A Critical Legal Study of the Prevent Duty:

The Religious Dimension

By

Rebecca Julia Riedel

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This thesis is being submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy (PhD).

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For Mum and Dad

Summary

The Islamist terrorist attacks which took place on the 11 September 2001 in the United States had a profound impact, giving rise to serious and international implications for national security. Subsequently, the United Kingdom witnessed its own terrorist attacks in 2005, driven by an emerging and dangerous ideology rooted in extreme Islam. Importantly, these attacks were planned and executed by British citizens. This 'homegrown' element to the terrorist threat spread quickly and globally, and this ignited debates about how the law should regulate the manifestation of belief. Religion, consequentially, became an integral part of counter-terrorism law in the United Kingdom.

With this in mind, this thesis aims to examine the effects of highlighting the religious dimension of the Prevent Duty upon Law and Religion as a field, as well as on faith communities. The first three chapters will explore the significance of the religious dimension of the Prevent Duty for the scholarship of Law and Religion. The subsequent three chapters will highlight the importance of the Prevent Duty and religious radicalisation for faith communities.

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Chapter One:
Introduction: A Critical Legal Study of the Prevent Duty: The Religious Dimension

1.1 Introduction

On 11 September 2001 (9/11), a terrorist attack, planned and executed by Al-Qaeda and affiliated groups, shook the world.[1] As the Islamist ideology behind the attack spread, the aftermath impacted national security on a truly international scale. Then, in the United Kingdom, it was uncovered that the 2005 London bombings (7/7) were in fact orchestrated by perpetrators who were all radicalised British citizens.[2] Although the threat of terrorism was not new for the UK,[3] the 'homegrown' element of the 7/7 attacks shocked the public and prompted debate as to the extent to which the law should regulate the manifestation of religion and belief.[4] It is clear that religion has become an integral part of counter-terrorism efforts in the UK; for example, the Terrorism Act 2000 explicitly states that religion is a potential motivating factor that may lead an individual to commit an act of terrorism.[5]

Moreover, the homegrown element incited extensive discussion as to the concept of religious radicalisation: why were so many individuals, born and raised in the United Kingdom, becoming drawn into supporting terrorism?[6] As a direct consequence, the Prevent Duty – once 'soft' law policy document, now 'hard' law duty – places a statutory responsibility on 'specified authorities' to have due regard to the need to prevent individuals from being drawn into terrorism.[7] Indeed, CONTEST (an abbreviation of the words 'counter-terrorism strategy') and the Prevent Duty Guidance, both 'soft law' documents which accompany the

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[1] See: National Commission on Terrorist Attacks Upon the United States, 'The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States' (Archived): <https://govinfo.library.unt.edu/911/report/911Report_Exec.htm> Last accessed: 15 February 2023.
[2] See, for an explanation: B Hoffman and D Dryer, 'Terrorism in the West: Al-Qaeda's Role in "Homegrown" Terror' (2007) 13 *The Brown Journal of World Affairs* 2, 91-99. The article describes the 'homegrown' threat of terrorism – which was emerging in 2007 – as the invention of 'al-Qaeda locals'; and 'almost all the major incidents in Europe are tied to al-Qaeda'.
[3] The UK had previously experienced ongoing conflicts with the Irish Republican Army (IRA) and the Irish National Libertarian Army (INLA). For discussion outside the scope of this thesis, see: S Prince, 'Narrative and the Start of the Northern Irish Troubles: Ireland's Revolutionary Tradition in Comparative Perspective' (2012) 50 *Journal of British Studies* 4, 941-964.
[4] R Sandberg, *Law and Religion* (Cambridge University Press 2001) 6.
[5] Terrorism Act 2000, s 1.
[6] See, for example, the work of: M Sageman, *Leaderless Jihad: Terror Networks in the Twenty-first Century* (University of Pennsylvania Press 2008) and Q Wiktorowicz, *Radical Islam Rising: Muslim Extremism in the West* (Rowman & Littleford 2005).
[7] Counter-Terrorism and Security Act 2015, s 26 and Schedule 6.

statutory Prevent Duty,[8] state that individuals are drawn into supporting terrorism through a process that has become known as 'radicalisation', defined by the UK Government as: 'the process by which a person comes to support terrorism and extremist ideologies associated with terrorist groups'.[9] Since the Prevent Duty made it a statutory responsibility to prevent radicalisation, many scholars have started to research the concept by studying the radicalised individuals themselves – both pre and post-conviction for terrorist offences – taking into account their worldviews and vulnerabilities, amongst other factors.[10] Specific to this thesis, '*religious* radicalisation' refers to radicalisation that is inspired by religion, in the same way that religious terrorism is inspired by religion.[11] There are, of course, other types of radicalisation, such as political and ideological radicalisation, but these fall outside the scope of this study. This is because this thesis focuses on Islamist terrorism and the stages of the radicalisation process that lead to it; the UK Government has stated that this brand of terrorism is far greater than any before it,[12] and defines it as:

> 'Acts of terrorism perpetrated or inspired by politico-religiously motivated groups or individuals who support and use violence as means to establish their interpretation of an Islamic society. In the UK context, the Islamist terrorist threat comes overwhelmingly from *Salafi-Jihadi* movements, which are inherently violent'.[13]

Despite the clear link between religion and terrorism, there has been little study of the Prevent Duty by lawyers in the field of Law and Religion. As a direct consequence of this, religiously motivated terrorism is not treated sufficiently in texts on the interaction between law and religion in the United Kingdom; for example, as we shall see, religiously motivated terrorism has not yet been placed in the context of religious offences and the criminal law.[14] This thesis, then, seeks to evaluate the effect of studying the religious dimension of the Prevent Duty within the context of the field of Law and Religion and the faith community. As a result, the main research question that underpins this thesis is:

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[8] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018); HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021).
[9] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) F.
[10] As discussed in Chapter Four of this thesis. See also, the ERG 22+ which was developed by His Majesty's Prison and Probation Services (HMPPS) to be used post-conviction. See: Ministry of Justice, 'The Structural Properties of the Extremism Risk Guidelines (ERG22+): a structured formulation tool for extremist offenders' (2019).
[11] Terrorism Act 2000, s 1 sets out that an act of terrorism may be motivated by politics, religion, race or ideology.
[12] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 8.
[13] Ibid, footnote 4.
[14] Section 1.2.3 of this chapter and Chapter Three of this thesis.

What is the effect of highlighting the religious dimension of the Prevent Duty upon Law and Religion as a field and the faith community?

This question is two-fold, and the work outlined in the following chapters will reflect this and address both parts of the question. Thus, Chapters One, Two and Three will address the first part of the main research question by answering:

Why is study of the religious dimension of the Prevent Duty – in the context of religious radicalisation – necessary to the study of Law and Religion?

Chapters Four, Five and Six will address the latter part of the question:

What are the implications of highlighting the religious dimension of the Prevent Duty for faith communities?

To begin, as stated, this chapter will address the first part of the main question. The chapter will be guided by a sub-research question which seeks to provide the necessary context to the rest of the work in Chapters One to Three: **how is the Prevent Duty relevant to the field of Law and Religion?** This question will be addressed in section 1.2 of this chapter. The remaining sub-research questions, which will guide the discussion in the remaining chapters of this thesis, as well as an overview of each chapter, will be outlined in section 1.3. The methodology will be outlined in section 1.4.

1.2 Contextual background: law, religion and terrorism

Although there exists no single definition of the sub-discipline,[15] 'law and religion' is generally understood to be the study of the law of the State as it interacts with – and applies to – religion. Although some scholars refer to 'faith' and not to religion in their work,[16] 'law and religion' will be used throughout this thesis to refer to the law of England and Wales as it applies to religion. Although the study of law and religion extends far beyond England and Wales, and is genuinely international in scope, the international interaction between law and religion is beyond the scope of this thesis and is only relevant by matter of making specific comparisons.

Within the sub-discipline of Law and Religion, the scholarship understands that there are two distinct but essential categories, and these are referred to as 'religion law' and 'religious law'.

[15] See, for example: F S Ravitch, *Advanced Introduction to Law and Religion* (Edward Elgar Publishing Ltd 2023) which does not define law and religion; see also: R Sandberg *Law and Religion* (Cambridge University Press 2011) 6 on defining law and religion.
[16] See, for example: A Bradney, *Law and Faith in a Sceptical Age* (1st edn, Routledge 2011).

'Religion law', simply, is used to describe the law of the State as it applies to religion, and this is the category of Law and Religion that this thesis is centred around. 'Religious law', by way of contrast, refers to the law created by religious organisations for their own governance and guidance. For example, the established Church of England is regulated by the laws of the state – external sources of religion law – which is applicable to all religious groups, but the Church is also regulated by its own internal religious law.[17] For example, Georg May defines Roman Catholic canon law as 'the norms of the law laid down by God and by the Church' as opposed to the 'public ecclesiastical law'.[18] The latter is the civil law which governs relations between the Church and State. On the topic of distinguishing religion law and religious law, Sandberg explains that the classifications are 'two complementary and overlapping entities'.[19] Outside Christianity, religious law also includes the internal rules of Jewish Law, Islamic Law, Hindu Law, and the rules of other world religions.[20] This is not to say that the study of law and religion is limited *only* to the study of religion law and religious law: 'Law and religion also includes the study of the relationship between law and religion'.[21] As Witte comments: 'Law and religion are distinct spheres and sciences of human life, but they exist in dialectical interaction, constantly crossing-over and cross-fertilising each other'.[22]

Therefore, as Sandberg and Doe put it: 'the interaction between law and religion is rarely far from the headlines',[23] and the nature of the interaction between law and religion continues to develop, particularly in the case of religious freedom and religious discrimination, widening the scope of the sub-discipline in recent years. These new developments have prompted 'passionate and wide-ranging debate about the extent to which... law should accommodate

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[17] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 13.
[18] G May, 'Ecclesiastical Law' in K Rahner (eds), *Encyclopedia of Theology* (T & T Clark 1981) 395; quoted by N Doe, *The Legal Framework of the Church of England* (Clarendon Press 1996) 14; see also, on Christian law: N Doe, *Christian Law: Contemporary Principles* (Cambridge University Press 2013) and M Hill QC, N Doe, R H Helmholz, J Witte, *Christianity and the Criminal Law* (Routledge 2020).
[19] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 13.
[20] See, for example: A Huxley, *Religion, Law and Tradition* (Routledge 2002); see also, for a comparative approach: N Doe, *Comparative Religious Law: Judaism, Christianity, Islam* (Cambridge University Press 2018); see also: R C Akhtar, P Nash and R Probert, *Cohabitation and Religious Marriage. Status, Similarities and Solutions* (Bristol University Press 2020). On Islam, see, for example: P Nash, *British Islam and English Law. A Classical Pluralist Perspective* (Cambridge University Press 2022); M Wilkinson, *The Genealogy of Terror* (Routledge 2018); S Ferrari, A Bradney, *Islam and European Legal Systems* (Ashgate 2000).
[21] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 6 (emphasis in original).
[22] J Witte, 'The interdisciplinary growth of Law and Religion' in F Cranmer, M Hill KC, C Kenny, R Sandberg (eds) The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe (Cambridge University Press 2016) 247-261; see also: J Witte, 'The Study of Law and Religion in the United States: An Interim Report' (2012) 14 *Ecclesiastical Law Journal* 3, 327-354; see also: Ibid, 7.
[23] See, for general discussion: N Doe and R Sandberg (eds), *Law and Religion: Critical Concepts in Law* (Routledge 2017).

religious difference';[24] 'implications of multiculturalism, religious resurgence and extremism... are dominating global and domestic news agendas and public life'.[25] The main focus of this debate has so far been on the interaction between religion and the civil law; the debate as to religion and the criminal law has been to a lesser extent.

Therefore, the field of Law and Religion interacts with a vast range of legal subjects, many of which will be outlined in this chapter, and the majority of which – as we shall see – have received a great deal of commentary and are featured in core Law and Religion textbooks. In light of this, the following sub-sections will outline how the field has addressed religion law in England and Wales over the past 20 or so years, as opposed to the state's interaction with religious law.[26]

As stated, this overview will provide the necessary contextual background for this thesis by addressing the three ways in which the literature suggests that law and religion interact. In doing so, the section will address the research question underpinning this chapter: whether religiously motivated terrorism is indeed relevant to the field of Law and Religion. First, this chapter will outline commentary from the field on the historical development of the interaction between law and religion in the United Kingdom; second, it will explore the ways in which the scholarship understands that religion is treated by the civil law; and, finally, how religion is understood to be both protected and regulated by the criminal law.

It is important to note that the literature discussed throughout this section, as it deals with terrorism, is the exception to the general rule; the majority of the Law and Religion literature does not make any mention of terrorism. For example, in his 2018 research handbook on Law and Religion, Ahdar makes no mention of terrorism as an area worth study from the field, even when exploring areas towards which the literature may, in the future, venture.[27] Witte treats terrorism similarly, making no mention of terrorism in his discussion of the growth of Law and Religion as a field.[28] Indeed, in the index of the most recent *Leading Works* text,

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[24] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 1.

[25] Ibid; see also: J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018).

[26] For a comprehensive discussion of religious law, see: N Doe, *Comparative Religious Law* (Cambridge University Press 2018).

[27] R Ahdar, 'Navigating law and religion: familiar waterways, rivers less travelled and unchartered seas' in R Ahdar (eds) Research Handbook on Law and Religion (Edward Elgar Publishing 2018).

[28] J Witte, 'The interdisciplinary growth of Law and Religion' in F Cranmer, M Hill KC, C Kenny, R Sandberg (eds) The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe (Cambridge University Press 2016) 247-261.

terrorism does not appear;[29] terrorism also only appears once in the index in the most recent edition of *Law and Religion in the United Kingdom*, and there is no commentary in this text on the Prevent Duty.[30] In Sandberg's 2011 *Law and Religion* textbook, terrorism is mentioned once, in the introduction, as a means to emphasise the shifting landscape of the interaction between law and religion, but never again. The omission, therefore, is clear. However, this chapter seeks to evaluate whether terrorism is indeed relevant to the field despite the lack of study dedicated to it, and will now address texts where terrorism is dealt with as an exception to the rule.

1.2.1 The historical development of law and religion in the United Kingdom

The interaction between law and religion in the UK today is indisputably influenced by its history – both in terms of the development of the law itself, [31] and how the field has studied it. Due to this, an important aspect of the work in the field has been on the historical development of law and religion in the United Kingdom, and there have been various typologies proposed as to what this looks like. For example, Sandberg suggests that 'the relationship between law and religion in England has developed through four broad overlapping but conceptually distinct phases'.[32] These are described as the medieval period, the reformation period, the period of religious toleration, and, finally, the period of positive religious freedom, which the scholarship agrees is where we sit today. Rivers proposes that these periods consist of the 'first millennium'; the break from Rome; the period of reformation and revolution; the establishment of religious toleration; a state of religious pluralism; and, finally, the present – or 'modern' – period, of which he writes:

> 'The settlement is being challenged, so it is important not only to state the law, but to understand the principles at stake… It is striking that in the last decade or so international human rights law has begun to take tentative steps towards a more comprehensive account of the rights of religious associations, which moves beyond its original individualistic cast in a direction which reconnects religious liberty and equality to the substance of the law of organised religions'.[33]

[29] R Sandberg (eds), *Leading Works in Law and Religion* (Routledge 2019).
[30] M Hill, R Sandberg, N Doe, C Grout *Religion and Law in the United Kingdom: Great Britain* (2nd edn Wolters Kluwer 2021).
[31] On the interaction between law, religion and history more generally, see: P W Edge, 'History, Sacred History and law at the Intersection of Law, Religion and History' (2020) 56 *Studies in Church History*, 508-528.
[32] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 17.
[33] J Rivers, *The Law of Organised Religions: Between Establishment and Secularism* (Oxford University Press 2010) 1-32.

The typologies proposed by Sandberg and Rivers, therefore, are similar, and will be addressed in stages below. Common to the typologies proposed by Law and Religion scholars, however, is the focus on Christianity and, as we shall see, the distinct underplay of the historical effect of religious radicalism.

More recently, however, Law and Religion scholars have paid more attention to each period on an individual basis. Oliva and Hall, for example, have contributed to the previously Anglo-centric scholarship by explaining how religion fits into the historical development of the constitutional law across England, Wales and Scotland.[34] Following an analysis of the literature, it is evident that texts which deal with the historical development of law and religion tend to focus principally on Christianity – not only in relation to its impact on the constitution and the formation of the law across England (and, more recently, Wales and Scotland), but also as to how it has been discriminated against, tolerated, and, ultimately, protected under English law.[35] As stated, each of these periods will now be explored.

First, there is the medieval period, which is characterised by a 'temporal/spiritual partnership' between England and the Church of Rome. As Baker explains, throughout this period 'England was still governed more by unwritten and variable custom than by uniform and settled law'.[36] Thus, initially, secular legislature or judiciary did not exist, and this period saw the rise of the King's Courts and 'the centralisation of government' which led to the development of the secular common law alongside the canon law of the Roman Church.[37] Since, legal scholars have engaged in debate about the jurisdictional overlap between the Roman Church and the secular common law during this period. For example, Helmholz, in support of Maitland, suggested that the English church only deviated from Roman papal law when permitted,[38] whereas Stubbs has suggested that the papal law of Rome was never binding on the English Church.[39]

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[34] J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018) 11-50.
[35] See, for example: J Rivers, 'Rights and Freedoms: Christian Constitutional Rights?' in N Aroney, I Leigh, *Christianity and Constitutionalism* (Oxford University Press 2022) 258-279; N Doe*, Christian Law: Contemporary Principles* (Cambridge University Press 2013). See also: C Grout, 'The Seal of the Confessional and the Criminal Law of England and Wales' (2020) 22 *Ecclesiastical Law Journal* 2, 138-155; R Domingo, J Witte (eds) *Christianity and Global Law* (Routledge 2020).
[36] J H Baker, *An Introduction to English Legal History* (4th edn, Butterworths 2002) 3.
[37] H G Hanbury, D C M Yardley, *English Courts of Law* (5th edn, Oxford University Press 1979).
[38] R H Helmholz, *Roman Catholic Canon Law in Reformation England* (Cambridge University Press 1990) 7.
[39] W Stubbs, 'Historical Appendix' in *Report of the Commissioners into the Constitution and Working of the Ecclesiastical Courts* (vol 1, London 1883); see also: R Sandberg, *Law and Religion* (Cambridge University Press 2011).

The second period is described as the Reformation period from the sixteenth century, and is characterised by discrimination and intolerance towards religion. Sandberg writes that this period was marked, in particular, by 'the ousting of the papal jurisdiction, the liberation of the Church of England from "foreign" jurisdiction and religious intolerance towards all other religious groups'.[40] Of most significance to this period, perhaps, is that the criminal law was used to control Catholics and Puritans – it became a criminal offence to challenge the royal supremacy over the Church of England.[41]

The following period is described as one of religious toleration and followed the Civil War. This period was characterised by restoration and enlightenment, and brought with it the enactment of the Blasphemy Act 1648,[42] as well as the abolition of the monarchy and the Commonwealth. Sandberg argues that this period was also characterised by the Toleration Act 1689 'which, over time… made alternative worship lawful and removed religious tests'; however, he continues: '[toleration] did not remove the many constitutional and legal provisions which operated on the presumption that England remained a "Protestant Kingdom"'.[43] Sandberg does not address, in his analysis, the prominence of religious radicals in the seventeenth century. This has been noted in more recent texts, however, as Oliva and Hall explain: 'The Commonwealth period… is often associated with religious and political repression'.[44] Further, Rivers has written about left-wing radicalism in Germany in the mid-1970s in relation to counter-extremism;[45] however, as will be addressed in more detail below, little has been written about the history of religious radicalism in England and Wales as it applies to modern-day religious radicalism.

Following the period of toleration is what is recognised as the modern period of positive religious freedom, of which Maitland has suggested that religious equality has been completed: 'religious liberty and religious equality are complete'.[46] Throughout the early

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[40] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 23. See also: E Duffy, *The Stripping of the Alters* (Yale University Press 1992): that is, the Reformation saw the establishment of the Church of England as the national church separated from the Church of Rome.
[41] See: Act of Supremacy 1559; see also: an offence to deprave the Book of Common Prayer 1552 (to which conformity was protected under the Act of Uniformity 1559) and the Thirty-Nine Articles of Religion (1563); to implement the papal bull (1571), under which Elizabeth was excommunicated by Pope Pius V in 1570. Also prohibited were: reconciliation with Rome (1581); the activities of the Jesuits and seminary priests who sought to return England to Catholicism (1585); and recusancy (1593).
[42] Which made it an offence to deny the Trinity or the authority of the Scriptures.
[43] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 27.
[44] J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018)
[45] See, for discussion: J Rivers. 'Counter-Extremism, Fundamental Values and the Betrayal of Liberal Democratic Constitutionalism' (2018) *German Law Journal* 2, 267-299.
[46] F W Maitland, *Constitutional History of England* (Cambridge University Press 1908) 520.

stages of this period, religion was increasingly viewed through the lens of the religious freedom standards of international law; for example, the European Convention on Human Rights (ECHR) Article 9 on the freedom of religion, thought and conscience. However, at this time, the ECHR was not part of domestic law and was therefore not directly enforced by the English and Welsh courts.[47] Following the enactment of the Human Rights Act 1998, religious freedom was placed firmly on a statutory footing as a positive right: 'English religion law is now shaped more by international norms than it has been at any time since the medieval period'.[48] The field of Law and Religion widely accepts this to be the case: that the United Kingdom has, indeed, moved towards a state of positive religious freedom: 'a multitude of overlapping laws have been enacted to recognise religious groups and to enable them to benefit from legal and fiscal advantages'.[49]

Due to this, there has since been much – and recent – commentary on the courts and their use of Article 9 from the field.[50] It is the view of the literature that, overwhelmingly, religious freedom is *protected* by UK law; religion is rarely viewed as a force for bad outside the constraints of Article 9(2) which limits the freedom of religion.

This is not to say, however, that Law and Religion scholars readily discuss whether religion is 'good' for society – in fact, the literature indicates quite the opposite – just that the law, as it stands, treats religion as a force for good. As Oliva and Hall put it, commenting on their 2018 text:

> 'We do not speculate as to whether the positive contributions being made by religious groups outweigh any negative impact that religious practices may have on society. It is indisputable that the question of whether religion is a blessing or a curse for humankind belongs firmly in the realm of philosophy and not of law'.[51]

As we shall see in section 1.2.3 below, and by way of example, many scholars in the field suggest that the criminal law seeks to protect religious freedom in this way.

[47] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 33.
[48] Ibid, 35-37: 'The religion law of the twenty-first century represents a change from passive religious tolerance to the active promotion of religious liberty as a basic right'.
[49] Ibid, 40.
[50] See, for example: P W Edge, L Vickers, 'Freedom of Religion under the European Convention on Human Rights. Foreshadowing interpretive dilemmas' in R Sandberg (eds), *Leading Works in Law and Religion* (Routledge 2019) 88-96.
[51] J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018) 8.

Although few Law and Religion scholars view religion as a force for bad, the work of Nehushtan is a clear example of an exception to this rule. Nehushtan argues that there are substantial links between religion and intolerance,[52] and suggests that understanding the practice of granting conscientious exemptions should be based on the principle of tolerance itself.[53] In his work, he explains that many religious groups are, by their very nature, intolerant of others and that ultimately, religion can be described as an antithesis of tolerance. In his view, religious groups consist of private communities based on a shared religion and actively exclude others who do not share their beliefs:[54]

> 'The communal nature of religion is intertwined with religious group identification, which, in turn, may promote the self-glorification of the group on the one hand the derogation of other groups or simple non-members on the other hand, as a means of enhancing the self-esteem of the group members'.[55]

Nehushtan suggests that religious believers are also intolerant in other ways. For example, in their aspiration to gain formal control by obtaining 'power over both believers and heretics',[56] in their use of religious symbols and traditions which have the potential to be harmful, and through their perception of the 'truth'.[57] Further, Nehushtan explains that religion is inherently intolerant based on religious absolutism, the intersectionality of faith and morality, and the fundamental substance of religious values and beliefs.[58]

The view that religious practice itself is inherently intolerant – and, therefore, a force for bad – is an important but rare component of the Law and Religion scholarship; as noted, most scholars in the field view religion in a positive light and rarely comment on its potential for promoting intolerance of those outside religious groups. Nehushtan notes this, concluding that the academic response to anti-religion arguments is 'harsh' because critique of religion is often perceived as 'an attack on one's identity or community'.[59] As he succinctly sums up:

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[52] See: Y Nehushtan, *Intolerant Religion in a Tolerant-Liberal Democracy* (Hart 2016).
[53] See, for example: Y Nehushtan, 'What Are Conscientious Exemptions Really About?' (2013) 2 *Oxford Journal of Law and Religion* 2, 393-416, 416: 'Regardless of the view that one holds about the proper limits of state's tolerance towards conscientious objectors, this article clarifies that tolerance is indeed the attitude of the state when it grants conscientious exemptions'.
[54] Y Nehushtan, *Intolerant Religion in a Tolerant-Liberal Democracy* (Hart 2016) 97-101; 108-12.
[55] Ibid, 99.
[56] Ibid, 101.
[57] Ibid, 106-108; 108-112.
[58] Ibid, 112-114; 114-117; 117-119.
[59] Ibid, 202.

‘Religion is not the source of all evil and it does not poison everything – but it has great potential and proven ability to cause great evil and to poison almost everything’.[60]

An initial sweep of the literature from the field of Law and Religion on the historical development of religion in the UK makes for two key findings that evidence that terrorism is a relevant area of study for the field, and justify the subsequent research questions which underpin this thesis. First, that the general view of the scholarship is that UK laws which deal with religion are designed to protect religion; second, that religious radicalism is rarely part of the discussion about the historical development of law and religion in the United Kingdom. Indeed, historical religious radicalism has not yet been part of any discussion addressing the history of religious terrorism in the United Kingdom by the field.

In addressing the first finding, it must be noted that the field of Law and Religion has repeatedly failed to recognise the *extent* to which some laws treat religion as a force for bad. As Oliva and Hall succinctly sum up: ‘there is a soft-presumption in favour of permitting and endorsing religious practices where possible’ but this soft-presumption is ‘easily rebutted if there are other factors weighing against it’.[61] This indicates that religion is broadly viewed by the field as something to protect. Religion is not, however, always treated by the legislature in this way. For example, the laws on counter-terrorism indicate that religion is viewed as a threatening entity in some instances; these laws do not seek to protect religion in any sense, and instead seek to prohibit certain manifestations of it, particularly in relation to Islam. This is because, as noted in the introduction to this chapter, the UK Government has explicitly stated that Islamist terrorism is the most significant threat facing the United Kingdom from terrorism at this time. It is worth questioning, for this reason, whether the interaction of law and religion remains in a period of positive religious freedom, or, perhaps, whether it is only the interaction of law and *Christianity* which has achieved this positive state. Not only does this indicate a bias in the literature – an important discussion but one which falls outside the scope of this thesis – there is perhaps a more obvious omission: although terrorism motivated by extreme manifestations of Christianity are not addressed by the law on counter-terrorism to the extent that Islamist extremism is, there have been recent instances where individuals who identify as Christian have been referred to Prevent for concerns relating to religious extremism.[62] As stated, this has not yet been addressed by the field. However, this means that

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[60] Ibid, 202.
[61] Ibid, 51.
[62] See Chapter Five of this thesis; see also: L Clarence-Smith, ‘Christian lecturer sacked over “homosexuality is invading the church” tweet’ *The Telegraph* 18 March 2023. The tweet read: ‘Homosexuality is invading the

terrorism – particularly when it is religiously motivated – is becoming all the more relevant to the study of Law and Religion.

On the second finding, there is little commentary from the field as to the history of religious radicals; in particular, for example, during the late sixteenth and seventeenth centuries, a period which, as noted, is subject to study from the field. However, Oliva and Hall explain the significance of religious radicals during the mid-seventeenth century;[63] in their work on the development of the constitution, Oliva and Hall explain that these religious radicals 'explored new and sometimes creative ways of thinking and living',[64] explaining that 'to paint the period as straightforward and intellectually repressive is misleading'.[65] Oliva and Hall's analysis has not been applied to modern day terrorism; however, they do highlight that, as Burgess points out,[66] the religious motivation of these historic radicals is often overlooked by commentators: 'what, from a later perspective, has been characterised as a struggle for political social justice was to contemporaries a *religious* endeavour to conform to the will of an omnipotent God'.[67] Importantly, they explain that, at the time,

> 'The question was not simply how the state should deal with the Church or religious questions, but how the state could align itself best with the reality and values of God's Kingdom. Furthermore, there was an understanding that failure in this endeavour would lead to divinely inspired repercussions'.[68]

In light of this imperative recognition of religious radicalism in the mid-seventeenth century, it is worth questioning whether further appreciation of the significance of religious radicalism in the past – and the motivations behind it – could lead the field towards the the study of modern-day radicalism in the context of the statutory Prevent Duty. This recognition of religious radicalism in one of the leading and recent texts cements that it is, in fact, relevant to the field of Law and Religion. The discussion will now move on to commentary from the field on the civil law, of which there exists abundant literature.

Church. Evangelicals no longer see the severity of this b/c [sic] they're busing apologizing for their apparently barbaric homophobia, whether or not its true. This *is* a "Gospel issue", by the way. If sin is no longer sin, we no longer need a saviour'; see also: [62] C Simpson, 'Chaplain flagged to Prevent for school sermon on LGBT policy victim of "Church of Postmodernism" *The Telegraph* 9 May 2021.

[63] Ibid, 21.

[64] J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018) 21.

[65] Ibid, 22.

[66] G Burgess, 'Introduction' in G Burgess and M Festenstein (eds), *English Radicalism 1550-1850* (Cambridge University Press 2007) 1, 10.

[67] Ibid, 22 (emphasis in original).

[68] Ibid.

1.2.2 Law, religion and the civil law

As stated above in section 1.2, much of the commentary from the field of Law and Religion to date has focused on the interaction between religion and the civil law in the United Kingdom and across wider Europe. There has also been valuable work which looks at the interaction between law and religion on an international scale.[69] As we shall see outlined throughout this sub-section, discussion from the field which focuses on the interaction between religion and the civil law is extensive and contemporary; religion interacts with almost every aspect of the civil law as it is recognised today.

For instance, scholars within the field have written extensively on the scope and sources of religion law (that is, the law as it impacts religion),[70] and various state positions on religion, internationally.[71] Doe, who has pioneered the modern study of comparative 'Christian law',[72] has not only provided valuable comparative texts on religious law,[73] but on religion law, too.[74] Of his study of religion law in Europe, he neatly sums up:

> 'All States allow religious groups to seek legal personality, but the conditions vary; all States confer tax benefits on prescribed religious activities, but the amounts vary. All States allow religious ceremonies to mark a marriage, but countries differ on whether those ceremonies generate a marriage with civil status. Equally, some States provide for denominational religious education in public schools, others do not – but all make provision for the religious education of pupils either on or off school premises'.[75]

This underlines further the multifaceted ways in which religion is entrenched within the civil law.

On other civil law issues, the literature has also addressed the importance of having clear legal definitions of religion. As Edge explained in 2002, 'a number of serious practical problems arise if a legal system decides not to define "religion" when that term constitutes a

[69] See, for example: F S Ravitch, *Advanced Introduction to Law and Religion* (Edward Elgar Publishing 2023); see also R Barker, *State and Religion. The Australian Story* (Routledge 2019).
[70] See, for example: M Hill, R Sandberg, N Doe, C Grout *Religion and Law in the United Kingdom: Great Britain* (2nd edn Wolters Kluwer 2021).
[71] See, for example: N Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford University Press 2011); see also: L Zucca, *A Secular Europe: Law and Religion in the European Constitutional Landscape* (Oxford University Press 2012).
[72] J Witte, 'Law at the Backbone: The Christian Legal Ecumenism of Norman Doe' (2022) 24 *Ecclesiastical Law Journal* 2, 192-208.
[73] See, for example: N Doe, *Comparative Religious Law* (Cambridge University Press 2018).
[74] N Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford University Press 2011).
[75] Ibid, 260.

generally applicable legal term'.[76] However, he suggests that 'a brief review of the key cases on the definition of religion makes it clear that the task of definition is extremely difficult'.[77] Edge explains that although a definition may be used to exclude groups, there must be some definition because 'there is a danger that the absence of a definition might lead either to abuse of the consideration given to religious interests, or to a public perception that such abuse might occur'.[78] He continues: 'in the absence of an explicit definition of religion, I would suggest that there is a danger that decision makers, when required to take account of religious interests in the exercise of their powers, may work by analogy from what they regard as being "clearly" religious'.[79] For an analysis of the interaction between law and religion to occur, Edge suggests that 'it is necessary to establish the characteristics of that which is being discussed before meaningful discussion can follow of the implications of those characteristics'.[80]

Concerns about the lack of definition of religion have also been voiced by Ahdar and Leigh in their work on religious freedom, who explain that the act of defining of 'religion' in law is 'not something that can be avoided',[81] and that there are real consequences for failing to do so in practice:

> 'A court that is unwilling to invoke a definition of religion, or to undertake an examination of individual beliefs, to restrict claims of religious liberty is left with only one tool by which to rein in excessive religious liberty claims. This is to limit permitted manifestations of belief in practice'.[82]

This discussion has not yet been applied to the definition of terrorism under the Terrorism Act 2000; as we shall see in Chapter Two, the definition directly references religion. This underscores the extent to which the role of religion in the context of counter-terrorism and the Prevent Duty has been largely overlooked by Law and Religion scholars to date.

In the United Kingdom, the study of religion and the civil law has also focused on the legal position of religious organisations, the autonomy of ministers and faith leaders,[83] and the

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[76] P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002) 9.
[77] Ibid, 6.
[78] Ibid, 7.
[79] Ibid, 9.
[80] Ibid.
[81] R Ahdar, I Leigh, *Religious Freedom in the Liberal State* (2nd edn, Oxford University Press 2013) 156.
[82] Ibid, 140.
[83] S Coleman 'The Process of Appointment of Bishops in the Church of England: A Historical and Legal Critique' (2017) 19 *The Ecclesiastical Law Journal* 2, 212-223

protection afforded to doctrine and worship.[84] There has been work on religion and property,[85] religion and finance,[86] and religion and charity,[87] the latter of which will be explored to some extent in Chapter Five of this thesis. The field has also produced work on the place of religion in employment law,[88] which intersects to some extent with religion and discrimination law – where there can be both indirect and direct discrimination on the grounds of religion and belief – of which Sandberg has written:

> 'Discrimination law does make some concession to religious groups and to religious employers whose religious beliefs clash with obligations placed on them. In contrast, religious individuals – such as religious employees – are in a very different legal position. They simply have to rely on the general terms of the law protecting religion'.[89]

As previously noted, there has also been much discussion surrounding exercise of the freedom of religion under Article 9 ECHR (on the freedom of religion). In the context of terrorism, there has been some recognition of the interaction between religion and terrorism and the implications of this on Article 9. For example, Edge, in his work on religious organisations, explains that religion and terrorism were expressly linked by Terrorism Act 2000.[90] He explained that although – in 2002 – there were no 'distinctively religious' organisations listed as proscribed organisations under the Act, it was 'clear that prohibition of such groups, if they meet the definition under the Act, will be possible'.[91] Edge described the potential implications of listing religious organisations as proscribed organisations under the 2000 Act with a practical example:

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[84] N Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford University Press 2011) 139-162.
[85] R H Helmholz, 'English property law and Christianity, 15000-1700' in R Cochran and M Moreland (eds), *Christianity and Private law* (Routledge 2020); see also: N Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford University Press 2011) 164-175.
[86] M K Lewis, *Religion and Finance: Comparing the Approaches of Judaism, Christianity and Islam* (Elgar 2019).
[87] K O'Halloran, *Religion, Charity and Human Rights* (Cambridge University Press 2014) 42-73.
[88] See, for example, the work of: J Duddington *The Church and Employment Law: A Comparative Analysis of The Legal Status of Clergy and Religious Workers* (Routledge 2023).
[89] R Sandberg Law and Religion (Cambridge University Press 2011).
[90] P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002) 120.
[91] Ibid. 'Proscribed organisations' are organisations that the Home Secretary believes may be concerned in terrorism; see: Home Office 'Proscribed terrorist groups or organisations' (2021); see also: Terrorism Act 2000, ss 3-10.

> 'Consider the offence of publicly showing support for a proscribed organisation. In this case, the individual believer would be prohibited from publicly demonstrating their adherence to their religion, for instance through wearing a holy symbol'.[92]

He continued that if the absolute right to hold a belief is wider than he had previously argued,[93] 'it may encompass identification with a religious system, as well as belief in that religious systems', and this would mean that 'general justifications under Article 9(2) would be inapplicable'.[94]

More recently, there has been commentary from the field on religious education and the place of religion in schools. Much of this discussion has omitted the true significance of the Prevent Duty in the context of education. For example, Sandberg's recent text on religion in schools makes no mention of the Prevent Duty.[95] For other key texts on the interaction between law and religion, and even for texts that do not sit firmly within the traditional scholarship, radicalisation and the Prevent Duty are only mentioned briefly: that is, they are often only referred to as part of a wider discussion about something else. For example, Oliva and Hall explain that although radicalisation in out-of-school – and independent school – settings is a 'key issue concerning religion and education law',[96] 'it should be stressed that contemporary concerns about terrorist indoctrination are by no means the only reason for dissatisfaction with education outside conventional schools'.[97] Similarly, Jivraj has highlighted the impact that the so-called 'war on terror' has had on Muslim schools by placing it in the context of Islamophobia. Jivraj explains: 'I would contend that singling out Muslim schools as having to "promote tolerance and harmony" in itself seems to signal a fear of the "home-grown" terrorist; "grown" perhaps in closed-off communities or schools within the nation'.[98] Indeed: 'the focus on Muslims as a key cause of the divisiveness of faith schools needs to be understood within the context of the broader politics of the "war on terror" in a post-9/11 era'.[99] Nash, in his text dealing with Islam and English law, considers the Prevent Duty's impact on schools in a similar way, explaining that 'after 9/11 the government developed the Prevent Strategy to stop children being recruited for terrorist causes at school and in

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[92] P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002) 121.
[93] Ibid, 47.
[94] Ibid.
[95] R Sandberg, *Religion in Schools: Learning Lessons from Wales* (Anthem Press 2022)
[96] J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018) 66.
[97] Ibid.
[98] S Jivraj, *The Religion of Law: Race, citizenship and children's belonging* (Palgrave 2013) 139.
[99] Ibid.

madrassas, noting the need for adequate safeguarding measures against radicalisation'.[100] Nash provides a useful exploration of the Trojan Horse Affair – which involved an alleged Islamist plot to take over schools in the UK – and concluded that this led primarily to conspiracy theories and extensive school guidance relating to the prevention of radicalisation.[101] Nash concludes, importantly, that problems within the schooling system can only be solved politically through addressing, for example, illegal schools.[102] It is important to note that – overall – the Prevent Duty is rarely mentioned in Law and Religion texts; when it is, it is often within the context of education. Nash's detailed discussion of the Trojan Horse Affair is an anomaly, but does not come close to addressing terrorism to the extent that it deserves.

As for the place of religion in the context of family law, much work has been carried out on marriage law.[103] However, more relevant to this thesis, there has been work focused on the rights of the child – and their welfare – in the context of religion.[104] The rights of the child will be revisited in Chapters Five and Six of thesis and, as we shall see, child welfare and the religious radicalisation of children are arguably linked. From the field, however, there has been no work on this link. However, there has been important work on various forms of child welfare issues which relate to religion; for example, relating to the exorcism of children,[105] and on the rights of the child the context of new religious movements.[106] Oliva highlights the importance of recognising the undeniable seriousness of religion-based abuse such as exorcisms involving children: 'The grim reality of the murder and maltreatment of children in circumstances connected to beliefs in hostile spiritual forces must be stressed from the outset, as individuals continue to fall through the cracks when public authorities identify and

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[100] P Nash, *British Islam and English Law: A Classical Pluralist Perspective* (Cambridge University Press 2022) 189-190.
[101] Ibid, 201.
[102] Ibid, 215.
[103] See, for example: R C Akhtar, P Nash and R Probert, *Cohabitation and Religious Marriage. Status, Similarities and Solutions* (Bristol University Press 2020); see also: R Sandberg, *Religion and Marriage Law: The Need for Reform* (Bristol University Press 2021).
[104] For example, see: P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002) 277-308; R Sandberg *Law and Religion* (Cambridge University Press 2011); S Jivraj, *The Religion of Law: Race, citizenship and children's belonging* (Palgrave 2013) 127-156. There has also been work carried out on marriage law – see, for example: R Sandberg, *Religion and Marriage Law: The Need for Reform* (Bristol University Press 2021); R C Akhtar, P Nash and R Probert, *Cohabitation and Religious Marriage. Status, Similarities and Solutions* (Bristol University Press 2020).
[105] J G Oliva, 'Exorcism and children: balancing protection and autonomy in the legal framework' (2022) 18 *Law in Context* 55-68; see also: H Hall, 'Exorcism, Religious Freedom and Consent: The Devil in the Detail' (2016) 80 *The Journal of Criminal Law* 4, 241-253.
[106] S Nilsson, 'Children in New Religions' in J R Lewis and I Tøllesfen (eds) *The Oxford Handbook of New Religious Movements: Volume II* (2nd edn, Oxford University Press 2016) 248-263.

intervene in abuse situations'.[107] Therefore, although, as noted, there has not yet been any discussion of extremism within the context of child welfare from the field, it must be recognised that the concept of faith-based abuse remains in its infancy, and so there is potential for it to be understood as including extremism and terrorism in the context of children. This argument will be revisited in Chapter Five of this thesis.

As for work on Islam in the United Kingdom, there has also been abundant discussion, particularly centred around the interaction between Sharia and UK law,[108] but also as to extreme – and less extreme – manifestations of Islam.[109] As to the interaction of Islam with UK law, Nash has commented explicitly on the Prevent Duty, which he views as an example of the 'considerable pushback against perceived government attempts to interfere with the collective integrity of British Muslims'; he places the Prevent Duty firmly in the context of multiculturalism.[110] As for work from the field on the various different manifestations of Islam – some extreme, some less so – there has been little commentary. However, the work of philosopher and social scientist Wilkinson – published as part of a Law and Religion collection – will be revisited in Chapter Four of this study.[111] Although scholars have highlighted the potential implications that the Prevent Duty may have on religious freedom,[112] we have seen, so far, throughout this section that it is rare for the field of Law and Religion to highlight the link between law, religion and terrorism explicitly. Terrorism is indeed relevant to the field of Law and Religion. We now turn to discussion of law, religion and the criminal law, where the relevancy between religion, law and terrorism becomes even more apparent but is yet to be discussed to the extent that it deserves.

1.2.3 Law, religion and the criminal law

The interaction between religion and the criminal law has been subject to much debate and discussion from the field of Law and Religion. As touched on, the Law and Religion literature suggests that the criminal law in England and Wales seeks, primarily, to protect – but sometimes to regulate – the practice of religion. In recognition of this, most standard Law

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[107] J G Oliva, 'Exorcism and children: balancing protection and autonomy in the legal framework' (2022) 18 *Law in Context* 55-68, 55.

[108] P Nash, 'Sharia in England: The Marriage Law Solution' (2017) 6 *Oxford Journal of Law and Religion* 3, 523-543; see also: J Rivers, 'Islamic Courts in the English Legal System' in S Bell and C Chapman (eds) *Between Naivety and Hostility: Uncovering the best Christian Responses to Islam in Britain* (Authentic Media 2011) 171-186.

[109] M Wilkinson, *The Genealogy of Terror* (Routledge 2018).

[110] P Nash, *British Islam and English Law. A Classical Pluralist Perspective* (Cambridge University Press 2022) 73.

[111] M Wilkinson, *The Genealogy of Terror* (Routledge 2018).

[112] J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018) 103.

and Religion texts deal explicitly with the interaction between religion and the criminal law as it applies to the so-called religious offences. As stated, although some texts have acknowledged the statutory Prevent Duty in its capacity to limit the freedom of religion, the Duty has not been dealt with in much detail. For example, Oliva and Hall explain that the Prevent Duty explicitly highlights 'the destructive potential of religion'; however, they argue that 'the issue is not one of religious ideologies but malign, extremist ideologies'.[113] Therefore, although it is noted that there are indeed limitations to the positive treatment of religion in the United Kingdom, this 'does not preclude the legal system from acknowledging that there are some manifestations of religious faith which are extremely negative, and dealing with those robustly'.[114]

Although the religious offences will be explored fully in Chapter Three of this thesis, for now it is important to note for contextual reasons that they include the aforementioned – and now abolished – offence of blasphemy, which criminalised statements that offended believers; acts of religious hatred under the Racial and Religious Hatred Act 2006; and the range of religiously aggravated and public order offences which protect, and in some instances limit, the practice of religion.[115] Therefore, for context, it is noted that these religious offences primarily operate to protect religious groups from acts of hatred directed towards them, whether verbally, written or physically. Edge has commented on hate speech, for example, albeit not in the context of counter-terrorism: 'it is possible to identify a wide range of instances in which religious scripture appears to justify or require hostility towards a protected group, or their practices, in a way which fails to mirror current state policy on equality and non-discrimination'.[116] Edge's commentary on hate speech will be revisited in Chapter Three of this thesis to illustrate how provision on hate speech directly interacts with – and can be applied to – understandings of terrorism. However, as we shall also see in Chapter Three, the literature in the field of Law and Religion has instead focused primarily on why these offences are so difficult to prosecute, and whether they truly serve their purpose: 'the practical effect of religious offences is open to doubt. However, this ineffectiveness may not necessarily be a bad thing'.[117] Terrorism is not understood as a

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[113] J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018) 103.
[114] Ibid, 104.
[115] See, for example: R Sandberg, *Law and Religion* (Cambridge University Press 2011) 131-147; M Hill, R Sandberg, N Doe, C Grout, *Religion and Law in the United Kingdom: Great Britain* (Wolters Kluwer 2021) 168-172.
[116] P W Edge, 'Oppositional Religious Speech: Understanding Hate Preaching' (2018) 20 *Ecclesiastical Law Journal*, 281.
[117] R Sandberg, Law and Religion (Cambridge University Press, 2011), 148.

religious offence, and for this reason it is often omitted from discussions from the field on the criminal law and religion. Indeed, because terrorism does not seek to protect religion in any way – and actively seeks to prohibit certain manifestations of it – it is not recognised by Law and Religion scholars as a matter for the field to address in the context of the criminal law. However, as we have seen, terrorism is related to religion, and is most definitely something for the field to consider in the context of the criminal law as it treats religion.

In the context of prohibiting certain manifestations of belief, the field recognises that the protection afforded under Article 9 is two-fold: it seeks to protect religion but also to limit it in certain circumstances. However, counter-terrorism laws and the Prevent Duty do not protect religion at all and their starting point is to prohibit certain manifestations of religion. Revisiting Oliva and Hall's conceptualisation of the soft-presumption that religion is something to be endorsed and permitted,[118] the Prevent Duty could be described as operating on a hard-presumption that religion is treated by some areas of law as an entity to be cautious of. This underscores the extent to which scholars in the field have predominantly looked at religion as a public good.

By means of comparison, there has also been very little said about the religious dimension of terrorism – and the Prevent Duty – by international scholars from the field. For example, in Europe, the latest Brill series on legal documents which deal with Islam in Europe does not deal with terrorism as a main point for consideration.[119] Where terrorism is mentioned by the literature, this has been by way of comparing terrorism with other aspects of the criminal law. For example, in her work on religion and state in Australia, Barker notes that the link between religion and terrorism has been made explicit through Australian counter-terrorism statues.[120] Similar to the definition set out by the Terrorism Act 2000, the Criminal Code Act 1995 explains that an act of terrorism may be motivated by religious causes.[121] Despite this, Barker explains that 'determining whether there is a link between religion and terrorism is far from simple'.[122] However, she continues, in Australia 'a connection is almost inevitably drawn between Islam and terrorism'.[123] As part of a brief comparison with UK law, it

[118] J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018), 51.
[119] J S Nielsen, S Ferrari, M Foblets, A Nalborczyk, M Rohe and P Shah (eds) *Annotated Legal Documents on Islam in Europe* (various dates).
[120] R Barker, *State and Religion. The Australian Story* (Routledge 2019) 137.
[121] Criminal Code Act 1995, s 100.1.
[122] R Barker, *State and Religion. The Australian Story* (Routledge 2019) 140.
[123] Ibid, 141.

becomes evident that Barker is reluctant to recognise the true extent of the link between religion and terrorism:

> 'When examined more closely, "religiously motivated terrorists" often have other secular goals such as the release of religious leaders from State detention or the return of "occupied" land. Far from being irrational fanatics "religiously motivated" terrorists, may, like terrorists motivated by political or other ideology, have rational practical motivations'.[124]

However, as shall be explored fully in Chapter Four of this thesis, religiously motivated terrorism is rarely a matter of rational motivation verses irrational fanaticism – this is an oversimplification. Instead, it is often a matter of scriptural interpretation – and various other contributing factors – which leads to the adoption of extreme worldviews. Although this thesis rarely relies on international literature – as stated, this is outside the scope of the study – it is proposed that on both an international and domestic scale, Law and Religion scholars have overlooked the extent to which terrorism is important in the context of law and religion. This indicates a major omission in the study of Law and Religion.

In light of this, it is worth noting the two main findings which were identified through a review of the literature, and which indicate a distinct gap in the Law and Religion scholarship as it applies to the criminal law in the United Kingdom. These findings also underpin the research questions which are designed to guide this study and which will be listed in the following section (see section 1.3 below). First, the field of Law and Religion treats religion largely as something that requires protection by the state; second, in most of the standard Law and Religion texts, there is no detailed discussion of the religious dimension of terrorism – even in texts that deal with the law on Islam in the United Kingdom, there is no commentary on the terrorism legislation outside the Prevent Duty and, occasionally, the Terrorism Act 2000. These findings will be explored, briefly, here and underpin the main justification behind this thesis.

First, to build on the findings in the previous sub-section, the field of Law and Religion, in its extensive literature as outlined above, rarely treats religion as a force for evil; rarely is religion described in a threatening manner. This is demonstrated clearly in Sandberg's evaluation of the religious offences; he comments: 'an argument may be made here that the

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[124] Ibid.

criminal law is the wrong vehicle to regulate religion'.[125] Sandberg then goes on to consider whether the criminal law is 'too blunt an instrument to regulate religion'.[126] This is not strictly correct; Sandberg's discussion has not recognised the significance of offences which deal with religion but which fall outside the typical religious offences of blasphemy, religious hatred and the religiously aggravated offences. These religious offences operate, for the most part, to protect religious groups from harm. Terrorism offences, however, in their explicit dealings with religion, seek to protect the public from religion. Although it is noted that Article 9(2) ECHR operates to limit the exercise of religious freedom in certain circumstances, it is suggested that the terrorism offences go further by seeking solely to prohibit certain manifestations of religious belief. It is argued, then, that the law on terrorism is in fact the correct vehicle to penalise religious extremism, and, for this reason, terrorism law should be treated in discussions on religious offences by the field.

Second, and as we have seen throughout this section, no standard Law and Religion texts deal in much detail with terrorism as it applies to religion. As Chapter Two of this thesis will explore further, religion is central to terrorism law in England and Wales but is very rarely commented on by the field. As we have seen, even in texts which deal specifically with Islam in the United Kingdom, and those which comment on how the law regulates faith, there is rarely any detailed discussion of terrorism law and its impact on religious freedom and faith communities. Despite this, a direct link – made by the UK Government – has been established between Islam and terrorism: Terrorism Act 2000 explicitly states that religion is a main motivation for acts of terrorism. This thesis, then, seeks to explore a previously underappreciated area of religion law: the law of England and Wales as it applies to the interaction between religion and terrorism law.

1.2.4 Summary of findings

To summarise, this section has uncovered four main findings that indicate gaps in the literature from the field of Law and Religion. These are as follows: first, the literature suggests that we are in a period of positive religious freedom. However, there exist laws which actively seek to prohibit certain manifestations and interpretations of religion, and certain religious practices: the Prevent Duty and related counter-terrorism legislation is one. It is proposed, then, that the field of Law and Religion should recognise that we are in a period of positive religious freedom as the law applies to Christianity, but not to Islam – in

[125] Ibid, 148.
[126] Ibid.

fact, the law on counter-terrorism specifically prohibits certain manifestations of Islam. The failure to recognise this indicates an omission and must be addressed by the field. As this chapter has argued, terrorism is of relevance to the field, particularly in the context of education and the criminal law. However, this finding also emphasises the Christian-centric nature of the debate so far, highlighting biases and narratives within the Law and Religion scholarship which are rarely addressed.

Second, religious radicalism has not yet been part of the commentary on the history of religion law in the United Kingdom, despite being relevant to it. As we have seen, there has been discussion of historical religious radicalism, but this has not yet been applied to modern-day radicalism in the context of the Prevent Duty. This, the chapter has argued, is an important omission due to the relevancy of religious radicalism to the field. Although not within the scope of this thesis, a historical account of religious radicalism as it relates to the Prevent Duty would enhance the discussion surrounding religion and terrorism, and advance understandings of why religiously motivated terrorists have come to be the greatest threat facing the United Kingdom.

Third, the field treats religion primarily as something which requires protection by the state and that rarely requires serious intervention. Indeed, Article 9(2) limits the exercise of religion – and even prohibits certain religious acts – but the field of Law and Religion ultimately recognises religion as a force for good. Due to this, and as we have seen, Sandberg suggests that the criminal law may not be the most suitable means to regulate religion. However, despite this, it was argued that there has been no recognition by the field of other laws which seek to protect the public from religion, such as terrorist offences and the statutory Prevent Duty. These laws, the chapter has argued, could be viewed as an alternative means to regulate religion. Although the Prevent Duty is not technically a criminal law duty, it relates directly to the prevention of religiously motivated terrorism, which is a criminal offence. Thus, it is evident that the field of Law and Religion has omitted the study of terrorism because it does not believe terrorism law is part of the criminal law that regulates religion; this will be explored further in Chapter Two of this thesis.

Fourth, it is evident that none of the key Law and Religion texts which explore the criminal law deal explicitly with terrorism as part of discussions about the religious offences. This is despite the statutory recognition by the Terrorism Act 2000 that religion is a driving force behind terrorism. This, again, is a significant omission; as we shall see in Chapter Three of

this thesis – which questions whether terrorism can be recognised as a religious offence – viewing the terrorism offences and the Prevent Duty (which seeks to prevent individuals from being drawn into terrorism) through a Law and Religion lens illustrates precisely how central terrorism is to the field.

Finally, it is submitted that the reason scholars in the field have neglected the study of terrorism is largely uncertain. However, it is most likely because terrorism is not often perceived as a Law and Religion matter. The arguments made above demonstrate some of the limitations of the lens through which the field studies the interaction between law and religion: if the 'test' is for the field to only deal with matter which explicitly reference religion, terrorism falls into this category.[127] It may also be inferred that, as Sandberg writes, the United Kingdom is perceived to have moved from a period of religious toleration to a period of positive religious freedom,[128] and this is widely accepted within the scholarship to be the case. Including religiously motivated terrorism in commentary on the interaction between law and religion in the UK would challenge Sandberg's argument. This is because, in the context of terrorism, religion is seen as a force for bad. As the greatest force driving terrorists today, religious terrorism is a threat to both public order and public safety; as we shall see throughout Chapters Two and Three of this thesis, terrorism law – both 'hard' and 'soft' – seeks not only to regulate religious belief, but to prohibit it entirely in some circumstances. This is not reflective of a period of positive religious freedom, and presents religion as hostile and dangerous.

1.3 Thesis outline

As explained in the introduction to this chapter,[129] the new nature of the terrorist threat facing the United Kingdom – a shift towards terrorism motivated by extreme Islam – has prompted the UK Government to introduce legislation which deals directly with individuals who are – or are at risk of becoming – radicalised.[130] This legislation has involved facets of both punishment and prevention, and the UK Government has expressly decided that the post-2001 legislation must confront *all* motivations behind acts of terrorism, not just those rooted in religion.[131] However, the Government has since explained that because the most significant

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[127] This will be explored further in Chapter Two of this thesis.
[128] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 29-30; see also: M Hill, R Sandberg, 'Is Nothing Sacred?: Clashing Symbols in a Secular World (2007) 3 *Public Law*, 488-506.
[129] Section 1.1.
[130] For example: the Counter-Terrorism and Security Act 2015.
[131] Terrorism Act 2000, s 1 sets out that an act of terrorism may be motivated by politics, religion, race or ideology; HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) F

threat the United Kingdom faces from terrorism is derived from Islamist extremism, more so than other forms of terrorism,[132] counter-terrorism efforts have – and will continue – to be focused towards combatting Islamist terrorism. This is exemplified by the statutory Prevent Duty,[133] central both to this thesis and to the Government's efforts in preventing radicalisation.[134] The statutory Prevent Duty, as we shall see in Chapter Two, has been subject to substantial criticism over the years, particularly in relation to its treatment of religion. For example, there exists extensive literature – which largely falls outside the field of Law and Religion – which criticises the Prevent Duty for its stigmatisation of the Muslim community, with emphasis given to the impact it has on the ordinary manifestation of Islam.[135]

As stated in the introduction, in light of this, this thesis will be guided a main research question which is comprises two main components:

What is the effect of highlighting the religious dimension of the Prevent Duty upon Law and Religion as a field and the faith community?

As noted, both parts of the question will be addressed by the chapters in this thesis. The first part of this question, which asks: **why is study of the religious dimension of the Prevent Duty – in the context of religious radicalisation – necessary to the study of Law and Religion?** will be addressed throughout Chapters One, Two and Three. As we have seen, Chapter One has outlined the extent to which the Prevent Duty is relevant to the field of Law and Religion; this discussion will continue throughout Chapters Two and Three, and the

[132] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 8. For more on the ideology of *Salafi-Jihadism* (the ideology behind Islamist extremism) see: S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books 2017). See also, Chapter Three of this thesis.
[133] The Prevent Duty, put on a statutory footing by s 26 of the Counter-Terrorism and Security Act 2015, places a legal responsibility on all 'specified authorities' to have due regard to the need to prevent individuals from being drawn into terrorism.
[134]Although Chapter Two provides a breakdown and history of the Prevent Duty (including its transition from 'soft' to 'hard' law), it is worth noting that the duty was stimulated, at least in part, by the events of the 7/7 bombings. The most recent independent review of Prevent has called for an increased focus on Islamist extremism above all other types of extremism; see: William Shawcross CVO, 'Independent Review of Prevent' (2023) 3: 'the facts clearly demonstrate that the most lethal threat in the last 20 years has come from Islamism, and this threat continues'.
[135] See, for example: D Barrett, 'Tackling Radicalisation: The Limitations of the Anti-Radicalisation Prevent Duty' (2016) 5 *European Human Rights Law Review* 530–541 at 536; L Blackwood, N Hopkins and S Reicher, 'From Theorizing Radicalization to Surveillance Practices: Muslims in the Cross Hairs of Scrutiny' (2016) 37 *Political Psychology* 6 597–612; Muslim Council of Britain, 'Meeting between David Anderson QC and the MCB: concerns on Prevent' (2015); Muslim Council of Britain, 'The Impact of Prevent on Muslim Communities' (2016); M Guest et al, *Islam and Muslims on UK University Campuses: perceptions and challenges* (Durham 2020); F Qurashi, 'The Prevent Strategy and the UK "War on Terror": Embedding Infrastructures of Surveillance in Muslim Communities' (2018) 4 *Palgrave Communications*.

research questions for these chapters will be outlined below. Respectively, Chapters Four, Five and Six will address the second part of the main research question, focusing on: **what are the implications of highlighting the religious dimension of the Prevent Duty for faith communities?** Again, each individual chapter will be guided by its own separate research question. As explained, each research question will be listed below along with a summary of each chapter.

To begin addressing why the study of the religious dimension of the Prevent Duty is necessary to the study of Law and Religion, Chapter One was guided by the question of: **how is the Prevent Duty relevant to the field of Law and Religion?** As seen above, the chapter has highlighted that terrorism has commonly been neglected in the study of Law and Religion because it is simply not perceived as a Law and Religion matter. Indeed, the chapter has illustrated how, even in Law and Religion texts which do deal with terrorism and the Prevent Duty, the relevance of terrorism is largely underplayed. The chapter, then has outlined how the Prevent Duty is relevant to the field of Law and Religion by beginning to highlight the religious dimension of the Prevent Duty. The chapter has achieved this by exploring the ways in which the field has neglected to view the Prevent Duty in contexts where it is, arguably, very much relevant. For example, the chapter has outlined how the Prevent Duty is relevant to the field in the context of the historical development of law and religion, the civil law and, perhaps most notably, the criminal law.

Chapter Two of this thesis seeks also to address why study of the religious dimension of the Prevent Duty is relevant to the field of Law and Religion. In doing so, Chapter Two will be guided by the question: **is religion central to terrorism law?** The chapter, therefore, seeks to build on the work completed in Chapter One by exploring the extent to which terrorism is a matter for the field of Law and Religion to address. The chapter will explore this through a chronological investigation of the key statutes which deal with religiously-motivated terrorism across England and Wales, between the years of 2000 and 2023, evaluating the extent to which religion is central to each of these statutes, and whether religion remains central to the operation of the statutory Prevent Duty. The chapter will explore, therefore, whether religion is not only relevant, but central, to terrorism prevention across England and Wales.

Chapter Three will also address the extent to which the study of the religious dimension of the Prevent Duty – in the context of religious radicalisation – is relevant to the field of Law

and Religion. Chapter Three, therefore, will address the question: **is terrorism omitted in Law and Religion discussions of the criminal law?** The chapter will explore how the field of Law and Religion treats the criminal law, and, building on the findings of Chapter One, evaluate the extent to which the field omits the study of religiously motivated terrorism in discussions of the religious offences. The chapter seeks to apply a Law and Religion lens to the terrorism offences, placing them in the context of the religious offences – of which there is much commentary from the field. The chapter will evaluate the extent to which these offences are relevant to the field of Law and Religion in discussions about the criminal law. Chapter Three will also provide a summary of the first three chapters of this thesis – as to their findings. The full extent of these arguments will be outlined and reflected upon in Chapter Seven.

Chapters Four, Five and Six, as stated, will address the second part of the main research question, which focuses on: **what are the implications of highlighting the religious dimension of the Prevent Duty for faith communities?** Yet again, each chapter will be guided by an individual research question.

Chapter Four will address the implications of highlighting the religious dimension of the Prevent Duty for faith communities by considering: **how is the Prevent Duty of importance for faith communities?** In addressing this question, Chapter Four will explore the extent to which the role of faith communities has been both underappreciated and underplayed by the UK Government on the subject of the Prevent Duty. Therefore, the chapter will explore the government guidance and risk assessment frameworks which set out the definition of 'Islamist terrorism' and the stages of the radicalisation process itself. These definitions and descriptions will be compared with the literature on the subject, primarily from the fields of psychology, political science and social science. In doing so, the chapter will explore how the Prevent Duty is of importance to faith communities through two case-studies; first, whether the government guidance sufficiently captures what it means to be an Islamist terrorist; second, whether the Government and literature align as to their descriptions of the radicalisation process. The implications of this will be explored throughout the chapter.

Chapter Five will again address the role of faith communities in the context of the Prevent Duty. This chapter will be guided by the research question: **how can faith communities be supported?** The chapter will explore, as a necessary and preliminary matter, why the faith sector is not legally obligated to prevent radicalisation under the statutory Prevent Duty. In

light of this, and of the conclusions drawn in Chapter Four, the chapter will explore the extent to which faith communities are already sufficiently equipped to deal with radicalisation by evaluating the provisions in place to support them in identifying and tackling it. The chapter will also evaluate the extent to which the Government is responsible for providing support to faith communities. Finally, the chapter will look towards alternative means of supporting faith communities outside the scope of the Prevent Duty and in the broader context of child welfare. The chapter will explore the concept of spiritual or faith-based abuse as it applies and compares to the radicalisation of children.

Chapter Six will also explore the implications of highlighting the religious dimension of the Prevent Duty for faith communities. Based on the findings of Chapter Five, the research question addressed by Chapter Six is: **is it useful to reframe religious radicalisation as a matter of child welfare?** The chapter will explore this research question by explaining and evaluating how the UK Government manage the rights of children across England and Wales, and the extent to which this intersects with the statutory Prevent Duty. In light of this, the chapter will evaluate whether the Prevent Duty is viewed as a safeguarding responsibility by the Government and by practitioners, as well as the extent to which radicalisation – of which the Prevent Duty seeks to interrupt – is understood as a matter of child exploitation or abuse, by the Government and in the literature. The chapter will explore the latter point in the context of whether radicalisation is comparable with other forms of harm that children may be subjected to. Chapter Six, like Chapter Three, will also summarise the findings of Chapters Four, Five and Six in light of addressing the second part of the main research question underpinning this. Again, the arguments made will be revisited and described fully in Chapter Seven.

Chapter Seven will conclude this thesis by providing a summary of the findings and outline potential contributions to future projects.

1.4 Methodology

The research takes a qualitative approach in its design. The qualitative data was generated through documentary analysis of relevant primary and secondary documentary data. Primary data was collected in the form of terrorism prevention legislation and policy, transcripts of parliamentary debates, and relevant case law. Through early thematic analysis, legislation, policy and parliamentary debates that did not refer to Islamist or religiously motivated terrorism were largely excluded. Legislation and policy dealing with religious hatred,

religion-related crime and safeguarding in the context of child welfare were also analysed where appropriate. Secondary data was collected in the form of academic books, journal articles, reports and government published data and statistics. Secondary data was also collected in the form of the Prevent and safeguarding policies of places of worship, religious organisations, universities and their respective chaplaincies, as well as other relevant policies and protocols.

The decision to study England and Wales was made due to the author's expertise and existing area of study, the accessibility of sources, and to manage the research undertaken so as not to undermine the depth of analysis. For this reason, the jurisdictional choice was limited to England and Wales.

The field of Law and Religion has not yet studied the interaction between terrorism and religion in sufficient detail across England and Wales, and so England and Wales were chosen as an initial starting point with the intention for comparative work which studies this interaction in other jurisdictions to grow from the work in this thesis. It is, however, acknowledged that the study of religion law – and indeed Law and Religion – extends far beyond the jurisdiction of England and Wales; however, the jurisdictional choice made for the purposes of this thesis was sufficient to address the overarching research question underpinning the work. Future work may address the extent to which terrorism prevention in England and Wales can be compared with other jurisdictions, but this falls outside the scope of this thesis. This will be discussed further in Chapter 7 (see section 7.4).

In parts of the thesis, Wales guidance is compared alongside England *and* Wales guidance. For example, in Chapter Six section 6.4. This approach was taken for two reasons: first, the Welsh guidance has not been studied in sufficient detail in this context before; second, it is necessary to acknowledge powers devolved to Wales and those reserved to central parliament (see, for example, Chapter Five section 5.2 and Chapter Six section 6.2). This includes, for example, the setting up and functions of the CONTEST and Extremism Board for Wales. The UK Government's intent behind these devolved powers, as will be explained in Chapter Five, is to encourage a collaborative approach towards counter-terrorism across England and Wales between each government, and between religion and state. Indeed, as explored in Chapter Six, elements of education and health and social services are also devolved to Wales. For this reason, a decision was made to include and draw comparisons between England and Wales throughout this thesis where necessary and appropriate.

Chapter Two:
The Prevent Duty and Religious Causes

2.1 Introduction

Historically, the criminal law has been used both to protect and to limit the exercise of religious belief and non-belief in the United Kingdom. For example, as was introduced in Chapter One of this thesis, the older criminal law offences which are associated with religion, such as the offence of blasphemy and its abolition, are routinely explored by Law and Religion scholars. However, as we also saw, other statutes that deal explicitly with religion are rarely commented on by the field. This includes, in particular, the Prevent Duty and other counter-terrorism legislation that regulates religiously-motivated terrorism; as noted in Chapter One, the Terrorism Act 2000 makes explicit reference to religion as one of the potential 'causes' behind an act of terrorism, and so is directly relevant to the field of Law and Religion. This concept will be explored fully throughout the first section of this chapter (see section 2.2.1 below).

Law and Religion, as a field, is yet to recognise the significance of terrorism as a matter for the scholarship to address. This chapter, then, will consider areas of law which have not yet been addressed by the Law and Religion scholarship; Chapter Three will consider the criminal law – of which much has been written – but to which links to terrorism law have not yet been made. One of the potential reasons for this, again introduced in Chapter One, is that the field has consistently studied religion as a force for good; religion is rarely examined as force for evil or as a threat in the literature, and because of this, terrorism is rarely addressed in standard Law and Religion texts. In fact, the interaction between religion and terrorism is an area of study that is routinely omitted by the field, being absolutely relevant to it. Where terrorism *is* discussed by Law and Religion scholars, the importance of its role in the interplay between law and religion in the United Kingdom is almost always underplayed. This chapter, then, seeks to explore further this important omission in the Law and Religion literature as identified in Chapter One; that terrorism is, indeed, relevant to the field. To this end, the chapter will provide a detailed, preliminary and necessary introduction to counter-terrorism law as it applies to religion. To guide the discussion in this chapter, the second research question underpinning this thesis will be addressed: **is religion central to terrorism law?**

To address this question, the chapter will provide a chronological exploration of the key statutes dealing with counter-terrorism across England and Wales between the years of 2000 and 2023. The chapter will explore and evaluate the key statutes which set out the main terrorism offences, as well as the statutes that regulate terrorist activity in England and Wales. For each statute, the chapter will explain and evaluate the relevance of religion to the extent that it is central to counter-terrorism law.

The first part of the chapter will look to the definition of 'terrorism' provided by the Terrorism Act 2000. The UK Government, through this definition, has explicitly recognised that 'religious causes' are a potential motivating factor that could lead an individual to commit an act of terrorism. Therefore, this initial section will begin with an examination of the word 'terrorism' under the 2000 Act, exploring its meaning and the consequences of the decision to include 'religious causes' as part of the definition. As part of this section, an explanation of the offence of committing an act of terrorism itself will be provided, both for contextual reasons, and to explore the degree to which religion is central to this offence. Finally, the section will provide an explanation and exploration of the offences created by the Terrorism Act 2006 – the so-called 'glorifying' offences – which deal with the glorification (or encouragement) of terrorism; again, the extent to which religion is relevant to these offences will be discussed and evaluated.

The second section of this chapter will explore the statutes that have not yet been addressed by the field of Law and Religion in the context of religion and the criminal law. The statutes addressed will be those that operate to limit the actions of offenders, and those which seek to prevent terrorist attacks from happening; this section will assess the extent to which religion is central to these statutes. The section will therefore include an exploration of the Terrorism Prevention Investigation Measures Act 2011 and the Counter-Terrorism and Security Act 2015, respectively. Specifically, the section will address Terrorism Prevention Investigation Measures (TPIMs) under the Terrorism Prevention Investigation Measures Act 2011, Temporary Exclusion Orders (TEOs) under the Counter-Terrorism and Security Act 2015, and the Channel Duty under the Counter-Terrorism And Security Act 2015. Although the Prevent strand of CONTEST was placed on a statutory footing by the Counter-Terrorism and Security Act 2015, the Prevent Duty will be addressed in the final section of the chapter due to its long and controversial history – this detailed discussion must be treated separately.

Therefore, the final section of this chapter will provide a detailed evaluation of the statutory Prevent Duty as it applies to religion. The section will provide an outline of the history of the Duty – once a 'soft' law regulatory instrument, now a 'hard' law statutory duty – and evaluate the extent to which religion is central to the duty today. Here, a Law and Religion lens will be applied in the form of previous work from the author of this thesis, which will be used to guide the discussion in the final section of this chapter, and explore potential avenues for future research from the field. Ultimately, the section will explore the extent to which religion is central to the statutory Prevent Duty.

2.2 Terrorism and religion

The Terrorism Act 2000 is perhaps the most significant piece of legislation governing counter-terrorism today. This is because the Act deals with the offence of committing an act of terrorism itself, and it provides the statutory definition of the term 'terrorism'.[136] The definition, as briefly introduced,[137] states that 'religious causes' may motivate an individual to commit an act of terrorism. However, when defining 'terrorism' under the 2000 Act, it is unlikely, as we shall see, that the UK Government had any idea of the potential impact that the inclusion of 'religious causes' would have on the right to exercise religious freedom; it is also unlikely that the Government foresaw the extent that religion would become central to counter-terrorism law. Of course, it was likely recognised by the Government that the definition would influence every piece of 'hard' and 'soft' law dealing with terrorism prevention since – in fact, this was likely the purpose of the definition – however, it is uncertain whether the extent to which terrorism would then become directly associated with religion was foreseen. As explained in Chapter One, there has been little commentary from the field of Law and Religion on this subject, especially in recent years. For example, in the early 2000s, Edge explained that the inclusion of 'religious causes' as part of the definition of 'terrorism' under the 2000 Act explicitly linked religion with terrorism.[138] This section will build on and update Edge's finding and explore the extent to which religion remains central to the Terrorism Act 2000 and associated offences.

In light of this, the following sub-sections will explore the extent to which the UK Government anticipated the extent that this definition – namely, the inclusion of 'religious

[136] Terrorism Act 2000, s 1.
[137] Section 2.1 above.
[138] See: P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002) 120-121; see also: see also: P Edge, 'Religious organisations and the prevention of terrorism legislation: A comment in response to the Consultation Paper' (1999) 4 *Journal of Civil Liberties* 2, 194-205.

causes' – would make religion central to terrorism law. In doing so, the sub-sections will explore fully how this initial focus on religion arose, as well as how religion has remained an integral part of the most fundamental terrorist offence: namely, the offence of committing an act of terrorism itself. The sub-sections will evaluate the extent to which the definition – and its inclusion of religious causes – remains fit for purpose, considering whether religion truly is central to terrorism law.

2.2.1 The Terrorism Act 2000

To begin, the Terrorism Act 2000 stipulates that an offence of terrorism takes place if the defendant uses or threatens to use 'action' where that action is designed to 'influence a government or an international governmental organisation, or to intimidate the public or a section of the public'.[139] Put simply, an act of terrorism can be directed towards government buildings, government officials, or can be carried out on an individual basis towards government officials in their homes. An act of terrorism can be directed towards any individual, then, whether in public or in private. However, for an act to constitute terrorism, there must also be some use – or threat of use – of 'serious violence' against a person, or 'serious damage' to a property.[140] The act must, in all circumstances, '[endanger] a person's life' or it must '[create] a serious risk to the health or safety of the public'.[141] It may also be designed in a way which will 'seriously interfere with or seriously disrupt an electronic system'.[142] Importantly, and as stated, to set aside this offence from other criminal law offences, the definition of 'terrorism' provided by the 2000 Act includes a list of 'motivating factors' which state that the individual must have been motivated by a political, religious, racial or ideological cause. That is, the use of threat – or threat itself – must be used 'for the purpose of advancing a political, *religious*, racial or ideological cause'.[143]

[139] Terrorism Act 2000, s 1.
[140] Ibid, s 2.
[141] Ibid.
[142] Ibid.
[143] Ibid, s 1 (emphasis added).

The Terrorism Act 2000 also created the offences of: weapons training for terrorism;[144] directing terrorist organisations;[145] possession of material for terrorist purposes;[146] collection of information related to terrorism;[147] and eliciting, publishing or communicating information about members of armed forces for the purposes of terrorism.[148] These offences must, in all

[144] Ibid, s 54: (1) A person commits an offence if he provides instruction or training in the making or use of – (a) firearms, (aa) radioactive material or weapons designed or adapted for the discharge of any radioactive material (b) explosives, or (c) chemical, biological or nuclear weapons. (2) A person commits an offence if he receives instruction or training in the making or use of – (a) firearms, (aa) radioactive material or weapons designed or adapted for the discharge of any radioactive material, (b) explosives, or (c) chemical, biological or nuclear weapons. (3) A person commits an offence if he invites another to receive instruction or training and the receipt – (a) would constitute an offence under subsection (2), or (b) would constitute an offence under subsection (2) but for the fact that it is to take place outside the United Kingdom. (4) For the purpose of subsections (1) and (3) – (a) a reference to the provision of instruction includes a reference to making it available either generally or to one or more specific persons, and (b) an invitation to receive instruction or training may be either general or addressed to one or more specific persons. (5) It is a defence for a person charged with an offence under this section in relation to instruction or training to prove that his action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism. (6) A person guilty of an offence under this section shall be liable – (a) on conviction on indictment, to imprisonment for life, to a fine or to both, or (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

[145] Ibid, s 55; see also, in s 54 – "biological weapon" means a biological agent or toxin (within the meaning of the Biological Weapons Act 1974) in a form capable of use for hostile purposes or anything to which section 1(1)(b) of that Act applies, "chemical weapon" has the meaning given by section 1 of the Chemical Weapons Act 1996, and "radioactive material" means radioactive material capable of endangering life or causing harm to human health'.

[146] Ibid, s 56(1)-(2): 'A person commits an offence if he directs, at any level, the activities of an organisation which is concerned in the commission of acts of terrorism. A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life'.

[147] Ibid, s 57(1)-(4):1)A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism. (2) It is a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism. (3) In proceedings for an offence under this section, if it is proved that an article – (a) was on any premises at the same time as the accused, or (b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public, the court may assume that the accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it. (4) A person guilty of an offence under this section shall be liable – (a) on conviction on indictment, to imprisonment for a term not exceeding 15 years, to a fine or to both, or (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both'. 'Reasonable excuse' has been interpreted judicially in the cases of *R v K* [2008] 2 WLR 1026, 1031 and *R v G (Respondent) (On appeal from the Court of Appeal Criminal Division)* [2009] UKHL 13. In *R v K*, [15], 'reasonable excuse' was interpreted to mean 'an explanation that the document or record is possessed for a purpose other than to assist in the commission or preparation of an act of terrorism'. This definition was adopted in the case of R v G at [71] where it was contributed that the material itself should not have the ability to be used lawfully: 'the information must, of its very nature, must be designed to provide practical assistance' to an individual preparing a terrorist attack. For example, a journalist or researcher would have a 'reasonable excuse' under the Act.

[148] Ibid, s 58A: '(1)A person commits an offence who – (a) elicits or attempts to elicit information about an individual who is or has been – (i) a member of Her Majesty's forces, (ii) a member of any of the intelligence services, or (iii) a constable, which is of a kind likely to be useful to a person committing or preparing an act of terrorism, or(b)publishes or communicates any such information. (2) It is a defence for a person charged with an offence under this section to prove that they had a reasonable excuse for their action. (3) A person guilty of an offence under this section is liable – (a) on conviction on indictment, to imprisonment for a term not exceeding [F215 years] or to a fine, or to both; (b) on summary conviction – (i) in England and Wales or Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both; (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the

cases, be motivated by either religion, ideology, race or politics. If an offence is not motivated by one of the listed causes, it is doubtful that it would be identified as an act of terrorism under the Act. As we shall see in the following sub-section (see section 2.2.2 below), the motivational aspect of the definition has been described by the UK Government as integral to distinguishing terrorism-related offences from other criminal law offences. As we shall see explored throughout this chapter, the Government has explicitly stated that religion is the most common motivation for terrorist attacks in the United Kingdom currently.

Since the establishment of the definition of terrorism, all UK laws that deal with counter-terrorism – including 'soft' law guidance issued by the Government on the subject – has relied entirely on a definition which explicitly associates acts of terrorism with religion. Religion, it appears, is central to terrorism for this reason alone. Due to this, it is perhaps worth questioning, at this stage, why the field of Law and Religion has not yet addressed terrorism in much detail. For example, as explored briefly in Chapter One,[149] recently published texts in the field make no mention of the religious dimension of counter-terrorism: Hill, Sandberg, Doe and Grout, for example, in their co-authored work on the interaction between religion and law in the United Kingdom, make no explicit mention of religiously motivated terrorism.[150] Although the text refers to the Anti-Terrorism Crime and Security Act 2001, this is in reference to religiously aggravated offences only; there is no recognition of terrorism as a religious offence,[151] nor as a topic worthy of detailed discussion from the field. This demonstrates clearly that terrorism is not part of the Law and Religion discourse to date. Whether terrorism can be necessary part of this discourse, however, will continue to be explored throughout this chapter and throughout Chapter Three of this thesis.

As we saw in Chapter One, which explored the relevancy of terrorism to the field of Law and Religion, of those scholars who do recognise terrorism as a matter for the field, terrorism is treated succinctly and often by way of example. For example, Ahdar and Leigh comment on terrorism only in relation to explaining the so-called 'glorification' offences which will be

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statutory maximum, or to both.(3A)In subsection (3)(b)(i), in its application to England and Wales, the reference to 12 months is to be read as a reference to the general limit in a magistrates' court. (4) In this section "the intelligence services" means the Security Service, the Secret Intelligence Service and GCHQ (within the meaning of section 3 of the Intelligence Services Act 1994 (c. 13)). (5)Schedule 8A to this Act contains supplementary provisions relating to the offence under this section.

[149] Section 1.2.

[150] M Hill, R Sandberg, N Doe, C Grout, *Religion and Law in the United Kingdom: Great Britain* (3rd edn, Wolters Kluwer 2021). This, as discussed in Chapter One, is typical.

[151] Ibid [407].

addressed later in this chapter (see section 2.2.3 below).[152] There has been no broader link made between terrorism, law and religion by the field. The key texts, as explained in Chapter One, treat religion as something that the law must protect and sometimes limit; the law's treatment of religion is viewed positively by the field, and religion is rarely perceived as a threatening entity. It is perhaps for this reason that there has been no Law and Religion commentary as to why, during the drafting of the Terrorism Bill, the UK Government expressly included 'religious causes' as part of the definition of terrorism, and as an integral part of the offence of terrorism itself. It is proposed that the UK Government did not include religion in order to *protect* religion, although it did not say so expressly; rather, it did so in a way that recognised certain manifestations of religion as a threat to public safety and something that required, in some instances, prohibition.

2.2.2 The religious dimension of terrorism

As explained in the previous sub-section, the UK Government included 'religious causes' as part of the definition of terrorism under the Terrorism Act 2000. However, also included were political, racial and ideological causes, and the Government has explained that the list of causes were included to act as an additional tool to distinguish acts which should be described as terrorism from those which should not.[153] Although this reasoning appears straightforward, it is somewhat incomplete. It is suggested that this is because there is a comparison to be drawn between the law on terrorism and the law on religiously aggravated offences.[154] Although religious offences – and the ways in which terrorism can and cannot be described as one – will be dealt with in Chapter Three of this thesis, religious aggravation is worth mentioning here. The example of criminal damage will be used: if an individual carries out an act of criminal damage – for example, they set alight a church – and claim that they did so because they 'hate all Christians', the individual would likely be prosecuted for religiously aggravated criminal damage under section 1 of the Criminal Damage Act 1971,[155] and section 28 of the Crime and Disorder Act 1998.[156] This is relatively straightforward: if an offence is found to be religiously aggravated, there will be a much heavier sentence. What is more difficult, perhaps, is distinguishing offences which are religiously aggravated from those which are religiously *motivated,* and are therefore more accurately described as acts of

[152] R Ahdar, I Leigh, *Religious Freedom in the Liberal State* (2nd edn, Oxford University Press 2013) 454-457.
[153] HC Deb 15 March 2000, vol 346. For example, demonstrators against fox hunting, although 'serious violence is committed against persons and property' would not be classified as terrorists by the law.
[154] Crime and Disorder Act 1998, s 28.
[155] Criminal Damage Act 1971, s 1(1).
[156] Crime and Disorder Act 1998, s 28.

terrorism provided they fall within the definition of terrorism under the 2000 Act. Put simply, if that same individual targeted the church because they felt that Christians were the 'enemies of Islam', would they be prosecuted under counter-terrorism laws or the law on religious offences? Although this question is likely best answered by the field of Law and Religion, scholars have yet to comment fully on the inclusion of religion as part of the definition of terrorism. As stated, terrorism, religion and the criminal law will be discussed in detail in Chapter Three; it will be explored whether religiously motivated terrorism fits within the pre-existing framework of religious offences under UK law.

The potential for the religious (and racial, ideological and political) aspect of terrorism to overlap with pre-existing religious offences was also not commented on during the House of Commons' Third Reading of Clause One (relating to the interpretation of 'terrorism' under the Terrorism Bill).[157] Instead, the primary concern was, as stated, that certain individuals would be caught by the definition but that others would not be: 'many of the problems with extending the definition in the manner proposed [to include motivation] shows people's discomfort with the range of organisations and activities that we believe might be caught by the clause'.[158] The organisations and activities referred to, however, did not involve the practice of religion in private places of worship – this was entirely overlooked. Instead, it was explained that activist groups – such as hunt saboteurs and those opposed to GM crops – could potentially be caught by a definition where motivation is the principal concern.[159] Because of this, the motivating factors were criticised as an unnecessary addition to the definition of terrorism on the basis that they would create a 'two-tier approach'.[160] It was suggested that 'certain people would be afforded lesser rights on the basis of the motivation of their crime',[161] and that non-terrorists may be 'caught under the definition', including

[157] HC Deb 15 March 2000, vol 346.
[158] Ibid, col 383: 'the inclusion of political, religious or ideological cause results in a definition of terrorism that is both too wide and too narrow. It is too wide because many of the problems with extending the definition in the manner proposed, which we discussed on Second Reading, show people's discomfort with the range of organisations and activities that we believe might be caught by the clause'.
[159] HC Deb 15 March 2000, vol 346, cols 385-386: 'There is a world of difference between the motivation of a person who is seeking to blow up a building and the motivation of a person who wants to destroy a field of GM crops. That is the point at which the question arises of whether an act is criminal… My hon. Friend says that a person should be guilty of a specific act, but, from my reading of his amendment, it still encompasses the concept of threat. That is one of the things that I find most baffling and disturbing about the Government's wording in the Bill: the threat of serious violence against property constitutes terrorism. As I read their wording, a letter threatening to burn a field of GM crops would constitute an act of terrorism. I sympathise with much of what he says, but, by maintaining the idea of threat, is his amendment not perpetuating the problem that I have with the Government's wording'.
[160] Ibid, col. 383.
[161] Ibid, col 382.

protestors, campaigners, and activists.[162] It is important to note that the Third Reading took place over a year before the devastating events of 9/11 and the height of the moral panic surrounding Islam; the primary concerns voiced in the House of Commons, therefore, were mostly in relation to political motivation for acts of terrorism. Therefore, non-extreme religious groups and individuals were not called into question as being at risk of being caught by the definition during the interpretation debate; Article 9 of the European Convention on Human Rights (on freedom of religion) was not mentioned once. As Edge sums up: 'it remains to be seen… how the new counter-terrorism regime will be implemented against religious organisations who are also terrorist organisations. Although it is easy to justify action against proven terrorist organisations, I would suggest that organisations that are the sole vehicles of a particular belief system should be the subject of especial scrutiny before proscription is permitted'.[163] It is evident that these concerns were not echoed by the Government at the time, indicating that the protection of religious organisations was not a primary concern. Indeed, Edge's concerns remain unanswered.

Instead, organised crime was a main concern for the House of Commons at this time. It was explained that the focus on motivation could have the effect of excluding certain groups who fell outside the legal definition but who were, in fact, terrorists. For example, it was suggested that gangs such as the Mafia, or groups involved in organised crime, racketeering or drug running may not be covered 'by a definition based on motivation'.[164] This concern was not focused on the nature of the cause behind the potential act of terrorism – be that political, religious or ideological – but with the approach that the inclusion of the causes themselves would inspire.[165] Therefore, the inclusion of 'religious causes' was designed to create a two-step approach that would distinguish terrorists from other offenders. The motivating factors placed the evidential burden on the motivation behind the crime; a crime

[162] Ibid, col 382. Examples used were: the women involved in the Trident Ploughshares campaign and those who broke in and damaged the Hawk aircraft. They would include the activities of animal rights protesters, activists who knowingly destroy fields of genetically modified crops and those who oppose live animal exports. From a different political perspective, they would also include the activities of anti-abortion campaigners.'

[163] P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002) 121.

[164] HC Deb 15 March 2000, vol 346, cols 383-384: 'The definition is also too narrow because the clause excludes many organisations that use terror tactics – gangs involved in organised crime, racketeering or drug running, for example, which are not covered by a definition based on motivation. It is not certain that the Bill's definition would cover the Mafia. Surely, therefore, one should remember that the Bill's impact on society is what will be assessed and gaps in the existing criminal law for dealing with such infrastructure errors or failures should be closed. The commission's first point, therefore, is that—specifically and directly—the question of motivation is dangerous. Far better to be specific in terms of attitude and say that a criminal offence should have been committed. It is that to which I now turn my attention'.

[165] Note: racial causes were a later addition to the motivating factors under Counter-Terrorism Act 2008, ss 75(1)(2)(a) and 100(5).

could only be described as terrorism if it was motivated by either religion, politics, ideology or – as a later addition – race.[166] However, some members of the House of Commons showed distaste for the motivational causes at the time, arguing that ‘a person should be [found] guilty of a specific criminal act. That should be what is judged, not whether it is politically, religiously or ideologically motivated, although that point could be taken into account in sentencing’.[167] Ultimately, the motivating causes were retained – it was decided that the benefit of the two-tier approach outweighed all other concerns.

As explained, terrorism has since become directly associated with religion and, in particular, with Islam. It is evident, however, that the true impact of including ‘religious causes’ as a potential motivation for acts of terrorism was not predicted by the Government at this time, and this is illustrated by there being no concern for the impact that this could – and, as we shall see, would – have on the right to exercise the freedom of religion under the European Convention on Human Rights (ECHR).[168] Much has been written by the field of Law and Religion on the topic of religious freedom, but terrorism does not yet formed an adequate part of this discussion. Despite this, in more recent years, scholars and activist groups who sit outside the realm of Law and Religion have commented on the impact that the centrality of religion to counter-terrorism law has had on the freedom of religion. For example, counter-terrorism legislation and guidance that relies on the definition has been described as Islamophobic due to its focus on Islam.[169] Some of these activist groups were mentioned –

[166] Counter-Terrorism Act 2008, ss 75(1)(2)(a) and 100(5).
[167] HC Deb 15 March 2000, vol 346, col 385.
[168] Ibid, col 386: As Hughes puts it: ‘We must get that definition right, even in this slightly odd forum—the best that we have—because "terrorism" is the word on which the structure of the Bill depends. Once we define something as being terrorist, much else follows’.
[169] J Holmwood, L Aitljadj, ‘The People’s Review of Prevent’ *Prevent Watch* (2022). Available online at: <https://peoplesreviewofprevent.org/prop-report/> Last accessed: 12 April 2023. ‘Prevent Watch’ are ‘a community-led initiative which supports people impacted by the Prevent Duty’; see also: P Thomas, ‘British Muslims. A suspect community?’ in P Thomas (eds) *Responding to the Threat of Violent Extremism Failing to Prevent* (Bloomsbury Academic 2017) 78-95: Thomas suggests that Prevent is not a community cohesion and integration tool. Instead, the Duty is ‘monocultural’ and targets the Muslim community: ‘the failure to address other forms of ‘extremism’ in non-Muslim communities simply exacerbates this inherent problem of a monocultural *Prevent*’ (emphasis in original).

albeit not explicitly –[170] as part of the most recent review of the statutory Prevent Duty.[171] These activist groups were described by the most recently appointed Independent Reviewer of the Prevent programme, William Shawcross CVO, as 'activist groups with agendas that do not always align with those of Prevent [who] will seek to have influence by offering guidance that may look credible and legitimate'.[172] To echo Edge's concerns from 2002:[173] not only is it questionable whether these activist groups would be caught by the definition of terrorism and its inclusion of 'religious causes', but this further emphasises the centrality of religion to counter-terrorism law.

Looking forward, it may be suggested that 'fear' should have been decided as the only motivational aspect behind an act of terrorism. The focus of the House of Commons on the religious, political, ideological and racial causes drew attention away from this element of the offence, but it is entirely conceivable that the intention to induce or invoke 'fear' should be central to the offence of terrorism. Despite this, 'fear' is not currently listed under the Terrorism Act 2000 as neither a motivating factor nor as part of the *mens rea* of the offence; however, the Act does refer to the intention to 'influence' a Government or 'intimidate' the public,[174] as noted above. Although it may be suggested that 'intimidate' includes 'fear', the word 'fear' was expressly and deliberately excluded. Interestingly, the reason that 'fear' was excluded was based on the same reasoning that religion was included – that some acts would be classified as terrorism that, the House of Commons agreed, should not be: 'the Yorkshire Ripper certainly put the public in fear – would that be categorised as a terrorist act?', they

[170] Following leaked extracts of the Shawcross review, the activist group Prevent Watch was not named in the published independent review of Prevent after warning Home Office of possible libel action, see: D Taylor, 'Home Office threatened with libel action over Prevent strategy review' *The Guardian* 30 January 2023: 'Dr Layla Aitlhadj, the director of Prevent Watch, says she believes it is likely their organisation has been named in Shawcross's review as one of those critical of the Prevent programme who are responsible for spreading Islamic extremism, a claim which, if it is made in Shawcross's review, she says is seriously defamatory. The legal letter calls on the Home Office to remove any defamatory references to Prevent Watch that may be contained in Shawcross's review. The letter warns that copies of the report leaked to the media may have contained critical references to Prevent Watch and so may have already libelled them.It adds that in order to avoid full defamation proceedings any references to Prevent Watch included in Shawcross's report must be removed'.
[171] See Counter-Terrorism and Security Act 2015, s 26. The Duty – and its controversy – will be dealt with below (see section: 2.4). As explained in Chapter One, the Prevent Duty places a legal responsibility on 'specified authorities' to prevent terrorism.
[172] W Shawcross, 'Independent Review of Prevent' (2023), 97 [6.71]; see also: 22 [3.40]: 'There is a wariness about using the term "Islamism". I believe this has in part been caused by Islamist-aligned activists themselves, who continue to perpetuate the narrative that there is no such thing as "Islamism", and that core Islamist ideas are part of normative Islamic belief and practice. Criticism of Islamism, or even using the term "Islamism" in relation to terrorism and extremism, is thus characterised as motivated by prejudice. This claim is flawed and inaccurate'.
[173] P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002) 120-121.
[174] See: Terrorism Act 2000, s 1(1)(b): 'the use or threat is designed to influence the government or an international governmental organisationor to intimidate the public or a section of the public'.

explained.[175] There is a distinction to be drawn, then, between the motivation behind acts of terrorism, and the intention of the offender who commits them. For example, it was suggested during the Third Reading of the Terrorism Bill that to commit an act of terrorism, an individual must *intend* to use serious violence to intimidate or coerce a government, the public or any section of the public.[176] This is reflected by the 2000 Act definition: 'the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public'.[177] The motivational element is very much separate: the individual must carry out their intention – as above – 'for the purpose of advancing a political, religious, racial or ideological cause'.[178] This does in fact introduce the intended two-tier approach, but perhaps not in the way that the House of Commons envisioned.

Instead, the two-tier approach has created a category of offences which, in all cases, rely on a political, religious, racial or an ideological cause motivating them. The inclusion of a motivational tier means that an individual who commits an offence without any cause – or without a cause that is religious, political, ideological or racial – is not recognised, by the law, as a terrorist.[179] This means that individuals who commit acts of terrorism which are fuelled by misogyny, for example, would only be caught by the definition of terrorism if their misogyny amounted to an 'ideology'. Further, religion, race and politics can all amount to ideologies, and this will be discussed further below. It is, therefore, difficult to comprehend

[175] HC Deb 15 March 2000, vol 346, cols 410-411: 'The Yorkshire Ripper certainly put the public in fear – would that be categorised as a terrorist act? I do not think that it could be described as terrorist behaviour, but it would certainly have put the public in fear and would have been caught by the proposed definition. Apart from controversial activities such as demonstrations and hunt saboteurs, very serious crimes would, quite inappropriately, be caught by that definition'. However, the example of the Yorkshire Ripper ceases to apply: Peter Sutcliffe has since been described as acting out of 'terrorist outrage' during a trial for his parole in 2010, see: 'No release for Yorkshire Ripper Peter Sutcliffe' *BBC News* 16 July 2010. Although outside the scope of this study, see also – for discussion of terrorism rooted in misogyny – Directorate-General for Migration and Home Affairs, 'Incels: A First Scan of the Phenomenon (in the EU) and its Relevance and Challenges for P/CVE' (Radicalisation Awareness Network 2021); see also: B Hoffman, J Ware, E Shapiro 'Assessing the Threat of Incel Violence' (2020) 43 *Studies in Conflict & Terrorism* 7, 565-587; R Pain, 'Everyday Terrorism: Connecting Domestic Violence and Global Terrorism' (2014) 38 *Progress in Human Geography* 4, 531-550: 'Framing domestic violence as everyday terrorism draws attention to its horror and severity'.
[176] Ibid. The requirement for '*serious'* violence was questioned by Maginnis at col. 403:'I wonder what the difference is. If the hon. Gentleman endangered my life, I might end up dead. I presume he means that, if he serious endangered it, I would end up very dead'. However, serious violence was maintained.
[177] Terrorism Act 2000, s 1(1)(b).
[178] Ibid, s 1(1)(c).
[179] Recently, there has been an increase in men being referred to Prevent over 'incel' ideology (gender-based hatred towards women): V Dodd, 'Large rise in men referred to Prevent over women-hating incel ideology' *The Guardian* 26 Jan 2023: 'A senior counter-terrorism officer described incel as an "emerging risk" making up 1% of all referrals to the anti-extremism scheme in the year to March 2022 – 77 cases – triggered by concerns that mainly young men were falling for its message'.

why politics, religion and race were expressly included, but why sex – and other grounds for hatred, such as sexual orientation – have not since been included as new potential motivations for acts of terrorism. This is especially true since there have been recent referrals to the Prevent programme, as explained in Chapter One, for extreme Christian views relating to homosexuality.[180] This highlights clearly that religion is central to counter-terrorism law, and underscores the blatant intersection that exists between the terrorism offences under the Terrorism Act 2000 and the aforementioned aggravated offences. For example, if an individual carries out an attack, using a nail bomb, in a public place because they 'hate women', it is unclear whether this would be prosecuted under counter-terrorism legislation or as a religiously aggravated offence; most likely, it would be prosecuted as a public order offence because it deals with sex as a protected characteristic. However, this would be further complicated if the individual who 'hates women' feels this way because they have interpreted their religious beliefs in a way that supports this worldview. Would they be prosecuted under the Terrorism Act 2000 for committing an act of terrorism, or would this amount to a religiously aggravated offence? Therefore, although the extent to which terrorism interacts with the religious offences will be explored fully in Chapter Three, it is worth reflecting on this as an example of the clear intersection between the terrorism offences and other criminal law offences which deal with religion. Thus, instead of making additions to the list of motivational causes, it may be more appropriate for the UK Government to revisit the definition and remove religion, politics and race from the list of motivations altogether. Instead, each of these could be incorporated as amounting to an ideology.

Although 'ideology' is not defined by the Act, in the context of terrorism – particularly religious terrorism – ideology refers to a particular shared worldview that terrorists use to justify their actions.[181] If the focus of counter-terrorism law was on ideology – with no direct reference to either religion, politics or race – the offence of terrorism would be undoubtedly broadened to include a host of other motivations such as sexual orientation, for example. This would remove, at least in statute, the concentrated focus of counter-terrorism law on religion and religious terrorism. As we saw briefly introduced in Chapter One, counter-terrorism in

[180] L Clarence-Smith, 'Christian lecturer sacked over "homosexuality is invading the church" tweet' *The Telegraph* 18 March 2023.
[181] See the work of R Borum, *Psychology of Terrorism* (University of South Florida 2004) 45: 'Ideologies generally are based on a set of shared beliefs that explain and justify a set of agreed behavioural rules. For terrorists, ideology helps to provide "the moral and political vision that inspires their violences, shapes the way in which they see the world, and defines how they judge the actions of people and institutions"' (quoting C Drake, The role of ideology in terrorists' target selection' 10 *Terrorism and Political Violence* (2) 53-85).

the United Kingdom has been described as Islamophobic; thus, removing 'religious causes' from the definition of terrorism would signal that the UK Government is actively addressing these claims, rather than refuting them. Outside of statute and Government-issued guidance, however, reducing the association between terrorism and religion would likely be near impossible. This is because, as we have seen in Chapter One – and as we shall see throughout the rest of this chapter and Chapter Three of this thesis – religion has become entrenched in counter-terrorism law, practice and guidance. We now turn to the Terrorism Act of 2006 and the aforementioned 'glorification' offences, to which religion is also central.

2.2.3 The Terrorism Act 2006

The Terrorism Act 2006 introduced several offences which have since been described as the 'glorification' offences.[182] These offences regulate behaviour that is viewed as 'glorifying' terrorism in any way, and includes expressions of support or direct encouragement of terrorism by individuals and groups.[183] These offences have been commented on by the field of Law and Religion: for example, Ahdar and Leigh describe the glorification offences, briefly, in reference to extremist hate preachers.[184] To enhance and further this discussion, the offences will now be listed and explored fully by reference to their direct association with religion and religious causes.

The 'glorification' offences comprise of four main offences. First, there is the offence of encouragement, where the defendant must publish or cause another individual to publish a statement which he 'intends or is reckless as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offences'.[185] Statements that glorify terrorism are described as those that an audience would 'reasonably understand' as constituting 'an indirect engagement to terrorism'.[186] These include statements that 'glorify terrorism' indirectly or those which may 'reasonably inferred' as glorifying terrorism.[187] The offence of encouragement may be described as the only criminal law offence which prohibits the radicalisation of another individual; as we shall see, although the statutory Prevent Duty stipulates that specified

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[182] UN Security Council, 'Resolution 1624' (14 September 2015) S/RES/1624.
[183] Terrorism Act 2006, ss 1, 2, 5, 6.
[184] R Ahdar, I Leigh, *Religious Freedom in the Liberal State* (2nd edn, Oxford University Press 2013) 454-457.
[185] Terrorism Act 2006, s 1(2).
[186] Ibid, s 5.
[187] Ibid, s 3; see also: s 20(2): '"glorification" includes any form of praise or celebration, and cognate expression are to be construed accordingly'. The other glorification offences are listed in sections 2, 5 and 6 of the Act. They are the offence of dissemination of terrorist publications, the offence of preparation for terrorism, and the offence of terrorist training.

authorities must interrupt the radicalisation process, there is no 'hard' law offence which seeks to criminalise the act of radicalisation itself.

The second glorification offence under the Terrorism Act 2006 applies to individuals who disseminate terrorist publications.[188] If the defendant intends or is reckless as to whether his conduct amounts to a direct or indirect encouragement, he will be have committed the offence.[189] Recklessness is treated objectively,[190] and 'conduct' refers to the defendant distributing or circulating a terrorist publication; giving, selling or lending a terrorist publication;[191] offering a publication for sale or for loan;[192] providing a service to others 'that enables them to obtain, read, listen to or look at such a publication, or to acquire it by means of a gift, sale or loan'; 'transmits the contents of such a publication electronically'; 'or has such a publication in his possession with a view to its becoming the subject of conduct falling within any of the [above]'.[193] It is irrelevant whether another individual is in fact encouraged or induced.[194]

The additional 'glorification' offences are the offences of preparation and training for terrorism. First, there is the offence of the preparation of terrorist acts.[195] Here, it is an offence for the defendant to commit an act of terrorism,[196] or assist another to commit an act of terrorism,[197] and the defendant must intend to do so.[198] It is irrelevant 'whether the

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[188] Ibid, s 2(13): '"Publication" means an Article or record of any description that contains any of the following, or any combination of them – (a) a matter to be read; (b) matter to be listened to; (c) matter to be looked at or watched'.
[189] Ibid, s 2(1).
[190] Ibid, s 2(3): 'For the purposes of this section matter that is likely to be understood by a reasonable person as indirectly encouraging the commission or preparation of acts of terrorism includes any matter which – (a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts; and (b) is matter from which a person could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by him in existing circumstances'.
[191] Ibid, s 13: Under the Act, 'lend' includes 'let on hire'.
[192] Ibid, s 13: '"loan" is to be construed accordingly'.
[193] Ibid, s 2(1)(a)-(f).
[194] Ibid, s 2(7): 'It is irrelevant for the purposes of this section whether anything mentioned in subsections (1)-(4) is in relation to the commission, preparation or instigation of one or more particular acts of terrorism, of acts of terrorism of a particular description or of acts of terrorism generally'; (8): For the purposes of this section it is also irrelevant, in relation to matter contained in any Article whether any person – (a) is in fact encouraged or induced by that matter to commit, prepare or instigate acts of terrorism; or (b)in fact makes use of it in the commission or preparation of such acts'.
[195] Ibid, s 5.
[196] Ibid, s 5(1)(a).
[197] Ibid, s 5(1)(b).
[198] Ibid, s 5(1): 'A person commits an offence if, with the intention of (a) committing acts of terrorism, or (b) assisting another to commit such acts, he engages in any conduct in preparation for giving effect to his intention'.

intention and preparations relate to one or more acts of terrorism of a particular description or acts of terrorism generally'.[199]

Finally, for the offence of training for terrorism, the defendant must '[provide] instruction or training'[200] in: 'making, handling or use of a noxious substance, or of substances of a description of such substances';[201] 'the use of any method or technique for doing anything else that is capable of being done for the purposes of terrorism' and;[202] 'the design or adaptation for the purposes of terrorism, or in connection with the commission or preparation of an act of terrorism or Convention offence, of any method or technique for doing anything'.[203] At the time of providing 'instruction or training', the defendant must '[know] that a person receiving it intends to use the skills' for preparation or assistance of acts of terrorism.[204] It is also an offence to receive instruction or training in any of the aforementioned skills where,[205] 'at the time of the instruction or training, he intends to use the skills' to commit or assist with an act of terrorism.[206] It is irrelevant, under the Act, whether the instruction or training is provided to one person or to many;[207] whether the person intends to use the instruction or training for one or more particular acts of terrorism, or more generally; and whether the assistance the defendant intends to provide is to one person or, again, to many.

Over the years, religion has become central to each of these offences, not least because the offences have been compared to the religious offences. For example, the religious offences have been described by Ekaratne as 'redundant' in light of the ability for terrorist offences to

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[199] Ibid, s 5(2).
[200] Ibid, s 6(1)(a).
[201] Ibid, s 6(3)(a).
[202] Ibid, s 6(3)(b): this includes anything 'in connection with the commission or preparation of an act of terrorism or Convention offence or in connection with assisting the commission or preparation by another of such an act or offence'.
[203] Ibid, s 6(3)(c).
[204] Ibid, s 6(2)(b)(i)-(ii).
[205] Ibid 2006, s 6(2); see also: s 6(3): 'The skills are – (a) the making, handling or use of a noxious substance, or of substances of a description of such substances; (b) the use of any method or technique for doing anything else that is capable of being done for the purposes of terrorism, in connection with the commission or preparation of an act of terrorism or Convention offence or in connection with assisting the commission or preparation by another of such an act or offence; and (c) the design or adaptation for the purposes of terrorism, or in connection with the commission or preparation of an act of terrorism or Convention offence, of any method or technique for doing anything'.
[206] Terrorism Act 2006, s 6(2): 'A person commits an offence if – (a) he receives instruction or training in any of the skills mentioned in subsection (3); and (b) at the time of the instruction or training, he intends to use the skills in which he is being instructed or trained – (i) for or in connection with the commission or preparation of acts of terrorism or Convention offences; or (ii) for assisting the commission or preparation by others of such acts or offences'.
[207] Terrorism Act 2006, s 6(4)(a)-(c).

be used to prosecute religiously aggravated offences, for example, and acts of religious hatred instead.[208] This particular argument will be revisited and explored further in Chapter Three of this thesis, where a more thorough comparison will be drawn between the religious offences and the terrorism offences in the context of the field of Law and Religion's treatment of the criminal law. However, it is necessary to note here that within the field of Law and Religion, scholars have scarcely commented on the impact of the offences aside from on freedom of speech, with no commentary addressing the potential impact on the freedom of religion.[209]

Despite this lack of commentary, there has been a recent prosecution for the encouragement of terrorism in the case of *R v Deghayes* which involved religious radicalisation.[210] This case will also be revisited in Chapter Three; however, this recent prosecution underscores the centrality of religion to counter-terrorism, and highlights the importance of viewing counter-terrorism from a Law and Religion angle, specifically in relation to religious radicalisation and the Prevent Duty, which will be explored later in this chapter (section 2.4). As suggested, it may be that the field of Law and Religion does not consider terrorism as a matter for the scholarship; because the law treats religious terrorism as something to be prohibited in all circumstances, and the field views the state's treatment of religion in a largely positive light.[211] Regardless of the reason, however, this initial section has demonstrated how religion is a central aspect of counter-terrorism law in the UK, building on the work in Chapter One which outlined that terrorism is not treated in any detail by many of the standard Law and Religion texts.[212] The following sections of this chapter will continue to explore how religion is central to the management of terrorist offenders and to the prevention of terrorist atrocities.

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[208] S C Ekaratne, 'Redundant Restriction: The U.K.'s Offence of Glorifying Terrorism' (2010) 23 *Harvard Human Rights Journal*, 210.
[209] R Ahdar, I Leigh, *Religious Freedom in the Liberal State* (2nd edn, Oxford University Press 2013) 457: 'The offence was enacted in the teeth of strong reservations that were expressed in Parliament over the need for the new offence – particularly the concept of indirect encouragement and criticism of its vagueness and possible chilling effects on free speech'.
[210] *R v Deghayes* [2023] EWCA Crim 97 [7]-[10]: A spontaneous speech was given at a mosque to 50 people, including children. Phrases from the speech included 'Jihad, jihad, jihad, jihad is compulsory. Jihad by fighting by sword means jihad is a compulsory obligation upon you, not jihad by word of mouth, this is also, but jihad will remain compulsory until the day of resurrection and my livelihood is under the shadow of my spear and who doesn't like that, go fight Allah, go fight Allah'. The speech was 'accompanied by a stabbing motion with the words 'the story carries out the act of Jihad'. The speech was video recorded.
[211] Subject, of course, to limitations imposed by Article 9(2) ECHR.
[212] See, for example: R Sandberg, *Law and Religion* (Cambridge University Press 2011); see also: N Doe, *Law and Religion in Europe* (Oxford University Press 2011). There is no mention of terrorism in either text.

2.3 Religious causes and managing terrorist offenders

The UK Government has an extensive history of using statute to combat terrorism. As we saw in the previous section, the early 2000s saw the emergence of numerous criminal law offences to deal specifically with terrorism. More recently, this has included the management of terrorist offenders, and the protection of the public from those who are considered to be potential terrorists. As we saw in Chapter One, the terrorist threat facing the United Kingdom began with 'the Troubles' of the mid-twentieth century.[213] National security in Ireland remains a priority for the UK Government, as illustrated by recent advancements to bring national security in Ireland in line with the rest of the United Kingdom.[214] Nonetheless, the UK Government suggests that, at present, Islamist terrorism has been – and remains – the most significant threat from terrorism.[215] This indicates that religion, in recent years, has become even more directly related to counter-terrorism efforts in the United Kingdom; more and more, counter-terrorism legislation and guidance has been designed to cope with the religious dimension of this threat.

The nature of the threat from Islamist terrorism has been described by the Government as far more significant than any before it.[216] To reflect this, the focus of the law in this area has shifted to some extent; for example, harsher sanctions have established lengthier prison sentences and stricter monitoring for offenders.[217] The law has also shifted to focus more

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[213] S Prince, 'Narrative and the Start of the Northern Irish Troubles: Ireland's Revolutionary Tradition in Comparative Perspective' (2012) 50 *Journal of British Studies* 4, 941-964.

[214] Security Service MI5, Northern Ireland, 'National Security Intelligence Work in Northern Ireland': <https://www.mi5.gov.uk/northern-ireland> Last accessed: 9 November 2022; see also: HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 8 [4]: 'Northern Ireland related terrorism remains a serious threat, particularly in Northern Ireland itself'.

[215] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 6 [4]: 'Islamist terrorism is the foremost terrorist threat to the UK'; for information, see also footnote 4: 'We define Islamist terrorism as acts of terrorism perpetrated or inspired by politico-religiously motivated groups or individuals who support and use violence as means to establish their interpretation of an Islamic society. In the UK context, the Islamist terrorist threat comes overwhelmingly from Salafi-Jihadi movements, which are inherently violent. We recognise that Islamism describes a spectrum of movements that hold a variety of views on the use of violence; some are conditional in their view on the use of violence and others are explicit in their rejection of it'; see also, for detailed discussion: W Laqueur, 'The terrorism to Come' (2004) *Hoover Institute.* Available online at: <https://www.hoover.org/research/terrorism-come> Last accessed 21 May 2022: 'A new form of Islamic fundamentalist violence rooted in fanaticism'. The motivation behind Islamist terrorism will be discussed in chapter four of this thesis.

[216] Ibid, 7 [2]: 'The threat from terrorism, globally and in the UK, is higher than when we last published CONTEST in 2011. The UK is facing a number of different and enduring terrorist threats. The increased threat has mainly been caused by the rise of Daesh and the creation of its cult-like "Caliphate", combined with the persistent threat from Al Qa'ida. Daesh has been constrained militarily by the actions of a global coalition in which the UK is playing a leading role, which has eroded most of its territory and severely degraded its central propaganda apparatus. But Daesh's ability to direct, enable and inspire attacks still represents the most significant global terrorist threat, including to the UK and our people and interests overseas. Daesh's methods are already being copied by new and established terror groups'.

[217] For examples of statutory sanctions, see: Counter-Terrorism and Sentencing Act 2021.

explicitly on the religious causes behind acts of terrorism, and the UK Government now uses two means of regulatory instrument to combat terrorism; as we shall see, religion is central to both. First, there is the 'hard' law – statute dealing principally with terrorist offences, their investigation, and their prosecution; second, there is the 'soft' law – policy and guidance designed, for example, to prevent people from being drawn into terrorism. Importantly, all of this statute and guidance is influenced by the definition of terrorism provided by the Terrorism Act 2000 which states explicitly that religion is a main driving force behind acts of terrorism. This section, then, will explore the law as it deals with terrorism prevention and how this has been developed through extensive statute, policy, and guidance to focus predominantly on religion.

2.3.1 The Terrorism Prevention and Investigations Measures Act 2011

To manage the terrorist threat facing the United Kingdom, the UK Government has established numerous orders and measures that are designed to prevent individuals who have been convicted of terrorist offences from behaving in certain ways or having access to certain freedoms. For example, the offender may be prohibited from living in a certain area or with certain individuals.[218] As we shall see, these orders and measures have been subject to criticism from a human rights perspective; however, there has been no discussion from the field of Law and Religion as to whether these regulations have the potential to violate Article 9 of the European Convention (on the freedom of religion).

In respect of current terror threats facing the United Kingdom, the origin of these orders and measures can be traced back to 2001 and the Anti-Terrorism, Crime and Security Act. The Act 'allowed the Home Secretary to order the indefinite detention of foreign nationals suspected to be involved in acts of terrorism',[219] a provision which permitted the Government to detain individuals from outside the UK if the Home Secretary was satisfied that the individuals may have some involvement in terrorism. Following the 2005 decision in *A and Others SSHD* (often referred to as the 'Belmarsh' case), where foreign prisoners were held indefinitely in UK prisons – some without trial – it was held that Part IV of the 2001 Act violated Article 5 (on the right to liberty),[220]Article 6 (on the right to a fair trial),[221] and

[218] Terrorism Prevention and Investigation Measures Act 2011, Schedule 1.
[219] Originally, the Anti-Terrorism, Crime and Security Act 2001, Part IV, since repealed by the Prevention of Terrorism Act 2005 ss 16(2)-(4); see also, for detailed discussion of control orders, see: D Lowe, 'TPIM's and Control Orders' Westlaw UK Insight (Thomson Reuters 2014).
[220] *A and Others SSHD* [2005] 2 AC 68. There was no judicial scrutiny of the decision.
[221] Ibid. It was the Home Secretary's decision alone.

Article 14 (on the right to freedom from discrimination) of the ECHR.[222] There was no discussion of whether the Act had the potential to violate freedom of religion under Article 9, but it was decided that the provision required replacement due to its incompatibility with the European Convention rights listed. Despite this, it is evident that religion was central to the design – and the function – of Part IV of the Act; many of the suspects detained at Belmarsh prison were Muslims.[223]

Therefore, in 2005, Part IV of the Anti-Terrorism, Crime and Security Act 2001 – and the indefinite detention of suspects – was replaced by the Prevention of Terrorism Act 2005 which sought to impose 'control orders' on suspects instead.[224] A 'control order' was defined by the Act as 'an order against an individual that imposes obligations on [them] for purposes connected with protecting members of the public from a risk of terrorism'.[225] The 2005 Act made specific provision for the European Convention rights listed above, stating that the power to make a control order is *only* exercisable where it does not infringe on that individual's right to liberty under Article 5 of the European Convention in particular.[226] There was no special provision made for Article 9. However, in 2011, control orders were replaced after they were found to be in violation of Article 8 ECHR (on the right to private and family life).[227] The orders were replaced by 'less restrictive'[228] Terrorism Prevention and

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[222] D Lowe, 'TPIM's and Control Orders' Westlaw UK Insight (Thomson Reuters 2014); see also: the 'Belmarsh case': *A and Others SSHD* [2005] 2 AC 68: It was held that the provisions under which the detainees were being held at Belmarsh prison were incompatible with Article 5 in particular. On discrimination – it only applied to non-UK citizens.

[223] Select Committee on Home Affairs, *Memorandum submitted by Human Rights Watch* 10 September 2004.

[224] Prevention of Terrorism Act 2005, ss 1-16.

[225] Ibid, s 1(1).

[226] Ibid, s 1(2)(a).

[227] See: *SSHD v AP* [2010] 3 WLR 51 in relation to the distance the defendant was order to live from his family; see also: D Lowe, 'TPIM's and Control Orders' Westlaw UK Insight (Thomson Reuters 2014); and HM Government, 'Review of Counter-Terrorism and Security Powers: review findings and recommendations' (2011) 15 [3]: 'In June 2010, the European Court of Human Rights (ECtHR) made final its decision in the case *Gillan and Quinton* which found the legislation to be in breach of Article 8 (the right to privacy and family life) of the European Convention on Human Rights (ECHR) because it was not "in accordance with the law". The ECtHR found the legislation was too broadly expressed and the safeguards in place were not sufficient. The Home Secretary took immediate steps to bring the use of the powers into line with the judgment whilst the issue was considered by this review'.

[228] D Lowe, 'TPIM's and Control Orders' Westlaw UK Insight (Thomson Reuters 2014); see also: HM Government, 'Review of Counter-Terrorism and Security Powers: review findings and recommendations' (2011) 9-10, [14]-[15]: Lord Macdonald reviewed recent case law, including *Sultan Sherand Others* (2010) EWHC 1859 where it was suggested that control orders were not in accordance with Article 5. The Government also sought to decrease the 'maximum period of detention over time'. At [23]: the options were: first, to 'allow 28 days to lapse, revert to 14 days, but may provision for introducing 28 days if required' with four means of doing so, in relation to pre-charge detention. This was rejected on the grounds [24] that 'Parliamentary debates would require particularly careful handling to avoid jeopardising the fairness of future trials' and lack of Parliamentary scrutiny; that a 14 day pre-charge 'bail' – this was rejected because the bail may be considered a 'mini control order' and that there 'would also be a limited increase in risk in releasing, even on strict conditions, a terrorist suspect still under investigation'; and finally, to reduce the pre-charge detention limit to

Investigation Measures (TPIMs) under the Terrorism Prevention and Investigation Measures Act 2011.[229] A TPIM notice is issued in respect of an individual's known involvement in terrorism, and consists of 'requirements, restrictions and other provisions' that may be imposed on an individual due to their involvement in terrorism.[230] This includes those who have encouraged (or radicalised)[231] another person to engage with terrorism or extremism and has been prosecuted. Although the wider terrorism literature has not yet classified it as such, it may be proposed that TPIMs are used to restrict the conduct of convicted 'radicalisers' – that is, individuals who encourage – or radicalise – another individual to engage in terrorism. There has been no comment from the field of Law and Religion on this. However, despite it being evident that TPIMs were designed and are used to deal with religiously motivated terrorism they may, as we shall see, also have the potential to interrupt the freedom to manifest belief.

Examples of the requirements imposed by a TPIM may relate to overnight residence: for example, an individual may be expected to report where they are staying and when.[232] The restrictions may relate to travel, finances and property transfers, as well as the use or possession of electronic communications.[233] This may involve placing restrictions on others at the individual's residence, and there are often restrictions relating to employment or study.[234] In terms of other provisions, individuals are often required to conform to reporting or monitoring requirements.[235] Consequently, each TPIM notice is tailored to the individual. Importantly, the Act stipulates that a TPIM must be imposed on the individual in a fair and proportionate way –[236] perhaps a nod towards the previously ECHR-incompatible control

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21 days which was rejected on the grounds that 'it may be regarded as a compromise which fulfils neither the objective of security nor a sufficient enhancement of civil liberties'.

[229] Terrorism Prevention and Investigation Measures Act 2011, s 1: 'the Prevention of Terrorism Act 2005 (which gives powers to impose control orders) is repealed'; s 2(1): 'The Secretary of State may by notice (a "TPIM notice") impose specified terrorism prevention and investigation measures on an individual'; s 2(2): 'In this Act "terrorism prevention and investigation measures" means requirements, restrictions and other provision which may be made in relation to an individual by virtue of Schedule 1'; see: Schedule1 of the Act.

[230] Ibid, Schedule 1, Part 1 which includes the following measures: residence, travel, exclusion, movement directions, financial services, property, electronic communication device, association, work or studies, polygraph, drug testing, photography, monitoring, and provision of residence information. Part 2 of Schedule 1 includes guidance on permission and notices.

[231] To 'radicalise' another individual is not a statutory offence. See instead the offence of encouragement and related 'glorification' offences: Terrorism Act 2006, ss 1, 2, 5, 6.

[232] Terrorism Prevention and Investigation Measures Act 2011, Schedule 1.

[233] Ibid.

[234] Ibid.

[235] Ibid, Part 2.

[236] See: *CF v SSHD* [2013] EWHC 843 (Admin) [25]-[26] for the test to be applied. Summarised, the measures must be 'sufficiently important to justify limiting a fundamental right', the measures 'must be designed to meet the objective and... connected to it' and the means to 'impair the right or freedom must be no more than is necessary to achieve the objective'.

orders – and, as a result, the conditions under which a TPIM notice can be imposed are strict – there are only five – and the 2011 Act details each condition.[237] As for their duration, each notice is imposed by the Home Secretary and will last for five years, but an individual may request that the Home Secretary remove the notice at any time.[238] In the instance that this request is refused, the individual may apply to the High Court to have the notice quashed,[239] and the court may quash the notice if it sees fit: 'the court must apply the principles applicable on an application for judicial review'.[240] In making its decision, the court is expected to closely examine each notice. This is, of course, an important balance between individual liberty and public interest.

As of 27 March 2023, there are only two TPIM notices in force in the United Kingdom, both of which involve British citizens.[241] In 2022, one of these TPIM subjects made an application for review, but this was dismissed: the TPIM was found to be necessary and proportionate under the circumstances.[242] Prior to this, in 2021, two TPIM notices, which were imposed in 2019, were reviewed by the High Court. Significantly, each were imposed on Islamist terrorists residing in the UK.[243] This underscores the centrality of religion to the function of TPIMs. As Justice Farbey explained of the individuals: 'both are said to be members and senior leaders of Al-Muhajiroun (ALM) [which has been] a proscribed organisation since 25 July 2006'.[244] In fact, previous TPIM notices were imposed on the individuals in 2016.[245] It is

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[237] Terrorism Prevention and Investigation Measures Act 2011, s 3(1): there are five conditions. Condition A is 'that the Secretary of State reasonably believes that the individual is, or has been, on the balance of probabilities, that the individual is, or has been, involved in terrorism-related activity (the "relevant activity")'. Condition B is 'that some or all of the relevant activity is new terrorism-related activity'. Condition C is 'that the Secretary of State reasonably considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for terrorism prevention and investigation measures to be imposed on the individual'. Condition D is 'that the Secretary of State reasonably considers that it is necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity, for the specified terrorism prevention and investigation measures to be imposed on the individual'. Condition E comprises of two parts: that 'the court gives the Secretary of State permission under section 6' or that 'the Secretary of State reasonably considers that the urgency of the case requires terrorism prevention and investigation measures to be imposed without obtaining such permission'.
[238] Ibid, ss 3 and 5.
[239] Ibid, s 16(1)(a).
[240] Ibid, s 16.
[241] HL 27 March 2023 UIN HLWS660.
[242] *TL vs Secretary of State for the Home Department* [2022] EWHC 3322 (Admin) [36]: 'In my judgment, in this case, these failures do not affect the validity of the overall judgment of the Secretary of State that the TPIM notice, and the individual measures it imposes, remains both necessary and proportionate; and they do not affect my judgment, which is to the same effect'. The TPIM notice was reviewed on the grounds of the defendant's mental health, that there was no recent evidence of terrorism related activity, the adequacy of the disclosure, and the management of the Director of Public Prosecutions.
[243] *Secretary of State for the Home Department v JM & Anor* [2021] EWHC 266 (Admin).
[244] Ibid [1].
[245] See: [2017] EWHC 1529 (Admin); [2017] EWHC 2685 (Admin).

worth questioning, then, whether the notices served their purpose; on their expiry, it was said: 'both JM and LF re-engaged with ALM associates and continued their activities for the behalf of ALM'.[246] Despite this, in the case of LF it was held that the conditions of the TPIM notice established a 'significant interference' with the claimant's right to private and family life, as well as their family's right to private life, despite the fact that LF had been engaging in Islamist extremism and radicalising others.[247] Article 9 of the European Convention was not mentioned in either case – it is perhaps evident then, on the basis of an interference under Article 9(2), an extremist individual would always find their rights lawfully interfered with.

To summarise, TPIM notices, are an explicit means through which the UK Government is able to monitor and regulate an individual's activities through requirements, restrictions and other provisions. Due to both current TPIM notices having been imposed on religiously motivated terrorists, the notices may also be framed as a way for the Government to regulate the manifestation of threatening religious belief and practice. After all, and as we shall see explored fully in Chapter Four, Islamist terrorism is understood by the counter-terrorism literature to be a religion in and of itself. It is also undeniable that religion is central to the management of terrorism offenders.

However, it is not the regulation of religion that makes TPIM notices the subject of controversy – or, at least, this has not yet been addressed in commentary on the notices. Instead, commentators have criticised the requirements, restrictions and other provisions that TPIM notices impose; it is these measures that make the notices so contentious. The notices have been described as quasi-criminal procedures by Gearty.[248] In similar vein, Lowe has argued that TPIM notices are not entirely necessary and mostly operate as a form of surveillance: 'while a TPIM may be a diluted version of the Prevention of Terrorism Act 2005's control order [that provides] a lighter touch regarding the restrictive measure imposed on the individual, the question is if there is a need for them'.[249] Lowe suggests that although they may be redundant, TPIM notices have not yet been found incompatible with any of the

[246] *SSHD v LF* [2017] EWHC 2685 (Admin).
[247] It was ruled that the TPIM would continue to apply but the conditions would be altered – the religious association measures particularly. *SSHD v LF* [2017] EWHC 2685 (Admin) [266]: 'The religious association measure was challenged during the proceedings. The parties have now agreed a replacement measure. Subject to the parties' contrary views, I consider that I should vary that measure and replace it with the text of the agreed measure'.
[248] C Gearty, *Liberty and Security (Themes for the 21st Century)* (Polity 2013).
[249] D Lowe, 'TPIM's and Control Orders' Westlaw UK Insight (Thomson Reuters 2014; see also: F Cochrane 'Not so extraordinary: the democratisation of UK counterinsurgency strategy' (2013) 6 *Critical Studies on Terrorism* 1, 29-49, 43; see also: HM Government, 'Review of Counter-Terrorism and Security Powers: review findings and recommendations' (2011) 38 [13]: 'surveillance does not provide control'.

European Convention rights.[250] Thus, although the notices are controversial, they have not yet been abolished. Importantly, it must be noted that religion is central to the operation of these notices – both notices which remain in force are imposed on Islamist terrorists.

2.3.2 The Counter-Terrorism and Security Act 2015

A second means by which the UK Government has introduced measures to prevent terrorism is under the Counter-Terrorism and Security Act 2015.[251] For example, the 2015 Act makes it an offence for individuals to travel from the United Kingdom to join terrorist organisations overseas.[252] If an individual successfully leaves the United Kingdom to join terrorist organisations overseas, but wishes to return afterwards, the Act makes provision and imposes measures for this.[253] The Secretary of State must issue a Temporary Exclusion Order (TEO) to prevent an individual from re-entering the United Kingdom if there is reasonable suspicion that the individual has been, or is currently involved in, terrorist activity overseas.[254] In all cases, the Secretary of State must have reasonable belief that a TEO is necessary to protect the public. However, before it is issued, the TEO must be approved by the Court of Appeal or the Inner House of the Court of Session – a court may refuse if it considers the decision 'obviously flawed'.[255] In the event that a TEO is issued, the individual's British passport will be invalidated for two years unless the TEO is revoked before then.[256] As we shall see in Chapter Six, TEOs can be issued to both adults and children; for children, they are often a means of child protection rather than punishment.

If an individual is outside the United Kingdom for a period, and they are permitted to return,[257] they are usually subject to various requirements involving monitoring, reporting or attendance at a de-radicalisation programme.[258] This process is similar to the TPIM notices

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[250] See, for example: *Guzzardi v Italy* (Application no. 7367/76), [93]: On proportionality 'the difference between deprivation of and restriction upon liberty is nonetheless merely one of degree or intensity, and not one of nature or substance. Although the process of classification into one or other of these categories sometimes proves to be no easy task in that some borderline cases are a matter of pure opinion, the Court cannot avoid making the selection upon which the applicability or inapplicability of Article 5 (art. 5) depends'.

[251] The 2015 Act also introduced the statutory Prevent Duty and amended the Data Retention and Investigatory Powers Act 2014. The Preamble of the Act reads that it is 'An Act to make provision in relation to terrorism; to make provision about retention of communications data, about information, authority to carry and security in relation to air, sea and rail transport and about reviews by the Special Immigration Appeals Commission against refusals to issue certificates of naturalisation; and for connected purposes'.

[252] Counter-Terrorism and Security Act 2015, ss 1-2; Schedule 1.

[253] Ibid, ss 5-8.

[254] Ibid, ss 2-4; Schedule 2.

[255] Ibid, ss 2, 3 and 4, and Schedules 2 and 3.

[256] Ibid, Schedule 1.

[257] As seen recently, individuals are not always permitted to return to the UK following their involvement in terrorism: *Begum v The Secretary of State for the Home Department* [2021] UKSC 7.

[258] Counter-Terrorism and Security Act 2015, s 9.

explored in the previous sub-section, and the criticisms of TEOs are also similar to those of TPIM notices. This is exemplified by the case of *QX v Secretary of State* where it was held that the requirements of the TEO interfered with the individual's right to Article 8 (on the right to private and family life).[259] It is perhaps unsurprising, at this stage, to learn that this case also involved Islamist terrorism. Yet again, however, the religious inspiration behind the individual's offence was not commented upon; yet again, ECHR Article 9 and the freedom of religion was not applied. It appears that an omission is emerging: although religion is central to both the terrorism offences and the management of extremists, this interaction has not yet been commented on by the field of Law and Religion.

The Counter-Terrorism and Security Act 2015 also introduced two important duties relating to the prevention of terrorism. First, the statutory Prevent Duty; second, the lesser-known Channel Duty. The Prevent Duty will be dealt with in the final section of this chapter (see 2.4) due to its lengthy history and the controversy that surrounds it. However, the Duty will be briefly addressed here for reasons of context. The Prevent Duty was placed on a statutory footing by section 26 of the 2015 Act, and imposes a statutory obligation on specified authorities (for example, schools, prisons and universities) to have due regard to the need to prevent individuals from being drawn into terrorism.[260] Although the provision makes no direct reference to religion, the duty itself has become directly associated with religion and seeks, primarily, to deal with Islamist radicalisation and terrorism. The Prevent Duty, as we shall see, has not been commented on in great detail by Law and Religion scholars. As we shall see, neither has the statutory Channel Duty.

The Channel Duty is directly related to the Prevent Duty, and is designed to support individuals who have been referred to the Prevent programme because they are considered to have a 'terrorism vulnerability'.[261] The Channel Duty has been described by the UK

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[259] *QX v Secretary of State for the Home Department* [2022] EWCA Civ 1541 [73]: Here, *Le Compte, Van Leuven and De Meyere v Belgium* (1982) 4 EHRR 1 [49] was applied because the interference with Article 8 was considered to be 'direct and material'.

[260] Counter-Terrorism and Security Act, 2015, s 26.

[261] Ibid, s 36(3); 'A chief officer of police may refer an individual to a panel only if there are reasonable grounds to believe that the individual is vulnerable to being drawn into terrorism'; see also: HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 6: for example, 'this could include cases where individuals: are accessing extremist materials; are espousing scripted extremist narratives; are demonstrating acute behaviour changes in relation to our working definition of extremism; have had potentially traumatic exposure to conflict zones; are acutely intolerant towards people from different ethnic backgrounds, cultures or other protected traits as defined in the 2010 Equality Act Other complex needs can play a part in amplifying grievance narratives. The gateway assessment undertaken by police will ultimately determine whether an individual is appropriate for consideration by a Channel panel'.

Government as the safeguarding element of the Prevent Duty,[262] but – rather confusingly – the Government has also distinguished the Channel programme from safeguarding: 'unlike mainstream safeguarding, there is no threshold to make a Prevent referral for an individual to access assessment and specialist support'.[263] Ultimately, this means that any individual who is referred under the Channel Duty has a right to be assessed for support. The Channel programme, therefore, is not a safeguarding measure and is not regulated by safeguarding laws in the UK. The Channel process will be outlined below and evaluated to the extent that religion is central to it.

In the first instance, individuals are usually referred to the Prevent programme by those they come into immediate contact with, such as school teachers, university chaplains, or other specified authority officials listed under Schedule 6 of the Counter-Terrorism and Security Act 2015.[264] When referred, the individual will be triaged and specialist police officers will determine whether they are to be classified as vulnerable or as a risk to the general public: 'This "gateway assessment" draws upon police databases and other resources to determine the level of vulnerability and risk around the referred individual, and whether the referral [or the] case will move into (or out of) Prevent'.[265] Following this, individuals who are considered in need of Prevent support are supported through Channel panels.[266]

Channel panels, as the instrument for this support, and are trained to identify 'signs that extremist views are being adopted [and these] can be used to assess whether the offer of early support should be made'.[267] The Channel panel is required to 'prepare a plan' in relation to the identified individuals who 'the panel consider should be offered support for the purpose

[262] HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 5 [5]: 'The aim of Prevent is to reduce the threat to the UK from terrorism by stopping people becoming terrorists or supporting terrorism. Delivery of Prevent is grounded in early intervention and safeguarding'; see also: at 45 [167]: 'It is essential that Channel panel members, partners to local panels and other professionals ensure that children, young people and adults are protected from harm. While the Channel provisions in Chapter 2 of Part 5 of the CT&S Act are counter-terrorism measures (since their ultimate objective is to prevent terrorism), the way in which Channel will be delivered may often overlap with implementation of the wider safeguarding duty, especially where vulnerabilities have been identified that require intervention from social services, or where the individual is already known to social services'.

[263] Ibid, 6 [11]: 'There may be cases that require a safeguarding response in conjunction with Prevent'.

[264] Ibid. 20, [55]; see also: Home Office, 'Prevent duty training: Learn how to support people vulnerable to radicalisation' (Undated) Available online at: <https://www.support-people-vulnerable-to-radicalisation.service.gov.uk/> Last accessed: 16 April 2023: Referrers are urged to follow the 'Notice, Check, Share' procedure before going to the police.

[265] Ibid, [56].

[266] Ibid, [57]-[58]: 'After the gateway assessment, individuals whom the police reasonably suspect pose a serious or imminent risk of terrorism offending, are unlikely to be signposted onwards for support through Channel. Depending upon the type and level of terrorism risk identified by police, these cases may be adopted for management in the police-led partnership or escalated into the Pursue space'.

[267] Ibid, 6 [11].

of reducing their vulnerability to being drawn into terrorism';[268] if consent is given, 'to make arrangements for support';[269] to review the support plan;[270] to revise the support plan (and withdraw support if appropriate);[271] 'to carry out further assessments' where appropriate;[272] and to 'prepare a further support plan in such cases if the panel considers it appropriate'.[273]

When an individual begins receiving Channel support, the Vulnerability Assessment Framework is used to 'guide decisions about whether an individual needs support to address their vulnerability to being drawn into terrorism as a consequence of radicalisation and the kind of support that they need'.[274] Although the Vulnerability Assessment Framework does not make direct reference to religion, it is suggested – for the purposes of this chapter – that because the most significant threat facing the United Kingdom at this time derives from Islamist terrorism, Channel panels use the framework in this context.[275] This means that at least some understanding of religion – both in mainstream and extreme forms – is integral to the Channel process; religion, then, is central to the Channel programme. Thus, the Channel panels only deal with individuals who have a 'terrorism vulnerability' and not those who are considered a 'terrorism risk' – the latter describes individuals who pose a real risk of committing an act of terrorism.[276] As stated, this distinction is made by the police who will

[268] Counter-Terrorism and Security Act 2015, s 36(4)(a); according to s 36(2) of the Act, an 'identified individual' means 'an individual who is referred to the panel by a chief officer of police [or by a local authority,] for an assessment'.
[269] Ibid, s 36(4)(b).
[270] Ibid, s 36(4)(c).
[271] Ibid, s 36(4)(d).
[272] Ibid, s 36(4)(e); see also: s. 36(4)(e)(i)-(ii): in cases where 'the necessary consent is refused or withdrawn to the giving of support under a support plan, orthe panel has determined that support under a plan should be withdrawn'.
[273] Ibid, s. 36(4)(f).
[274] HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 51 Annex C: 'It should not be assumed that the characteristics set out below necessarily indicate that a person is either committed to terrorism or may become a terrorist. The assessment framework involves three dimensions: engagement, intent and capability, which are considered separately'; see also, generally: HM Government, 'Channel: Vulnerability assessment framework' (2012).
[275] The Vulnerability Assessment framework will be revisited in Chapter Four of this thesis in the context of faith communities.
[276] Counter-Terrorism and Security Act 2015, s 36(3); 'A chief officer of police may refer an individual to a panel only if there are reasonable grounds to believe that the individual is vulnerable to being drawn into terrorism'; see also: HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 6: for example, 'this could include cases where individuals: are accessing extremist materials; are espousing scripted extremist narratives; are demonstrating acute behaviour changes in relation to our working definition of extremism; have had potentially traumatic exposure to conflict zones; are acutely intolerant towards people from different ethnic backgrounds, cultures or other protected traits as defined in the 2010 Equality Act Other complex needs can play a part in amplifying grievance narratives. The gateway assessment undertaken by police will ultimately determine whether an individual is appropriate for consideration by a Channel panel'.

assess risk and vulnerability.[277] The risk assessment is kept under review: if an individual who initially presents a vulnerability becomes a risk, 'the police may remove a case from Channel'.[278] For example, if an individual's extremist views become more extreme, they may be subject to further assessment and, ultimately, removed from the Channel programme. Importantly, individuals who are receiving Channel support and are subject on an ongoing (and unrelated to terrorism) police investigation will 'not [be] precluded from accessing Channel support'.[279]

To conclude, this section has explored the statutory provisions which deal with, primarily, managing terrorist offenders and supporting individuals in an effort to prevent them from becoming terrorist offenders, and evaluated the extent to which religion is central to them. The section argues that it is important to recognise that each of these provisions are very much linked to religion, but that the provisions have not yet been commented on by Law and Religion scholars. What has been commented on, to some extent, is the statutory Prevent Duty, which will be explored in the final section of this chapter. The Prevent Duty itself is closely *associated* with Islam and, therefore, with religion itself, but the final section of this chapter will examine the extent to which religion is *central* to the Prevent Duty. As we shall see, the Duty has in fact been described as discriminatory due to its direct association with Islam, and as having the potential to interrupt various European Convention rights. Significantly, however, there has been no detailed discussion of whether the Duty has the

[277] HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 6 [12]: 'Clear distinction should be made between individuals who present with a 'terrorism vulnerability' requiring Channel support and those who pose a 'terrorism risk' requiring management by the police. The process for undertaking assessments of risk and vulnerability informs this determination and is kept under review. Should there be an escalation of risk, the police may remove a case from Channel if appropriate'; 'The gateway assessment undertaken by police will ultimately determine whether an individual is appropriate for consideration by a Channel panel'.

[278] Ibid; see also, 20 [59]: 'Every case adopted into Channel is kept under review and routinely re-assessed for any changes to identified vulnerabilities and risks in relation to terrorism-connected offending. Should there be an escalation of risk, where deemed appropriate, the police may remove a case from Channel to police-led partnership or escalate it into Pursue'; see also: 29 [96]-[97] on the management of those not suitable for Channel support: 'Police-led partnerships cover the management of individuals, groups or institutions that are not suitable for Channel, but which have identified Prevent-relevant issues requiring support or mitigation. Channel brings together a wider network of support available to reduce an individual's vulnerabilities to being drawn into terrorism or any terrorism-connected offending. The terrorism vulnerability and risk for the case is kept under review by police and the case may be removed from Channel if the risk escalates to a level that police believe cannot be safely managed by the Channel panel'.

[279] Ibid, 29 [98]: 'Circumstances may arise where an individual who is in receipt of Channel support is the subject of an investigation by police for a non-terrorism related offence. In this instance, the individual is not precluded from accessing Channel support. Channel can continue to provide support, with any information shared between Channel partners used to assess individual vulnerabilities, risk and support needs. However, where information that suggests criminal activity is exchanged, the police are duty bound to investigate'.

potential to interrupt Article 9 on the freedom of religion from the field of Law and Religion and beyond.

2.4 The Prevent Duty

As we have seen, in the United Kingdom counter-terrorism is regulated primarily by 'hard' law instruments. This 'hard' law takes the form of statute, dealing principally with terrorist offences, their investigation and their prosecution. The current body of legislation dealing with counter-terrorism has shifted purpose considerably over the last twenty or so years and now: creates a range of terrorist criminal offences;[280] prohibits the membership of proscribed organisations and the possession of property or weapons used for terrorism;[281] confers powers related to the arrest and detention of suspected offenders;[282] and makes provision for border security and the management of offenders.[283] Not touched upon yet by this chapter is the 'soft' law component, which takes the form of government-issued guidance and policy.

Much of this guidance deals with supporting those who are responsible for preventing individuals from being drawn into terrorism,[284] and is therefore supplementary to the Counter-Terrorism and Security Act 2015's statutory Prevent Duty. Although we have already explored the 2015 Act as it applies to TEOs and the Channel Duty, it is also a statute which deals explicitly with religious radicalisation, and the prevention of it.[285] This is because, as stated under section 26 of the Act – and as mentioned in the previous section – 'specified authorities' must have 'due regard' to the need to prevent individuals from being drawn into supporting terrorism.[286] Importantly, the Prevent Duty itself has not received much attention from Law and Religion scholars. As we saw in Chapter One, the Duty is often mentioned briefly and used as a means to contextualise other issues, such as education, but is rarely treated in much depth. In 2021, however, I criticised the Prevent Duty as it relates to religion, and these criticisms will be revisited and developed in the following sub-sections to provide a look at the Duty through a Law and Religion lens, as well as to explore the extent to which religion is central to the Prevent Duty, its drafting and its current form.

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[280] See, for example, Terrorism Act 2006, ss 1, 2, 5 and 6.
[281] See: Terrorism Act 2000, s 3 and Schedule 2; and Terrorism Act 2000, s 14.
[282] See, for example: Counter-Terrorism and Security Act 2015, ss 2-15.
[283] See: Terrorism Act 2000, s 23; see also Counter-Terrorism Act 2015 and; Counter-Terrorism and Border Security Act 2019.
[284] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021).
[285] Although the encouragement of terrorism does prohibit glorifying statements which may encourage another to engage in terrorist activity, there is no explicit mention of 'radicalisation' in the Terrorism Act 2006.
[286] Counter-Terrorism and Security Act 2015, s 26.

The Prevent Duty began as a 'soft' law policy (the Prevent *Strategy*) but has since shifted status to a 'hard' law duty. As introduced in Chapter One, the statutory Prevent Duty places a legal responsibility on 'specified authorities' to make referrals to the Prevent programme on behalf of radicalised individuals.[287] The list of specified authorities includes local government, criminal justice, education and child care, health and social care, and the police.[288] A specified authority 'must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism'.[289] The process by which an individual is drawn into terrorism is known as 'radicalisation';[290] the focus of the Prevent Duty, as we shall see, is primarily on *religious* radicalisation. Therefore, for the purposes of this section, it is important to note that the religious radicalisation process is the principal element with which the Prevent Duty deals with, and is therefore deserving of detailed discussion. This is why the radicalisation process will not be dealt with in detail here, and will instead be revisited in Chapter Four of this thesis.

2.4.1 The CONTEST Strategy

The principal 'soft' law instrument governing counter-terrorism in the UK is a policy referred to as 'CONTEST'– an abbreviation of the words 'counter terrorism strategy'.[291] First drafted in 2003, then presented to Parliament in 2006, CONTEST consisted – and still consists – of four strands.[292] The Prevent strand makes up only one part of CONTEST, and is the only element to be placed on a statutory footing.[293] Until Prevent was made a legal duty, the

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[287] Ibid. For information, both the referral and support processes will be explained and evaluated in Chapter Five (insert sub-section) of this thesis.
[288] Ibid, Schedule 6.
[289] Ibid, s 26.
[290] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) F: radicalisation 'refers to the process by which a person comes to support terrorism and extremist ideologies associated with terrorist groups'.
[291] Home Affairs Committee, 'Project CONTEST: The Government's Counter-Terrorism Strategy' (House of Commons, 2009) 5: 'Beginning in 1909 and developing especially during and after the Second World War, the intelligence apparatus was founded on the twin pillars of the Secret Intelligence Service (SIS, colloquially known as MI6) dealing with threats from without the United Kingdom, and the Security Service (generally referred to as MI5) tackling domestic terrorism. However, since the 1950s, the Cabinet Office has played a coordinating role in some respects, the Joint Intelligence Committee (JIC) has been based there since 1957 and provides the Cabinet with advice on defence, security and intelligence-related matters'; see also: HM Government, 'Countering International Terrorism: The United Kingdom's Strategy' (2006) 9: 'Since early 2003, the United Kingdom has had a long-term strategy for countering international terrorism (known within Government as CONTEST)'.
[292] The Prevent Duty was placed on a statutory footing by the Counter-Terrorism and Security Act 2015; the Protect Duty is pending legislation; see: 'News story: Martyn's law to ensure stronger protections against terrorism in public places' *Home Office* 19 Dec 2022. Available online at: <https://www.gov.uk/government/news/martyns-law-to-ensure-stronger-protections-against-terrorism-in-public-places> Last accessed: 29 January 2023.
[293] As noted previously, see: Counter-Terrorism and Security Act 2015, s 26.

Prevent Strategy existed as a 'soft' law instrument only. This is why, throughout this section, Prevent will be referred to as both the Prevent *Strategy* and the Prevent *Duty*.[294] The additional components of CONTEST – Pursue, Protect and Prepare – are not dealt with by this thesis simply because they do not deal specifically with the prevention of religious radicalisation.[295]

The Home Affairs Committee defended the decision to establish CONTEST in 2003 as 'an attempt to coordinate the pan-Governmental response to the emerging terrorist threat in the aftermath of the attacks on New York and Washington, DC, in September 2001'.[296] Therefore, triggered by the 7/7 London bombings in 2005, the Prevent Strategy was presented to Parliament and made available to the public in 2006 so 'that people [could] go about their daily lives with confidence' in spite of the terrorist threat facing the United Kingdom at the time.[297] The Prevent Strategy, then, was designed with religion in mind; religion, therefore, was central to the creation of the strategy. Further, in publishing CONTEST, the UK Government explained that they wanted full transparency in relation to terrorism prevention.[298] Although the 2006 version of CONTEST did not stimulate considerable controversy – aside from the recognised need to revise and update the strategy – [299] the previous version of CONTEST (drawn up in 2003) has.

These criticisms were centred around the Strategy's focus on Islam, and were triggered by a Freedom of Information request that led to the 2003 version of CONTEST being released to the public in 2016.[300] It is important to note that, previously, only the 2006 version of the Strategy was available for public use. However, after the 2003 version was released,

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[294] In later chapters, Prevent will only be referred to as the Prevent *Duty*.
[295] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 10-11: Pursue is designed to 'stop terrorist attacks happening in this country and against UK interest overseas'; Protect is designed to 'strengthen our protection against a terrorist attack in the UK or against our interests overseas'; Prepare is designed 'to mitigate the impact of a terrorist incident, by bringing any attack to an end rapidly and recovering from it';
[296] Home Affairs Committee, *Project CONTEST: The Government's Counter-Terrorism Strategy* (HL 2008-09) 4 [1]; CONTEST 2003, previously classified as 'confidential', was released after a Freedom of Information request was made on 2 August 2016 but some parts of the document remain redacted.
[297] HM Government, 'Countering International Terrorism: The United Kingdom's Strategy' (2006) 1 [5].
[298] Ibid, [1]: The UK Government state that the strategy 'comprises both open elements (which can be freely publicised and discussed) and classified elements (which are kept secret)'; see also: Communities and Local Government Committee, *Preventing Violent Extremism* (HC 2009-10).
[299] See: Home Affairs Committee, *Project CONTEST: The Government's Counter-Terrorism Strategy* (HL 2008-09). Recommendations included the need for human rights to be at the forefront of any counter-terrorism strategy.
[300] 'Whitehall releases 2003 Counter Terrorism Strategy' *Scotland Against Criminalising Communities* 13 December 2016. Available online at: <https://www.sacc.org.uk/press/2016/whitehall-releases-2003-counter-terrorism-strategy> Last Accessed 12 May 2022. 'SACC' are an activist group whose main purpose is to 'campaign against laws and policies whose effect is to criminalise political and community activity'.

criticisms were brought by activist group SACC,[301] focusing in particular on the Prevent strand of CONTEST and the reasons behind its initial design, which, as stated, were religious in nature. When the 2006 version of CONTEST was publicly released by the Government, it explicitly stated that the Prevent Strategy was created in response to the Government's failure to prevent the 2005 7/7 bombings.[302] It was explained, by the Government, that the Prevent Strategy was informed by the newly established knowledge that 'Islamist terrorists' were responsible for the 7/7 attacks in 2005,[303] and that the Prevent Strategy was designed to manage Islamist terrorism *because* this was the motivation behind the bombings. Therefore, although it was evident that the Prevent Strategy was designed with religiously motivated terrorism in mind – and for this reason, religion was central to the Strategy – this was justified by the religious motivation behind the 2005 bombings.

However, following the 2016 Freedom of Information request,[304] it soon became apparent that the Prevent Strategy had made several references to Islamist terrorism and managing the Muslim community in response to this *before* the 2005 bombings had happened.[305] For example, in the document, the Government explained that 'a long term but vital element of the [implementation of the Prevent] strategy' would involve: 'building enhanced links with Muslim Council UK and promoting community leadership', '[preventing] the radicalisation of Muslim youth in the UK' and '[helping to] resolve International causes of tension, [engaging] with and [supporting] reform in the Islamic world, e.g. Madrassas'.[306] Activist group SACC has since asserted that the alleged unfair targeting of the Muslim community through the Prevent programme began here,[307] arguing that the creation of the Prevent Strategy was not stimulated by the 7/7 bombings and, instead, 'the document shows that Prevent was part of CONTEST from the outset, and had a strong focus on Muslim

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[301] Ibid.
[302] Intelligence and Security Committee, *Report into the London Terrorist Attacks on 7 July 2005* (2006).
[303] HM Government, 'Countering International Terrorism: The United Kingdom's Strategy' (2006); see also: Intelligence and Security Committee, *Report into the London Terrorist Attacks on 7 July 2005* (2006).
[304] Home Affairs Committee, *Project CONTEST: The Government's Counter-Terrorism Strategy* (HL 2008-09) 4 [1].
[305] On the 2003 version of CONTEST, with particular reference to the Prevent Strategy. The Prevent Strategy itself will be dealt with in the following sub-section (2.2.3); however, it is necessary to discuss it here – briefly – in relation to CONTEST's controversial history.
[306] HM Government, 'The United Kingdom's Strategy for Countering International Terrorism' (2009) 83-84.
[307] As shall be explored within this chapter, it is a common criticism of the Prevent Duty that the Muslim community has been unduly targeted by its implementation; see, for example: R Riedel, 'Religion and Terrorism: The Prevent Duty' (2021) 23 *Ecclesiastical Law Journal* 3, 280-293.

communities from the outset'.[308] The field of Law and Religion is yet to comment on this, despite it being clear that the Government sought to use the Prevent programme to regulate religiously motivated terrorism from the beginning.

The UK Government, however, has commented on the 2003 version of CONTEST – but not since the Freedom of Information request. In 2009, the Government explicitly referred to the 2003 version of the Strategy as 'the least developed' part of CONTEST: 'The intelligence and analytic picture was incomplete: resources in most countries, including the UK, were devoted to investigative work, in order to protect the immediate threat to life, rather than to understanding the factors driving radicalisation'.[309] Indeed, the 2006 published version of CONTEST was far more comprehensive, and SACC acknowledges this in their statement, allowing that the 2003 CONTEST document 'does not provide much detail' on the counter-terrorism strategy.[310] However, it appears that SACC do not believe this to be wholly relevant, arguing that, most importantly, this version of the Prevent Strategy 'contains the seeds of policies that have developed over the years into a framework that threatens civil liberties and promotes prejudice'.[311] This is a criticism of the Prevent Strategy that continues to follow Prevent today.[312] Perhaps most importantly, for the purposes of this chapter, it is evident that both the 2003 and 2006 versions of CONTEST drew connections between religion and terrorism from the very beginning, meaning that religion has always been very much central to counter-terrorism efforts in the United Kingdom. The field of Law and Religion has commented on the early versions of CONTEST, but outside the scope of their link with religion, and rarely in much detail – there is a lack of discussion about the early link between religion, terrorism and the Prevent Duty. Nash, for example, discusses CONTEST in the context of multiculturism.[313]

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308 'Whitehall releases 2003 Counter Terrorism Strategy' *Scotland Against Criminalising Communities* 13 December 2016. Available online at: <https://www.sacc.org.uk/press/2016/whitehall-releases-2003-counter-terrorism-strategy> Last Accessed 12 May 2022.
309 HM Government, 'The United Kingdom's Strategy for Countering International Terrorism' (2009) 83-84.
310 'Whitehall releases 2003 Counter Terrorism Strategy' *Scotland Against Criminalising Communities* 13 December 2016. Available online at: <https://www.sacc.org.uk/press/2016/whitehall-releases-2003-counter-terrorism-strategy>. Last Accessed 12 May 2022.
311 Ibid.
312 M Guest *et al*, *Islam and Muslims on UK University Campuses: Perceptions and Challenges* (Durham 2020).
313 P Nash, *British Islam and English Law: A Classical Pluralist Perspective* (Cambridge University Press 2022) 71-72.

2.4.2 The Prevent Strategy

The later versions of CONTEST – namely, those released to the public in 2009, 2011 and 2018 – are all, to varying degrees, also linked to religion.[314] Since the release of CONTEST 2006 – or, as we have seen, since the formulation of CONTEST 2003 – the strategies have all been designed to deal with the threat from religious terrorism. For example, in 2009, although the UK Government stated that they felt the 2006 version of CONTEST had 'achieved its intended aim',[315] it was decided that the Strategy required an update 'to take account of the evolution of the [terrorist] threat'.[316] This was in reference to the new terrorist organisations that were emerging at the time, and the way in which longstanding groups were evolving: the threat was 'always changing' and, as we shall see, the CONTEST Strategy was routinely updated to contend with this.[317] This included the updating of the Prevent Strategy which was modernised to address a 'new form of terrorism' referred to as 'international terrorism',[318] a brand of terrorism to which religion was central.

Religion was therefore used by the Government as a reference point to explain the shifting terrorist threat – at the time, individuals were becoming more commonly motivated by religion in committing acts of terrorism, and the guidance reflects this.[319] On a more general note, 'international terrorism' was described by the Government as 'different in scale and nature from the terrorist threats we have had to deal with in recent decades'.[320] The process was described as involving the '[exploitation of] modern travel and communications to spread through a loose and dangerous global network'.[321] Importantly, and again with implicit reference to religion, the threat from 'international terrorism' was categorised by the

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[314] See, respectively: HM Government, 'Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism' (2009); HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2011); HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018).

[315] Ibid, 8.

[316] Ibid. Amendments included, for example: an updated guide for local partners in relation to delivering the Prevent strategy, an updated National Risk Assessment to reflect the evolution of the threat, and an Annual Report (the first of its kind).

[317] Ibid, 7: 'Learning from our experience over the past few years, we have updated all aspects of our strategy to take account of [the] changing threat'.

[318] Ibid, 22, 38, 59: There is no explicit explanation provided as to what the previous terrorist threats were; however, there is reference to Irish-related terrorism.

[319] Ibid 37: 'Reflecting earlier international trends, it draws explicitly on the language of religion and its objectives are linked to a religious cause. Al Qa'ida is not a domestic terrorist group focused on a single political issue or geographical area, but an international network with an international agenda. It aspires to be a vanguard, provoking a violent uprising in the Islamic world which will overthrow existing political structures and establish a new world order'. Here, the Government reference 'extracts from Ayman Al Zawahiri 'Knights Under the Prophets Banner' in Gilles Kepel and Jean-Pierre Milelli (eds) *Al Qaeda in its Own Words* (Harvard 2008) 193.

[320] Ibid.

[321] Ibid, 6.

Government as the offender's intention to '[inflict] mass casualties without warning, motivated by a violent extremist ideology'.[322] This violent extremist ideology was described as being motivated by an extreme religious worldview and, importantly, the Government explained that there must be a 'clear distinction [made] between violent extremist ideologies and the religion which violent extremists often and falsely claim to represent',[323] suggesting that this should be achieved by distinguishing terrorism that is driven by ideology from that which is driven by theology:

> 'Terrorists and violent extremists use exclusive messages about a "War on Islam" and concepts of "them and us" to drive division between British Muslims and mainstream society. Echoing such language reinforces it. Describing terrorists as criminals and murderers deglamorises terrorism. It is of course also important to talk about the ideology of contemporary terrorism and we have sought to do so in this strategy'.[324]

However, separating ideology from theology is not so straightforward, and this was the final mention made by the Government as to the importance of making this distinction. It can therefore be inferred that it is no longer a priority for the Government. Moreover, and as argued in the first section of this chapter (see section 2.2.2 above), there is a case for incorporating all potential motivations for terrorism under the umbrella term of 'ideology'. However, as we have already seen – and as we will see throughout the rest of this section – religion and terrorism are intrinsically, and indisputably, linked. This is underscored by the 2006 version of CONTEST, where religion was also explicitly mentioned in relation to the *future* of terrorist threat: 'the most resilient terrorist groups have a large number of members, follow an ideology which draws upon religion, and maintain alliances with other terrorist organisations',[325] predicting, to some degree, the spotlight that future versions of CONTEST would shine directly on religion. For the Law and Religion scholarship to continue to overlook the religious aspect of terrorism would make for a significant omission in the literature; religion is undeniably central to counter-terrorism law and guidance in the UK.

CONTEST was then updated again, and this version, published in 2011, sought again to address the 'changing terrorist threat' facing the United Kingdom.[326] This time, the strategy

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[322] Ibid.
[323] Ibid, 154.
[324] Ibid.
[325] Ibid, 48.
[326] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2011) 7.

was updated to conquer terrorist threats that were emerging specifically from 'Al Qa'ida and its affiliates, associated groups and terrorists acting on their own – so-called lone-wolves'.[327] Thus, the 2011 version of CONTEST was even more explicit in its focus on religion, demonstrating how religion was becoming all the more central to counter-terrorism efforts. Indeed, the 2011 version has since been described as 'even more explicit in saying that it is about legitimising what is acceptable Islam'.[328] It remains unclear, then, why the field of Law and Religion has not yet fully commented on the explicit focus from CONTEST on religion, especially since these earlier versions of the Strategy indicate a strong desire from the Government to regulate the practice of Islam in the UK by targeting, for example, madrassas. Specifically in the context of education, where – as we have seen in Chapter One – scholars from the field have begun to address the Prevent Duty,[329] detailed discussion of the Duty and its potential impact on schooling and faith communities is frequently dismissed in favour of other issues.

To underscore this further, the UK Government, in the 2011 version of CONTEST, also made explicit mention of faith institutions and organisations, explaining that these organisations 'have a very important role to play in preventative activity' due to their ability to 'challenge an ideology that purports to provide theological justification for terrorism'.[330] This was the first time that faith communities were brought into the discussion surrounding counter-terrorism, and this emphasises the extent to which religion is very much central to counter-terrorism efforts across the United Kingdom. As the UK Government explained: faith institutions 'can provide more specific and direct support to those who are being groomed to terrorism by those who claim religious expertise and can use what appear to be religious arguments'.[331] The Government continued:

> '[Faith institutions and organisations] can also play a wider and no less vital role in helping create a society which recognises the rights and contributions of different

[327] Ibid, 6.
[328] J Mohammed, A Siddiqui, 'Good Muslim, Bad Muslim: A response to the revised Prevent strategy' (Cageprisoners 2011), 6. Available online at: <https://www.cage.ngo/product/good-muslim-bad-muslim-a-response-to-the-revised-prevent-strategy-report> Last Accessed: 14 May 2022.
[329] See, for example, the work of P Nash, *British Islam and English Law: A Classical Pluralist Perspective* (Cambridge University Press 2022).
[330] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2011) 68.
[331] Ibid.

faith groups, endorses tolerance and the rule of law and encourages participation and interaction'.[332]

The Government has commented on establishing a dialogue with faith communities more recently in 2015, when reviewing plans to update the CONTEST Strategy.[333] The Government explained that it would be 'commissioning a new programme of support to help faith institutions to establish strong governance':[334] 'the programme aims to strengthen and support places of worship of all faiths in order to improve governance, increase their capacity to engage with women and young people, challenge intolerance and develop resilience to extremism'.[335] This would involve a 'partnership with faith groups to review the training provided to those who work as faith leaders in public institutions'.[336] There has been little work to advance this, however. It is presumed, then, that this work is ongoing,[337] and that religion remains a central part of counter-terrorism efforts through the Prevent programme.

In 2018, CONTEST was revised for a final time. The UK Government have confidence in this version of the strategy, stating that they believe it 'will disrupt terrorist threats in the UK earlier', taking account of 'the scale of the threat and the speed at which plots are now developing'.[338] Importantly, this version of CONTEST was published after the Prevent Duty was placed on a statutory footing in 2015, and this – to some extent – explains the inclusion of the need 'to safeguard those at risk of radicalisation or to ensure those who have supported or been involved in terrorist-related activities disengage'.[339] However, as discussed in the previous section (see section 2.3.2 above), the Prevent Duty – and related Channel Duty – have very little to do with safeguarding. This point will be developed fully in Chapter Six, but it is worth noting here that the Government has recognised the Prevent programme as a form of safeguarding in the past but that they no longer do so.

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[332] Ibid.
[333] HM Government, 'Counter-Extremism Strategy' (2015).
[334] Ibid, [86].
[335] Ibid.
[336] Ibid, [87].
[337] R Riedel, 'Religion and Terrorism: The Prevent Duty' (2021) 23 Ecclesiastical Law Journal 3, 280-293, 292; F Cranmer, 'Parliamentary Report: October 2015-January 2016' (2016) 18 *Ecclesiastical Law Journal* 2, 222–229; HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2011) 68: It is made clear, however, that any faith institutions or organisations that are found to be in support of terrorism will be punished: 'Where faith groups or institutions are supporting terrorism we will take law enforcement action. Where they are expressing views we regard as extremist those views will be subject to challenge and debate'.
[338] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 9.
[339] Ibid.

The Prevent Strategy has been an important – but controversial – element of CONTEST since its formulation, and the now-Prevent *Duty* remains an integral part of CONTEST. In 2003, the Prevent Strategy was designed, as previously noted, to promote vague 'community leadership' values in the form of tackling religious radicalisation.[340] By 2006, the Government made the objectives of the Prevent Strategy certain: the Prevent programme was designed to 'deter those who facilitate terrorism' and dissuade those who 'encourage' others to become involved in terrorism.[341] As noted, the language of 'encouragement' is mirrored by the 2006 offence of encouraging terrorism, although the Terrorism Act 2006 makes no reference to the Prevent strand of CONTEST.[342] It is proposed, then, that the offence of encouragement is perhaps the only statutory offence which comes close to criminalising the act of radicalising another individual.

By 2006, the threat from terrorism was escalating,[343] described at the time as 'serious and sustained' by the Government,[344] 'genuinely international in scope' and involving 'a variety of groups, networks and individuals who are driven by particular violent and extremist beliefs'.[345] This section has demonstrated how religion has been central to each version of CONTEST, to the Prevent Strategy, and to the now-statutory Prevent Duty; so much so that each were formulated with prohibiting certain manifestations of religion in mind. The aim of the Prevent strand, therefore, has *always* been to manage and reduce religiously motivated terrorism, but, as explained, the field of Law and Religion is yet to recognise the true extent of this. This analysis is especially obvious now that the Prevent programme has been placed on a statutory footing by the Counter-Terrorism and Security Act 2015.

2.4.3 Preventing terrorism, law and religion

As previously explained, the Prevent Strategy was made a statutory duty by the Government in 2015.[346] In defending this decision, the UK Government has explained that there was a 'need to legislate in order to reduce the terrorism threat to the UK' after the independent Joint Terrorism Analysis Centre (JTAC) raised the UK national threat to 'SEVERE' meaning an

[340] 'Whitehall releases 2003 Counter Terrorism Strategy' *Scotland Against Criminalising Communities* 13 December 2016. Available online at: <https://www.sacc.org.uk/press/2016/whitehall-releases-2003-counter-terrorism-strategy> Last Accessed 12 May 2022.
[341] HM Government, 'Countering International Terrorism: The United Kingdom's Strategy' (2006) 1-2.
[342] Terrorism Act 2006, s 1.
[343] Again, the need to confront the terrorist threat at this time is further exemplied by the new offences brought in by the Terrorism Act 2006.
[344] HM Government, 'Countering International Terrorism: The United Kingdom's Strategy' (2006) 1.
[345] Ibid.
[346] Counter-Terrorism and Security Act 2015, s 26.

attack is ‘highly likely’.[347] Thus, the Prevent Duty was placed on a statutory footing,[348] and there is now a legal requirement for ‘specified authorities’ to make referrals to the Prevent programme on behalf of suspected radicalised individuals.[349] It is undeniable, based on the reasoning of the previous section, that the Prevent Strategy – now Duty – was devised to inhibit terrorist activity associated with religion, and that this remains the purpose of the Duty today. Therefore, although the definition of terrorism under the Terrorism Act 2000 refers to multiple motivating factors that may cause an individual to engage in terrorist activity,[350] each version of the Prevent Strategy, including the now Prevent Duty, has been designed with the intention of impeding *only* religious radicalisation.[351] Religion, therefore, has always been central to counter-terrorism efforts in the UK, and the recent independent review of the Prevent Duty reinforces this: ‘the facts clearly demonstrate that the most lethal threat in the last 20 years has come from Islamism, and this threat continues’.[352]

The success of the Prevent Duty was described as ‘undeniable’ by the Centre for the Response to Radicalisation and Terrorism in 2017.[353] Importantly, the most recently appointed Independent Reviewer of Prevent, William Shawcross CVO, noted in February 2023 that ‘the Government should be proud of Prevent’s positive impact’ in relation to how it ‘saves lives, helps tackle the causes of radicalisation, prevents individuals from potentially carrying out an act of terrorism, and assists others to disengage from extremism’.[354] Indeed,

[347] Counter-Terrorism and Security Act 2015, Explanatory Notes [3]-[4].
[348] ‘PM statement on European Council and tackling extremism’ 1 September 2014: Then-Prime Minister David Cameron announced legislation that would involve ‘stronger powers to manage the risk posed by suspected extremists who are already in the United Kingdom… Dealing with the terrorist threat is about not just new powers but how we combat extremism in all its forms. That is why we have a new approach to tackling radicalisation, focusing on all types of extremism, not just violent extremism… As part of this, we are now putting our de-radicalisation programme, Channel, on a statutory footing. Anyone subject to our strengthened terrorism prevention and investigation measures will be required to engage with the Prevent programme’. Available online at: <https://www.gov.uk/government/speeches/pm-statement-on-european-council-and-tackling-extremism> Last accessed: 24 Jan 2022.
[349] Counter-Terrorism and Security Act 2015, s 26.
[350] Terrorism Act 2000, s 1: ‘The use or threat of action where the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause’.
[351] HM Government, ‘CONTEST: The United Kingdom’s Strategy for Countering Terrorism’ (2018) 8.
[352] W Shawcross, ‘Independent Review of Prevent’ (2023), 3; 14: ‘It is worth restating that Islamist terrorism is currently the largest terrorist threat facing the United Kingdom’.
[353] ‘Understanding CONTEST: The Foundation and the Future’ (Centre for the Response to Radicalisation and Terrorism, The Henry Jackson Society 2017) 3. See also: HM Government ‘CONTEST the United Kingdom’s Strategy for Countering Terrorism: Annual Report 2015’ (2016).
[354] W Shawcross, ‘Independent Review of Prevent’ (2023) 6: ‘Prevent has a noble ambition: stopping people becoming terrorists or supporting terrorism. I heard time and again about how Prevent saves lives, helps tackle the causes of radicalisation, prevents individuals from potentially carrying out an act of terrorism, and assists others to disengage from extremism. The government should be proud of Prevent’s positive impact in this regard. Prevent’s architecture is sophisticated and impressive. The caricature of Prevent as an authoritarian and thinly veiled means of persecuting British Muslims is not only untrue, it is an insult to all those in the Prevent network doing such diligent work to stop individuals from being radicalised into terrorism’.

the Duty saw much success in its first year in 2015: ‘the scheme stopped more than 150 individuals in the UK from travelling to Syria’.[355] The Duty has also been described as ‘absolutely fundamental’ to tackling terrorism.[356] Indeed, those that were not prevented from leaving the UK – and have since attempted to return – have faced harsh punishment;[357] the recent case of *Begum* and the controversy surrounding it brought the Prevent Duty to the headlines.[358] Thus, despite its success, the Prevent Duty has also faced serious and sustained criticism, much of which is related to its treatment of religion,[359] and there is a wealth of literature on this which falls outside the field of Law and Religion.[360] However, I have explored the Prevent Duty and its treatment of religion in previously published work, applying a Law and Religion lens, and this will be described and advanced here. This analysis seeks to highlight, yet again, the centrality of religion to the Prevent Duty, and to counter-terrorism law in general. It also seeks to underline the importance for the field of Law and Religion to address religious terrorism and the radicalisation process that leads individuals to engage with it.[361]

First, I criticised the Prevent Duty ‘on the basis of arguments from the perspective of fairness and human rights’.[362] Citing data from the Justice Initiative report,[363] I argue that Prevent

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[355] ‘Understanding CONTEST: The Foundation and the Future’ (Centre for the Response to Radicalisation and Terrorism, The Henry Jackson Society 2017) 3; see also: HM Government, ‘CONTEST the United Kingdom’s Strategy for Countering Terrorism: Annual Report 2015’ (2016).

[356] See, for example: ‘Prevent scheme “fundamental” to fighting terrorism’ *BBC News* 27 December 2016.

[357] *Begum v The Secretary of State for the Home Department* SC/163/2019 [113]: ‘On 17th February 2019 The Sunday Times published an article by the Home Secretary under the headline, “If you run away to join Isis, like Shamima Begum, I will use all my power to stop you coming back”. The article itself is more measured. The Secretary of State explained that deprivation powers are used “very carefully” and “we look at the facts of each case, the law and the threat to national security”’.

[358] *Begum v The Secretary of State for the Home Department* SC/163/2019.

[359] R Riedel, ‘Religion and Terrorism: The Prevent Duty’ (2021) 23 *Ecclesiastical Law Journal* 3, 280-293.

[360] The Duty has been criticised on the basis of human rights – for example, see: A Singh, ‘Instead of fighting terror, Prevent is creating a climate of fear’ *The Guardian* 19 October 2016; see also: Open Society Justice Initiative, ‘Eroding trust: The UK’s Prevent Counter-Extremism Strategy in Health and Education’ (Open Society Foundations, 2016); for its comprehension of the religious radicalisation process: M King and D Taylor, ‘The Radicalization of Homegrown Jihadists: A Review of Theoretical Models and Social Psychological Evidence’ (2011) 23 *Terrorism and Political Violence* 602–622; for its treatment of the religious radicalisation process: B Hale, ‘Freedom of religion and freedom from religion’ (2017) 19 *Ecclesiastical Law Journal* 3–13; M Guest *et al*, *Islam and Muslims on UK University Campuses: Perceptions and Challenges* (Durham 2020); for its deradicalization programmes: C Brader, ‘Extremism in Prisons: Are UK Deradicalization Programmes Working?’ (2020) HL Library; and for its treatment of the Muslim community in general: F Qurashi, ‘The Prevent Strategy and the UK “War on Terror”: Embedding Infrastructures of Surveillance in Muslim Communities’ (2018) 4 *Palgrave Communications*; see also: D Barrett, ‘Tackling Radicalisation: The Limitations of the Anti-Radicalisation Prevent Duty’ (2018) 12 *European Human Rights Law Review* 530–541.

[361] I have written on this subject previously: see, for detailed discussion: R Riedel, ‘Religion and Terrorism: The Prevent Duty’ (2021) 23 *Ecclesiastical Law Journal* 3, 280-293.

[362] Ibid, 289.

[363] Open Society Justice Initiative, ‘Eroding trust: The UK’s Prevent Counter-Extremism Strategy in Health and Education’ (Open Society Foundations, 2016) 16: ‘Prevent’s targeting of non-violent extremism and ‘indicators’ of risk of being drawn into terrorism lack a scientific basis ... the belief that non-violent extremism–including

targets non-violent extremism and, for this reason, is at odds with various articles of the European Convention.[364] Despite the Prevent Duty's intense focus on the Muslim community, there has not yet been any commentary as to whether it unlawfully interferes with religious belief under Article 9(2) ECHR for cases where the individual is not an extremist. Second, I argue that religious radicalisation itself has been ill-defined by the Government.[365] I cite the case of *B,*[366] which will be explored fully in Chapter Six of this thesis alongside other religious radicalisation case law, and argue that because of the insufficient definition of radicalisation provided by the UK Government, radicalisation is difficult to detect and to interrupt for specified authorities.[367] This argument will be revisited and developed further in Chapter Four of this thesis. Third, I propose that the Prevent Duty 'unduly [targets] the Muslim community';[368] I suggest that the Prevent Duty is potentially discriminatory on the grounds of religion, something which has not been commented on by Law and Religion scholars since.[369] Fourth, I argue that there must be a distinction drawn between 'permissible radical religion and impermissible harmful religion',[370] and the impact that this could potentially have on the freedom to manifest belief. Although this particular concern has been voiced by scholars outside the field of Law and Religion, again, this has not yet been highlighted as a matter of concern by the law and religion scholarship. It is proposed here that this is indeed a matter of concern for the field. Finally, I argue that de-radicalisation programmes are problematic on the basis of religious indoctrination.[371] This argument will be advanced through a discussion of religious indoctrination – in the context of forced conversion – in Chapter Five of this study.

To more generally advance the arguments proposed in my article – that religion is, indeed, an intrinsic part of both the formulation of and the implementation of the statutory Prevent Duty and counter-terrorism efforts broadly – it is suggested, simply, that the field of Law and Religion engages with the religious aspect of terrorism and, most importantly, with the concept of religious radicalisation. So far, the centrality of religion to terrorism has been wholly underplayed – and sometimes dismissed – by scholars in the field; this chapter has

'radical' or religious ideology– is the precursor to terrorism has been widely discredited by the British government itself'.

[364] R Riedel, 'Religion and Terrorism: The Prevent Duty' (2021) 23 *Ecclesiastical Law Journal* 3, 289.

[365] Ibid.

[366] *London Borough of Tower Hamlets v B* [2016] EWHC 1707 (Fam), [2016] 2 FLR 887.

[367] R Riedel, 'Religion and Terrorism: The Prevent Duty' (2021) *23 Ecclesiastical Law Journal* 3, 289-290.

[368] Ibid, 290.

[369] Ibid, 289-290.

[370] Ibid, 291.

[371] Ibid, 291-292.

illustrated the opposite. Religion is an integral and central theme in counter-terrorism law in the United Kingdom but has been largely overlooked by the field. Therefore, despite the centrality of religion to terrorism – and to counter-terrorism efforts – it is rarely addressed by the Law and Religion scholarship. As outlined in Chapter One of this study, terrorism and the Prevent Duty are often treated as a small part of a wider discussion, or as a supplementary point to provide context.[372] In many texts, it is not addressed at all. It is evident, then, that many of the leading scholars in the field have not recognised the importance of discussing terrorism in relation to the interaction between law and religion. This chapter, however, has argued that because religion is central to counter-terrorism in the UK, the study of religiously motivated terrorism is integral to *any* future study of the interaction between law and religion; this chapter, therefore, has revealed a new dimension for the field to explore.

2.5 Conclusion

This chapter has argued, ultimately, that law, religion and terrorism are not only connected, but that religion is absolutely central to counter-terrorism in the United Kingdom. However, as evidenced in Chapter One, the scholarship in the field of Law and Religion has not yet addressed this to the extent that it deserves. The chapter has demonstrated, however, that through the inclusion – and retention – of 'religious causes' in the definition of terrorism under the Terrorism Act 2000, the UK Government have ensured that religion remains an integral part of counter-terrorism law and guidance in the United Kingdom. As we have seen, the definition of terrorism has been relied upon by every piece of counter-terrorism law since. This includes statutes dealing with terrorist offences, including the offence of committing an act of terrorism itself, and the associated 'glorification' offences, which deal with encouraging or 'glorifying' terrorism in any way. The definition is also relied upon by statutes dealing with the management of terrorist offenders – both those inside and outside the UK – and those who have not yet committed a terrorist offences. The chapter has also explored the controversy surrounding the statutory Prevent Duty through a Law and Religion lens, something which has so far been largely neglected by the scholarship.

The chapter has confronted the proposition that the vast majority of scholars in the field of Law and Religion have failed to address terrorism as a Law and Religion issue because it is

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[372] For example, in Sandberg's *Law and Religion*, terrorism is used as an example to shed light on the great debates surrounding the study of law and religion, but is not touch upon it again within the book: 'The shadow of 9/11 has been cast not only upon the ramifications of the so-called War on Terror, but also upon national debates concerning the extent to which religious difference should be accommodated'; see: R Sandberg, *Law and Religion* (Cambridge University Press 2011) 1.

not understood to be one by explaining precisely how religion is central to counter-terrorism law in the UK. The chapter has argued, therefore, that religiously motivated terrorism is indeed an issue that must be addressed by the Law and Religion scholarship. The following chapter, then, will explore religiously motivated terrorism in the context of the religious offences. This exploration will not only inform the outdated discussion on religious offences but will offer a new perspective as to whether terrorism that is religiously motivated can be understood as a religious offence.

Chapter Three:
The Prevent Duty and Religious Offences

3.1 Introduction

For the field of Law and Religion, discussions surrounding the criminal law and its treatment of religion routinely deal with its protection and, sometimes, its regulation. As part of this discussion, the literature routinely reflects the offences of blasphemy (both statutory and common law),[373] the laws which penalise religious hatred,[374] and the range of religiously aggravated offences.[375] As we have seen, the law on counter-terrorism is rarely treated in discussions of the criminal law and its treatment of religion, but Chapter One set out the few examples where terrorism law is commented on in this context. However, as we saw, these examples were few. This chapter will build on the work set out in the previous two chapters by exploring the extent to which the field of Law and Religion has omitted the study of terrorism in the context of the criminal law. The chapter will do so in the broader context of highlighting why the study of the Prevent Duty – in the context of religious radicalisation – is necessary to the study of Law and Religion. This chapter, therefore, will address the third research question underpinning this thesis: **is terrorism omitted in Law and Religion discussions of the criminal law?**

In addressing this question, the first section of this chapter will describe the religious offences of blasphemy (as stated, both the common law and the statutory offence), the offence of stirring up religious hatred, and the range of religiously aggravated offences. These offences will be explored through a Law and Religion lens. As noted, the wider Law and Religion literature, as it applies to the criminal law and to terrorism, was set out in Chapter One. Therefore, this chapter will instead provide an overview of the Law and Religion literature as it deals with the religious offences in particular. This was not touched upon in detail as part of Chapter One.

Following this, the second section of this chapter will set out and compare the religious offences with both the offence of the encouragement of terrorism, and the statutory Prevent Duty. The offence of encouragement was selected because this offence is arguably closely associated with the act of religious radicalising, and because the centrality of religion to the

[373] The Blasphemy Acts of 1648, 1659 and 1697 and the common law offence of blasphemy.
[374] See the Racial and Religious Hatred Act 2006.
[375] See the Crime and Disorder Act 1998 and the Public Order Act 1896.

offence of encouragement has been so far overlooked by the Law and Religion literature.[376] It is important to note, for the context of this chapter, that although the Prevent Duty is not a criminal law offence, it is directly related to the offence of the encouragement of terrorism; the Prevent Duty, as we have seen, seeks to prohibit activity associated with radicalisation. Implicitly, radicalisation involves the encouragement of terrorism. It is therefore directly related to this offence.

As part of this comparison, the extent to which the scholarship recognises religious radicalisation in this context as a religious offence – if at all – will be evaluated. Finally, the chapter will explore whether the field of Law and Religion has neglected the study of religious radicalising under the Prevent Duty. This final sub-section will advance the arguments made in previously published work from myself,[377] seeking to underline the importance of viewing the Prevent Duty through a Law and Religion lens.

3.2 Religious offences

As previously noted, scholars in the field of Law and Religion have commented extensively on the criminal law as it applies to – and limits – the freedom of religion, often in the context of the range of offences which seek to protect religion. This section, therefore, will begin by describing how the field of Law and Religion has, so far, framed and understood the criminal law as it applies to religion. The second part of this section will outline the extent to which this Law and Religion lens has been applied to the most notable religious offences: blasphemy, religious hatred and religiously aggravated offences. Throughout, the section will highlight where there has been little discussion of relevant criminal law offences, primarily in the context of counter terrorism.

3.2.1 Law, religion and the criminal law

As was suggested in Chapter One, a common theme of the study of Law and Religion in the United Kingdom has been on the interaction of the law and Christianity. Although there have been numerous texts dedicated to the study of Islam and Judaism by Law and Religion scholars,[378] as well as various comparative studies on the world religions,[379] the literature remains very much focussed on Christianity. It was also suggested that religion is treated as a

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[376] See Chapter Two of this thesis for a discussion of the centrality of religion to counter-terrorism.
[377] R Riedel, 'Religion and Terrorism: The Prevent Duty' (2021) 23 Ecclesiastical Law Journal 3, 280-293.
[378] See, for example: P Nash, *British Islam and English Law. A Classical Pluralist Perspective* (Cambridge University Press 2022); M Wilkinson, *The Genealogy of Terror* (Routledge 2018); S Ferrari, A Bradney, *Islam and European Legal Systems* (Ashgate 2000).
[379] See, for example: N Doe, *Comparative Religious Law: Judaism, Christianity, Islam* (Cambridge University Press 2018).

force for good in the vast majority of these texts.[380] However, as Sandberg explains, religion's place in the public sphere has been called into question in a more general sense by the scholarship: 'a complex cocktail of constantly changing causes has created an age of uncertainty, which has meant, amongst other things, that the place of religion in the public sphere has become ever-controversial, divisive and disputed'.[381] Moreover, academic discussion in the field has fully acknowledged that there has been, in more recent years, 'a new loss of consensus about the role and significance of religion' in everyday life,[382] and that this has occurred 'especially' since the events of 9/11 in 2001.[383] Despite this, and as we saw throughout Chapter Two, there has been insufficient commentary from the field on the central role that religion plays in modern-day terrorism since the atrocities of 9/11 in 2001.

Indeed, religiously motivated terrorism – and the need to prevent it – is rarely addressed by the literature on the interaction between religion and the criminal law; when it is, terrorism is often used to provide an example of the moral panics society has experienced about the place of religion in a modern world: 'the moral panics about the place of religion in the public sphere and concerns about terror attacks said to be in the name of religion have not sat well' with the concept that religion and secularisation have become harmoniously balanced.[384] Instead, the focus of the study of Law and Religion, in relation to the criminal law, has been on the previously introduced religious offences: '[this] category of "religious offences" is known to Parliament and to academics, but not in statute'.[385]

These so-called 'religious offences' include provisions which seek to protect religious worship, and those which are classified more broadly as public order offences. There also exist newer offences which deal with acts of religious hatred and religiously aggravated

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[380] As discussed in Chapter One, even in exceptional cases where religion is viewed as a harm, this is reorientated in terms of the rights of individuals and groups. See, for example: R C Akhtar, P Nash and R Probert, *Cohabitation and Religious Marriage. Status, Similarities and Solutions* (Bristol University Press 2020); and: R Probert, S Saleem, 'The Legal Treatment of Islamic Marriage Ceremonies' (2018) 7 *Oxford Journal of Law and Religion* 7, 376-400; G Douglas et al, 'The Role of Religious Tribunals in Regulating Marriage and Divorce (2012) 24 *Child and Family Law Quarterly* 2, 134-157; G Douglas et al, 'Accomodating Religious Divorce in the Secular State: A Case-Study Analysis' in M Maclean and J Eekelaar (eds) *Families: Deviance, Diversity and the Law* (Hart Publishing 2013) 185-201; R Sandberg *et al*, 'Britain's Religious Tribunals: "Joint Governance" in Practice' (2013) 33 *Oxford Journal of Legal Studies* 2, 263-291.

[381] R Sandberg, 'Prologue' in R Sandberg (eds) *Leading Works in Law and Religion* (Routledge 2019) 3.

[382] J Rivers, 'The Secularisation of the British Constitution' (2012) 14 *Ecclesiastical Law Journal* 371, 385.

[383] R Sandberg, 'Prologue' in R Sandberg (eds) *Leading Works in Law and Religion* (Routledge 2019) 2.

[384] R Sandberg, 'Roman canon law in the Church of England' in R Sandberg (eds) *Leading Works in Law and Religion* (Routledge 2019) 177.

[385] M Hill, R Sandberg, N Doe, C Grout, *Religion and the Law in the United Kingdom* (Wolters Kluwer 2021) [393].

offences.[386] The offences are frequently described by Law and Religion scholars as mechanisms by which to protect and regulate the practice of religion and the manifestation of belief.[387] As Ahdar explains, the religious offences are considered a 'familiar waterway' in the field of Law and Religion[388] and, as a result, in many of the leading works there has been an overwhelmingly common theme as to how they are dealt with. For instance, and in particular, great emphasis has been placed on the study of blasphemy; the field routinely evaluates whether the offence has survived its abolition in the form of the newer religious offences.[389] Although this section will describe fully the ways in which the scholarship has treated blasphemy, the focus of the second section of this chapter will be to evaluate the extent to which blasphemy – and the other religious offences – are important in the context of the Prevent Duty and to the act of religious radicalising itself. In doing so, the sections, combined, seek to highlight how the field of Law and Religion has omitted not only to discuss terrorism in the context of the criminal law, but to fully appreciate the extent to which terrorism is relevant to these religious offences.

Importantly, the terrorist offences introduced in Chapter Two frame religion as a threat and as something that has the potential to motivate individuals to commit the most heinous of crimes. Contrastingly, under the religious offences that will be discussed in the following sub-sections, religion is, more often than not, framed as something to be protected; it is the view of the Law and Religion scholarship that only in very specific circumstances is it necessary for the law to limit the exercise of religious freedom. These discussions are almost always are centred around the limitations imposed by Article 9(2) of the European Convention (on the freedom of thought, conscience and religion). Counter-terrorism laws – of which religion is central – rarely surfaces in these discussions; when it does, as we saw in Chapter One, it is not treated to the extent that it deserves. This indicates an obvious omission: that the field of Law and Religion has neglected the study of terrorism, and has been suggested already that this is because field views religion as something to be defended;

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[386] See, for full discussion: A W Jeremy, 'Religious Offences' (2003) 7 *Ecclesiastical Law Journal* 33, 127-142.
[387] See, for example: P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002); R Sandberg, *Law and Religion* (Cambridge University Press 2011); J Rivers, The Law of Organised Religions: Between Establishment and Secularism' (Oxford University Press 2010); M Hill, N Doe, R H Helmholz, J Witte, *Christianity and Criminal Law* (Routledge 2020); M Hill, R Sandberg, N Doe, C Grout, *Religion and the Law in the United Kingdom* (Wolters Kluwer 2021).
[388] R Ahdar, 'Navigating law and religion: familiar waterways, rivers less travelled and unchartered seas' in R Ahdar (eds) *Research Handbook on Law and Religion* (Edward Elgar Publishing 2018) 5.
[389] See, for full discussion, section 3.3.2 below. See also: R Sandberg, *Law and Religion* (Cambridge University Press 2011)133-141; see also: R Sandberg, N Doe, 'The Strange Death of Blasphemy' (2008) 71 *The Modern Law Review* 6, 972-986; see also, R Ahdar, I Leigh, *Religious Freedom in the Liberal State* (2nd edn, Oxford University Press 2013) 436-7.

that it is a force for good. Of course, there are some exceptions to this rule where the literature does view religion as a harm, but this is only relevant to specific contexts; for example, religion is sometimes viewed as harmful in the medical and family law context,[390] when it is the driving force behind neglect or abuse;[391] and in the context of the religious courts.[392] However, these discussions are often reorientated in terms of balancing the rights of the individuals and organisations, and this is perhaps the reason why counter-terrorism terrorism is yet to be addressed fully by the field. Terrorism is rarely described in relation to the act itself – as to whether it is motivated by religion – but is instead discussed more broadly in relation to how counter-terrorism laws may prohibit the manifestation of religion, impact religious organisations, and therefore potentially interrupt the freedom to manifest belief.[393] Put simply, there has been little discussion as to how terrorism can be *caused* by religion, and there has been little discussion about how acts of terrorism – including the encouragement of terrorism or the radicalising of another – may be an example of religion as a force for bad. This is perhaps why, as was explored in Chapter Two, the centrality of religion to terrorism is rarely acknowledged by the field of Law and Religion; the field views religion as something to be defended and rarely as a force for evil.

A further example of how the field of Law and Religion has omitted the study of terrorism in the context of the criminal law can be found in discussions of the defences to criminal acts. Scholars in the field have rightly acknowledged that religion is not a defence for any offence,[394] often citing two examples from case law: it is not a defence to act in the name of religion based on divine instruction from God,[395] nor is it a defence to use drugs for spiritual reasons.[396] However, the field has not yet commented on whether or not terrorism fits into

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[390] A Bradney, *Law and Faith in a Sceptical Age* (1st edn, Routledge 2011); P W Edge, Legal Responses to Religious Difference (Kluwer Law International 2002); see also: C Shelley, 'Beating Children is Wrong, Isn't it? Resolving Conflicts in the Encounter Between Religious Worldviews and Child Protection' (2013) 15 *Ecclesiastical Law Journal* 2, 130-143. More attention has been given to the best interests of the child debate, following I McEwan, *The Children Act* (Vintage 2015).

[391] G Douglas, *An Introduction to Family Law* (2nd edn, Oxford University Press 2005); see also, on exorcism: J G Oliva, 'Exorcism and children: balancing protection and autonomy in the legal framework' (2022) 18 *Law in Context* 55-68; see also: H Hall, 'Exorcism, Religious Freedom and Consent: The Devil in the Detail' (2016) 80 *The Journal of Criminal Law* 4, 241-253.

[392] See, for example: R C Akhtar, P Nash and R Probert, *Cohabitation and Religious Marriage. Status, Similarities and Solutions* (Bristol University Press 2020).

[393] See, for example: P W Edge, Legal Responses to Religious Difference (Kluwer Law International 2002); see also: J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018).

[394] P W Edge, Legal Responses to Religious Difference (Kluwer Law International 2002) 200.

[395] See: M Hill, R Sandberg, N Doe, C Grout, *Religion and the Law in the United Kingdom* (Wolters Kluwer 2021) [393] citing *Blake v DPP* [1993] Crim LR 556.

[396] Ibid, citing *R v Taylor* [2011] EWCA Crim 2263; *R v Andrews* [2004] EWCA Crim 947; *R v Aziz* [2012] EWCA Crim 1063; also, on defences, see: M Hill KC, N Doe, RH Helmholz, J Witte (eds), *Christianity and the Criminal Law* (Routledge 2020) 151-238.

this context, and this further underlines how discussions about terrorism in the context of law, religion and the criminal law have been largely omitted. For example, as we saw in Chapter Two, the law states that for acts which are considered to glorify religious terrorism in some way, there is – rightly – no defence for acting on the grounds of religion. What is significant, however, is that religion may in fact be viewed in the opposite way: as a potential *motivation* behind an act of terrorism. As we have seen, religion remains very much central to terrorism law. On this basis, it is proposed that it is the centrality of religion to counter-terrorism law which means that the terrorism offences may be viewed through a Law and Religion lens. This will be explored fully throughout the latter half of this chapter. For now, it is important to note that the counter-terrorism offences may be distinguished from the religious offences on grounds of how they *treat* religion; the terrorism offences seek to prohibit the exercise of religion, whereas the religious offences – as we shall see – seek to protect it.

Before a comparison between the religious offences and the terrorism offences can be made, however, it is necessary to explain and evaluate the ways in which the criminal law has been used to penalise acts which attack religious belief, practice and teaching. As explained in the introduction to this chapter, each of these offences will be examined through a Law and Religion lens; that is, the existing Law and Religion literature – as it deals with the criminal law – will be used to guide the discussion around the offences. The offences that will be explored in the following sub-sections, as stated above, are as follows: the abolition of blasphemy (the following sub-section will deal with both the statutory and the common law offence), the Racial and Religious Hatred Act 2006, and the new category of offences created to deal specifically with religiously aggravated crimes, with some discussion of public order offences where relevant. There will not be any discussion of sentencing; the discussion in this chapter is primarily concerned with the offences themselves.[397]

3.2.2 Blasphemy

Described as one of the 'old' religious offences by Sandberg,[398] blasphemy has existed as both a statutory offence and as a common law offence, and: 'in the case of the Church of England, such laws are part of the law of the land'.[399] Therefore, blasphemy dealt with

[397] For a discussion of religion in sentencing, see: C Bakalis, P Edge, 'Taking Account of Religion in Sentencing' (2009) 29 *Legal Studies* 3.
[398] R Sandberg, Law and Religion (Cambridge University Press 2011) 131-132; see also, for a discussion of blasphemy: J Rivers, The Law of Organised Religions: Between Establishment and Secularism (Oxford University Press 2010).
[399] Ibid, 133.

expressions – both verbal and written – that offended the established Church of England: 'the law of blasphemy protected the sanctity of Christian beliefs since those beliefs were regarded as being at the heart of society'.[400] As Oliva explains: 'As faith was always seen as being at the heart of society, to challenge or offend it was thought to threaten the fabric of society'.[401] The Blasphemy Act of 1650, for example, sought to curb extreme religious 'enthusiasm' by allowing Puritans the freedom of worship.[402] The Act also repealed the Elizabethan requirement of compulsory attendance at an Anglican Church.[403] The nature of the offence has changed, however, over time. For instance, Ahdar and Leigh note, of blasphemy, that in more recent years different kinds of expression have caused offence: 'it is revealing that the type of expression that has caused most offence in recent decades has been controversial artistic appropriation of venerated religious symbols or persons, rather than revisionist accounts of scripture'.[404] Despite a recognition of the newer – and different – expressions which have started to cause offence, it is important to note that there has not yet been any discussion of terrorism in this context. This omission will be revisited – briefly – throughout this section, but discussed in more detail in section 3.3.1 of this chapter.

As the literature notes, the common law offence of blasphemous libel consisted of the *actus reus* to publish blasphemous material, written or verbal – as a strict liability offence; the *mens rea* related to the intention to publish, not the intention to blaspheme.[405] As for what is actually considered 'blasphemous material', in *Taylor's Case* it was held that 'any general attack on Christianity is the subject of a criminal prosecution, because Christianity is the established religion of the country'.[406] It is important to note that Christianity was, at the time, understood as synonymous with the Church of England, and scholars in the field have questioned whether this meant that blasphemy did not cover all Christian denominations or, for that matter, other religions. However, referring, in particular, to the principle in the case of *Williams*,[407] Sandberg explains that 'attacks on other Christian denominations and other religions were protected "to the extent that their fundamental beliefs are those which are held

[400] Ibid, 131-132; see also: J Oliva, 'The Legal Protection of Believers and Beliefs in the United Kingdom' (2007) 9 *Ecclesiastical Law Journal*, 66-86 and A W Jeremy, 'Religious Offences' (2003) 7 *Ecclesiastical Law Journal* 33, 127-142.
[401] J Oliva, 'The Legal Protection of Believers and Beliefs in the United Kingdom' (2007) 9 *Ecclesiastical Law Journal*, 66-86, 68.
[402] See: R Webster, *A Brief History of Blasphemy* (Southwold 1990).
[403] Ibid.
[404] R Adhar, I Leigh, *Religious Freedom in the Liberal State* (2nd edn, Oxford University Press 2013) 436.
[405] *R v Gott* (1922) 16 Cr App R 87.
[406] *Gathercote's Case* (1838) 2 Lewin 237.
[407] *Williams* (1797) 26 St Tr 654.

in common with the established Church"'.[408] Thus, in *Williams*, it was established that an attack on the Old Testament amounted not only to an attack on Judaism but also to an attack on the Church of England.

It is evident, then, that blasphemy, at least historically, was considered a necessary safeguard for society, religion and the state: traditionally the law of the state was so entangled with the religious law of the Church of England that to undermine religion was 'to dissolve all those obligations whereby civil societies are preserved'.[409] The common law offence has since been abolished by section 79 of the Criminal Justice and Immigration Act 2008,[410] but the statutory offence continued to exist under dated Acts of Parliament until 1967.[411] The *Choudhary* judgment,[412] which stated that extending the remit of blasphemy would ultimately do more harm than good, was, according to Sandberg, to be treated as 'clear evidence that the abolition of blasphemy was inevitable'.[413] The offence was also considered incompatible with the European Convention on Human Rights (ECHR), illustrated by the case of *Conway*, where it was held that a prosecution for blasphemy would fail on grounds of freedom of religion and legal uncertainty.[414]

It is unsurprising, then, that by 1966, the Law Commission had called for the abolition of the statutory offence.[415] Although, as explained, the common law offence survived until 2008,[416] an unsuccessful attempt at private prosecution for blasphemy in 1991 – which failed on the basis that the offence did not extend to Islam –[417] prompted some scholars to suggest that the abolition of the common law offence was inevitable, too: '[the offence has] lingered on, enjoying a perilous existence on a life support machine while legislators, commentators and judges huddle around a bedside debating whether it has a future'.[418] The UK Government's position, at this stage, was that 'there [was] a good case for revising and, indeed, removing

[408] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 134.
[409] *Rex v Taylor* (1676): the undermining of religion was the undermining of law because 'Christianity is the parcel of the Laws of England' and 'to reproach the Christian religion is to speak in subversion of the law'.
[410] Criminal Justice and Immigration Act 2008, s 79(1); see also: C Kenny, 'The evolution of the law of blasphemy', (1922) 1 *Cambridge Law Journal*, 127; and R Webster, *A Brief History of Blasphemy* (Southwold 1990).
[411] Including the Blasphemy Acts of 1648, 1659 and 1697.
[412] *R v Chief Stipendiary Magistrate, ex parte Choudhury* [1991] 1 QB 429.
[413] R Sandberg, Law and Religion (Cambridge University Press 2011) 135.
[414] *Conway v Independent Newspapers* (Ireland) Ltd [1999] 4 IR 484.
[415] Criminal Law Act 1967, s 13.
[416] The requisite *mens rea* was clarified judicially in 1979 in the last successful prosecution for blasphemy: a defendant must have intended to publish the material – but there was no requirement for intention to blaspheme. See: *Whitehouse v Gay News Ltd* [1979] AC 617.
[417] *R v Chief Stipendiary Magistate ex parte Choudhury* [1991] 1 QB 429.
[418] R Ahdar, I Leigh, *Religious Freedom in the Liberal State* (Oxford University Press 2005) 368.

existing blasphemy law',[419] and the responsibility to inquire whether existing religious offences – particularly blasphemy – should be abolished, and whether a new offences should take its place was placed on the House of Lords' Select Committee on Religious Offences.[420] The case for abolition focussed on three key points, which will be outlined briefly here – as stated, there is already a wealth of literature which deals directly with the abolition of blasphemy.[421] The case was as follows: first, that the offence was incompatible with the European Convention on Human Rights; second, that the offence had fallen into disuse; and, third, that the law unduly favoured Christianity in its protection.

First, it was questioned whether blasphemy was ECHR-compliant. On the whole, the UK courts were unwilling to accept that the offence was incompatible with Article 9 (on religious freedom),[422] but blasphemy had been considered by the European Court of Human Rights as to whether it was compatible with Article 10 (on freedom of expression).[423] Despite this, it was not certain whether blasphemy would *continue* to be ECHR-compliant,[424] and to combat any potential incompatibility, the House of Lords suggested that a statutory replacement of the offence was the most appropriate response.[425] It was suggested that this would balance religious freedom and the freedom of expression, as set out in the Strasbourg *Otto-Preminger-Institut* case.[426]

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[419] HL Paper 95-1; see also: David Blunkett, HC Deb Column 707, 26 November 2001.
[420] Ibid.
[421] For more detail, see: P Kearns, 'The end of blasphemy law' (2008) 76 *Amicus Curiae*; J Oliva, 'The Legal Protection of Believers and Beliefs in the United Kingdom' (2007) 9 *Ecclesiastical Law Journal*, 66-86; N Doe and R Sandberg, 'The Strange Death of Blasphemy' (2008) 71 *Modern Law Review* 6, 978; R Sandberg, *Law and Religion* (Cambridge University Press 2011) 135-151.
[422] M Hill, R Sandberg, 'Is Nothing Sacred? Clashing Symbols in a Secular World' [2007] Public Law 488-506. See also: R Sandberg, 'Recent controversial claims to religious liberty' (2008) *Law Quarterly Review* 124, 213-217. See also: Strasbourg criticisms of the no-interference approach in *Eweida v United Kingdom* [20130 ECHR 37; see also: N Doe and R Sandberg, 'The Strange Death of Blasphemy' (2008) 71 *Modern Law Review* 6, 979. See also, for example: *Gallagher (Valuation Officer) v Church of Jesus Christ of the Latter-Day Saints* [2008] UKHL 56: The House of Lords held that the Mormons were not discriminated against on the ground of their religion and Article 9 of the ECHR was not engaged.
[423] *Wingrove v The United Kingdom*: Case 19/1995: Strasbourg stated that the continuance of a blasphemy law remained within the acceptable 'margin of appreciation' of the United Kingdom under the ECHR.
[424] N Doe and R Sandberg, 'The Strange Death of Blasphemy' (2008) 71 *Modern Law Review* 6, 978. See also: HL Paper 95-1, Appendix 3 [12]: 'the Court's decision in *Wingrove* that there was not "as yet... sufficient common accord" to mean that the English law of blasphemy was in breach of the European Convention does not mean that it will not rule otherwise in the future'.
[425] HL Paper 95-1, [48].
[426] *Otto-Preminger-Institut v Austria* (1995) 19 EHRR 34, [47-48]: 'Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or minority, cannot reasonably expect to be exempt from all criticism... the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the state, notably in its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs and doctrines...'. The House of Lords also feared that the uncertainty surrounding the definition of blasphemy would make the offence incompatible with Article 6 ECHR. However, it may be suggested that the offence was no

Second, there was the argument of whether the offence should be abolished after having fallen into disuse.[427] This argument was not new: the offence had already been declared a 'dead letter' by Lord Denning in 1949.[428] However, the 1979 *Gay News* case was the first successful prosecution in sixty years, and this could, in some ways, be considered to have revived the offence.[429] Following this, the 1991 *The Satanic Verses* case prompted the court to consider whether the offence should actually be extended instead of abolished, to cover other religions; however, it was ultimately decided that this was likely to do more harm than good.[430] So, the offence stumbled on, and this is perhaps best exemplified by the case of *Green*.[431] In 2005, the broadcasting of the television programme of *Jerry Springer: The Opera* caused public outrage; two years later, Christian Voice sought – albeit unsuccessfully – a private prosecution for blasphemous libel against the BBC. While refusing the case judicial review, District Judge Hughes LJ 'provided a more cogent rationale for abolishing the offence', according to Sandberg.[432] First, Hughes LJ explained that the play was not aimed at Christianity; second, section 2 of the Theatres Act 1968 would prevent prosecution;[433] indeed, section 2 stipulated that there could be no prosecution for a play in these circumstances, and the court held that this applied in this instance. Sandberg argues, then, that the law had indeed fallen into disuse, and that the offence of blasphemy post-*Green* 'was heavily curtailed'.[434]

The third, and final, argument proposed by the House of Lords was that it was 'difficult to justify a law which [protected] the sacred entities of Christianity but [did] not offer similar protection to other faiths'.[435] It is important to note here that Christianity was protected because it was 'the established religion of the country',[436] but, as stated above, that other

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more uncertain than other common law offences, for example manslaughter – arbitrary reform, favouring some offences over others, is not feasible; an all or nothing approach towards reform is preferable but impractical. See, for further discussion: N Doe and R Sandberg, 'The Strange Death of Blasphemy' (2008) 71 *Modern Law Review* 6, 978: in *Wingrove*, 'counsel for both sides presented a united front that Lord Scarman's speech in the *Gay News* case had defined the *actus reus* of blasphemy in common law'.

[427] For detailed discussion, see: J Oliva, 'The Legal Protection of Believers and Beliefs in the United Kingdom' (2007) 9 *Ecclesiastical Law Journal*, 66-86.

[428] A Denning, *Freedom Under the Law* (Stevens 1949) 46.

[429] *Whitehouse v Gay News Ltd* [1979] AC 617 since *R v Gott* (1922) 16 CR App R 87 in 1922.

[430] *R v Chief Stipendiary Magistrate ex parte Choudhury* [1991] 1 QB 429.

[431] *Green v The City of Westminster Magistrates' Court* [2007] EWHC (Admin) 2785.

[432] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 138.

[433] See: Theatres Act 1968, s 2(4).

[434] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 139.

[435] Volume II, Q176, 48.

[436] See: *R v Gathercole* (1838) 2 Lew CC 237; see also: L F Sturge *Stephen's Digest of the Criminal Law* (3rd edn, Sweet & Maxwell 1950) article 2.14 – quoted by the House of Lords in *Whitehouse v Gay News Ltd* [1979] AC 617.

religions were protected only 'to the extent that their fundamental beliefs are those which are held in common with the established Church'.[437] However, this technical point was not debated by the House of Lords. Instead, it was argued that the protection afforded to Christianity over other religions was potentially incompatible with the ECHR under Article 14 (on protection from discrimination).

Despite the abolition of the statutory offence of blasphemy in 1967, and the common law offence of blasphemous libel in 2008, many Law and Religion scholars submit that the spirit of these offences has survived in the form of newer statutory offences which deal with religion. However, as we shall see in the following sub-sections, it is not only Christianity that benefits from this protection. Importantly, the abolition of the offence of blasphemy has been used over the past 20 years to lead discussions from the field about the newer religious offences. Sandberg, for example, evaluates whether the offence of blasphemy has survived, despite is abolition, in the form of religious hatred and the religiously aggravated offences.[438] What is missing from this discussion, as noted above, is that blasphemy has since been used as a justification for terrorist activity on the grounds of religion. Due to the fact that discussions of blasphemy have, so far, primarily very focused on the Christian faith, the study of terrorism in this context has been overlooked. Although the concept of blasphemy as a justification for terrorism will be examined fully below in section 3.3.1; for now, it is important to recognise that although terrorism is both a timely and important part of discussions of the religious offences, it has so far been omitted. Thus, the field of Law and Religion, through excluding discussions of terrorism in the literature on the religious offences, has missed an important connection between the law, religion and terrorism. To underscore the significance of this omission, the link between terrorism and blasphemy has been recognised by both the UK Government and in the most recent review of the Prevent Duty; this will be revisited and explored throughout the second section of this chapter.

3.2.3 Religious Hatred

Described as one of the 'newer' religious offences,[439] 'religious hatred' is defined by the Racial and Religious Hatred Act 2006 to mean 'hatred against a group of persons defined by

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[437] *Williams* (1797) 26 St Tr 654; see also: *R v Chief Stipendiary Magistrate ex parte Choudhury* [1991] 1 QB 429.
[438] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 133-141.
[439] Ibid, 141-143.

reference to religious belief or lack of religious belief'.[440] Under the Act, 'religious belief or lack of belief' is designed to be intentionally broad,[441] it incorporates all religions and the absence of religion – unlike the offence of blasphemy – and therefore offers wider protection than blasphemy law.[442] Also to be distinguished from blasphemy law, 'the offences are not intended to protect religious believers against insult or offensive attacks against matters they regard as sacred'.[443] Like blasphemy, religious hatred has received commentary from both standard texts on the interaction between law and religion,[444] and the wider literature in the field.[445] For instance, Sandberg argues that the definition of 'religious hatred' is insufficient: 'although the Explanatory Notes professed that the meaning… was deliberately broad, the reference to "religious belief" seems narrower than the term "religion or belief" used in human rights and discrimination law'.[446] He continues: 'whilst including those defined by a lack of religious belief, it would seem to exclude beliefs that are not religious'.[447] It appears, then, that whereas the scope of religious belief covered by blasphemy laws was too narrow, the scope of religious belief covered by religious hatred is too wide. It is uncertain whether the Racial and Religious Hatred Act 2006 was stimulated by the events of 9/11 in 2001, but it is indisputable that the events did coincide with an increased hate campaign against Muslims

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[440] S 29A; Explanatory Notes [11]: 'the definition is designed to cover hatred against a group of persons defined by their religious belief or lack of religious belief but does not seek to define what amounts to a religion or a religious belief. It will be for the courts to determine whether any particular belief is a religious belief for these purposes'; Public Order Act 1986, s 17. Under the Act, 'racial hatred' means 'hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins'.
[441] Explanatory Notes [12]: 'the reference to "religious belief or lack of religious belief" is a broad one, and is in line with the freedom of religion guaranteed by Article 9 of the ECHR. It includes, although this list is not definitive, those religions widely recognised in this country such as Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, Baha'ism, Zoroastrianism and Jainism. Equally, branches or sects within a religion can be considered as religions or religious beliefs in their own right. The offences also cover hatred directed against a group of persons defined by reference to a lack of religious belief, such as Atheists and Humanists. The offences are designed to include hatred against a group where the hatred is not based on the religious beliefs of the group or even on a lack of any religious belief, but based on the fact that the group do not share the particular religious beliefs of the perpetrator'.
[442] Racial and Religious Hatred Act 2006 [23]: '[the offences] are designed to include hatred against a group where the hatred is not based on the religious beliefs of the group or even a lack of any religious belief, but based on the fact that the group do not share the particular beliefs of the perpetrator'.
[443] Sir J Dingemans *et al*, *The Protection for Religious Rights: Law and Practice* (Oxford University Press 2013) 457; see also: Racial and Religious Hatred Act 2006, s 29A. Religious hatred must be against a 'group of persons' - hatred against an individual is not an offence.
[444] See, for example: R Sandberg, *Law and Religion* (Cambridge University Press 2011) 142-144; N Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford University Press 2011) 78-87; M Hill, R Sandberg, N Doe, C Grout, *Religion and Law in the United Kingdom: Great Britain* (Wolters Kluwer 2021) 171-172.
[445] See, for example: K Goodall, 'Incitement to Religious Hatred: All Talk and no Substance?' (2007) *70 Modern Law Review* 1, 89-113; F Cranmer, 'Law and religion round up – 14 February' (2021) available online at: <https://lawandreligionuk.com/2021/02/14/law-and-religion-round-up-14th-february-2/> Last Accessed: 1 June 2023.
[446] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 143.
[447] Ibid.

by reason of their association with terrorism. This has not been commented on in the Law and Religion literature, however, and once again highlights how terrorism has been omitted in discussions by the field of the interaction between religion and the criminal law. Again, this will be revisited and explored fully in section 3.3.1.

Initially, only racial hatred was covered by the law; the Public Order Act 1986 created a number of offences which dealt with stirring up racial hatred. However, the Racial and Religious Hatred Act 2006 then contributed a new Part 3A to the Public Order Act 1986, making it a statutory offence to stir up religious hatred through various means. For example, religious hatred could be stirred up through the use of words or behaviour or display of written material;[448] by publishing or distribution of written material;[449] by the public performance of a play;[450] by distributing, showing or playing a recording;[451] by broadcasting

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[448] The new s 29B: 'Use of words or behaviour or display of written material (1) A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred. (2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling. (3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section. (4) In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling. (5) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service'.

[449] The new s 29C: 'Publishing or distributing written material (1) A person who publishes or distributes written material which is threatening is guilty of an offence if he intends thereby to stir up religious hatred. (2) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.'

[450] The new s 29D: 'Public performance of play (1) If a public performance of a play is given which involves the use of threatening words or behaviour, any person who presents or directs the performance is guilty of an offence if he intends thereby to stir up religious hatred. (2) This section does not apply to a performance given solely or primarily for one or more of the following purposes – (a) rehearsal, (b) making a recording of the performance, or (c) enabling the performance to be included in a programme service; but if it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in paragraph (b) or (c), the performance shall, unless the contrary is shown, be taken not to have been given solely or primarily for the purpose mentioned above. (3) For the purposes of this section – (a) a person shall not be treated as presenting a performance of a play by reason only of his taking part in it as a performer, (b) a person taking part as a performer in a performance directed by another shall be treated as a person who directed the performance if without reasonable excuse he performs otherwise than in accordance with that person's direction, and (c) a person shall be taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance; and a person shall not be treated as aiding or abetting the commission of an offence under this section by reason only of his taking part in a performance as a performer. (4) In this section "play" and "public performance" have the same meaning as in the Theatres Act 1968. (5) The following provisions of the Theatres Act 1968 apply in relation to an offence under this section as they apply to an offence under section 2 of that Act—section 9 (script as evidence of what was performed), section 10 (power to make copies of script), section 15 (powers of entry and inspection)'.

[451] The new s 29E: 'Distributing, showing or playing a recording (1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening is guilty of an offence if he intends thereby to stir up religious hatred. (2) In this Part "recording" means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public. (3) This section does not apply to the

or including a programme in a programme service;[452] and by possession of written materials or recordings with a view to display, publication, distribution or inclusion in a programme service.[453] For each of these offences, the words, behaviour, written material, recordings or programmes must be threatening and intended to stir up religious hatred.[454] However, importantly, the offences of stirring up religious hatred are not intended to limit or restrict discussion, criticism or expressions of antipathy, dislike, ridicule or insult or abuse.[455]

The Racial and Religious Hatred Act 2006 also created numerous criminal offences protecting groups of believers from being threatened by reference to their belief or lack of belief.[456] However, there is a requirement for intent; a defendant can only be prosecuted if they possess the intention to stir up religious hatred.[457] This requirement for intention, coupled with the freedom of speech clause within the Act, has decreased the likelihood of a

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showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service'.

[452] The new s.29F:'Broadcasting or including programme in programme service(1)If a programme involving threatening visual images or sounds is included in a programme service, each of the persons mentioned in subsection (2) is guilty of an offence if he intends thereby to stir up religious hatred.(2)The persons are - (a)the person providing the programme service,(b)any person by whom the programme is produced or directed, and(c)any person by whom offending words or behaviour are used.'

[453]The new s 29G: 'Possession of inflammatory material (1) A person who has in his possession written material which is threatening, or a recording of visual images or sounds which are threatening, with a view to – (a) in the case of written material, its being displayed, published, distributed, or included in a programme service whether by himself or another, or (b) in the case of a recording, its being distributed, shown, played, or included in a programme service, whether by himself or another, is guilty of an offence if he intends religious hatred to be stirred up thereby. (2) For this purpose regard shall be had to such display, publication, distribution, showing, playing, or inclusion in a programme service as he has, or it may reasonably be inferred that he has, in view.' Namely, possession of threatening material with a view to using it in a way that is intended to stir up religious hatred: Explanatory Notes [15].

[454] Explanatory Notes [14]: 'in the case of the offence at 29B, this does not apply where the words or behaviour are used or displayed inside a private dwelling and there is no reason to believe that they can be heard or seen by a person outside that or any other private dwelling'.

[455] They do not apply to proselytisation, evangelism or the seeking to convert people to a particular belief or to cease holding a belief. See: s 29J: 'Protection of freedom of expression. Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system'; Explanatory Notes [16]. See also: S.29K; Explanatory Notes [17]: 'Moreover, the Act does not apply to fair and accurate reports of anything done in the United Kingdom and Scottish Parliaments, the National Assembly for Wales, or the fair and accurate contemporaneous reports of judicial proceedings.'; originally, proceedings in the National Assembly for Wales were not covered by this provision, but this was changed by the Criminal Justice and Immigration Act 2008, Schedule 16, s 15.

[456] For a full account, see I Hare, 'Crosses, Crescents and Sacred Cows: Criminalising Incitement to Religious Hatred' [2006] *Public Law* 521; and K. Goodall, 'Incitement to Religious Hatred: All Talk and No Substance' (2007) 70 *Modern Law Review* 1, 89.

[457] This is contrary to the Government's original intentions. The Government had wanted the offence to be charged either when the defendant had the intention to stir up religious hatred or was being reckless as to whether religious hatred would be stirred up thereby. The Government had also wanted to include 'abusive or insulting' words or behaviour in addition to 'threatening'.

successful prosecution for religious hatred.[458] Thus, Sandberg suggests that the focus of the new law differs fundamentally from the law on blasphemy;[459] the law on blasphemy sought only to protect Christian religious beliefs, whereas the Racial and Religious Hatred Act 2006 outlaws all behaviour that is committed against people on grounds of religion. However, some scholars in the field, such as Addison, view elements of the Act as a suitable replacement for the law on blasphemy,[460] and this was the original stated intent of the Government.[461] In the years following its enactment, the legislation was subject to debate and criticism. Lord Lester, for example, viewed the provisions as comparable to 'using a steamroller to crack a nut',[462] suggesting that the new offences established by the Act are far too broad. Geoffrey Roberts QC has also criticised the legislation as 'unnecessary and clumsily framed',[463] implying that prosecutions were so unlikely to succeed under the Act that Parliament felt it necessary to broaden the offence to include a defence under freedom of expression.[464] The freedom of expression provision has been commented on by Sandberg, who suggests that although the offences are restricted by it, 'this may not be a bad thing'[465]: 'if the Labour Government had succeeded with its original plans for the offence, religious hatred would represent a significant and disproportionate limit on free speech'.[466] As we shall see in the following section, the potential to interrupt the freedom of speech is also a common criticism of the statutory Prevent Duty. First, however, the following sub-section will outline how the literature deals with the second of the newer religious offences – religiously aggravated offences.

3.2.4 Religiously aggravated offences

For an offence to be religiously aggravated, the basic crime is aggravated by the demonstration or motivation by the perpetrator of religious hostility towards the victim; thus, for offences that are found to be religiously aggravated, heavier sentences may be enforced

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[458] K Goodhall, 'Incitement to Religious Hatred: All Talk and No Substance?' (2007) 70 *Modern Law Review* 1, 89-113.
[459] See: R Sandberg, 'The Sociology of the Law on Religion' (2007) [Working Paper]. Available online at: https://orca.cardiff.ac.uk/id/eprint/78300/1/Sandberg%20_%20The%20Sociology%20of%20Law%20%20on%20Religion.pdf> Last accessed: 2 May 2022.
[460] N Addison, *Religious Discrimination and Hatred Law* (Routledge 2007) 133.
[461] See the comments of David Blunkett, HC Deb Column 707, 26 November 2001.
[462] Anthony Lester in Lisa Appinanesnsi (eds) *Free Expression is No Offence* (Penguin 2005) 234.
[463] K Goodhall, 'Incitement to Religious Hatred: All Talk and No Substance?' 2007 70 *Modern Law Review* 1, 89-113, quoted in Ruth Gledhill *et al*, The Times, February 7 2005.
[464] Ibid.
[465] R Sandberg, Law and Religion (Cambridge University Press 2011) 144.
[466] Ibid.

against the perpetrator.[467] In England and Wales, there are four categories of religiously – and racially – aggravated offences. There is first section 29 of the Crime and Disorder Act 1998 which deals with religiously aggravated assaults involving common assault,[468] actual bodily harm,[469] and maliciously wounding or causing grievous bodily harm.[470] Second, there is section 30 of the Crime and Disorder Act 1998 which covers criminal damage,[471] section 31 of the Act which covers the Public Order Act 1986 offences,[472] and section 32 which covers harassment.[473] At this stage, it is important to revisit the arguments introduced in Chapter Two:[474] that religiously aggravated offences are directly related to counter-terrorism legislation, but are rarely discussed by Law and Religion scholars in this context. Sandberg suggests that many of these offences are subject to the same criticisms as the abolished law on blasphemy, arguing that it is 'unclear why these offences are needed and why existing criminal law offences could not be applied'.[475] This supports the argument made in Chapter Two: that it is uncertain, in some instances, which offence would be used to prosecute religiously motivated acts of terrorism.[476] This argument – on the interaction between religiously aggravated offences and the law on religiously motivated terrorism – will not be repeated within the second section of this chapter. It is noted, however, that the argument made in Chapter Two highlights yet another omission made by the field: that acts of terrorism can be religiously aggravated, and that some religiously aggravated offences will amount to terrorism.

However, to underscore the omission of the discussion of terrorism in the context of religion and the criminal law, it is noted that Sandberg's argument does not take account of the wider context surrounding the establishment of these offences. As previously mentioned, it must be recognised that throughout the early 2000s there was an increased hate campaign directed towards British Muslims in the aftermath of the 9/11 attacks of 2001. The beginning of this hate campaign coincided both with the enactment of various new terrorist offences under the Terrorism Act 2006, and with the surge of the new religious offences discussed above,

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[467] Criminal Justice Act 2003, s 145(1) and (2); s145(3): s 28 of the Crime and Disorder Act 1998 (the meaning of 'religiously aggravated) applies for the purposes of this section as it applies to the purposes of s 29 of that Act.
[468] Crime and Disorder Act 1998, s 39.
[469] Offences Against the Person Act 1861, s 47.
[470] Ibid, s 20.
[471] Crime and Disorder Act 1998, s 30.
[472] Ibid, s 31.
[473] Ibid, s 32.
[474] Chapter Two, section 2.2.2.
[475] R Sandberg, *Law and Religion* (Cambridge University Pres 2011) 147.
[476] Chapter Two, section 2.2.2.

particularly the Racial and Religious Hatred Act 2006. Also during this period, the UK Government attempted to extend 'the existing provisions on incitement to racial hatred to [also] cover incitement to religious hatred' with an unsuccessful clause contained in the Anti-Terrorism, Crime and Security Bill which was designed to amend Part 3 of the Public Order Act 1986. The Anti-Terrorism, Crime and Security Act 2001 was given Royal Assent without the provision protecting religion in place, however. This important link has only been briefly mentioned in the context of Law and Religion: 'An increase of racial violence and harassment resulted in a new category of racially aggravated crimes under the Crime and Disorder Act 1998 and, following 9/11, the Anti-Terrorism, Crime and Security Act 2001 extended these to deal with religiously aggravated offences'.[477] Instead, as we shall see, the discussion has – unsurprisingly – focussed on whether the offence of blasphemy has survived its abolition through the religiously aggravated offences.[478] The scholarship has also considered whether public order offences are the correct means to deal with religiously aggravated offences;[479] the Crime and Disorder Act 1998 and the Anti-Terrorism, Crime and Security Act 2001 have been extended to deal with religiously aggravated offences.

The Crime and Disorder Act 1998 provides two types of religious aggravation: one based on the demonstration towards the victim of religious hostility;[480] the other based on religiously hostile motivation towards a religious group.[481] An offence, therefore, is described as being 'religiously aggravated' if at the time of committing the offence – or immediately before or after committing the offence – the offender demonstrates some kind of 'hostility' towards the victim based on the victim's 'membership (or presumed membership) of a religious group'.[482] Importantly, there is no requirement for the defendant to be motivated by religious hostility, just for them to demonstrate it.[483] The test used is whether defendant formed the view that the victim was a member of a religious group and, based on this view, the

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[477] M Hill, R Sandberg, N Doe, C Grout, *Religion and Law in the United Kingdom* (3rd edn, Wolters Kluwer 2021) [407].
[478] R Sandberg, Law and Religion (Cambridge University Press 2011) 147.
[479] See generally: M Idriss, 'Religion and the Anti-Terrorism Crime and Security Act 2001' (2002) *Criminal Law Review* 890.
[480] Crime and Disorder Act 1998, s 28(1)(a).
[481] Ibid, s 28(1)(b).
[482] Ibid, s 28(1)(a). As the demonstration of hostility must be "immediately" before or after the act, a demonstration twenty minute after the act will not suffice; however, the victim need not be present at the demonstration: *Perry v DPP* [2004] EWHC 3112 (Admin).
[483] R Card, J Molloy, *Card, Cross and Jones Criminal Law* (22nd edn, Oxford University Press 2016), 195; *DPP v Green* [2004] EWHC 1125 (Admin).

defendant demonstrated hostility towards the victim.[484] An offence may also be described as religiously aggravated if the defendant is motivated, at least in part, by hostility towards members of a religious group based on their membership of the group.[485] This second offence requires proof that the defendant was *motivated* by religious hostility,[486] similar to how the offence of terrorism requires proof that the defendant was *motivated* by religious causes. Both offences operate on the basis of a religious component, and this will be discussed further in the section 3.3 of this chapter. As explained in Chapter Two,[487] the importance of the religiously aggravated component for these offences arises when a court is considering the seriousness of the offence: if the offence is decided to have been religiously aggravated, the court must treat this as an aggravating factor, and this will usually result a heavier sentence for the perpetrator.[488]

In terms of general public order laws that affect religion, the Public Order Act 1986 is related to religiously aggravated offences as it 'contains a number of offences which may be used to control expression by and against religious adherents'.[489] For example, section 4 of the Act states that it is an offence to '[use] threatening, abusive or insulting words or behaviour';[490] or 'distribute or display to another person any writing, sign or other visible representation which is threatening, abusive or insulting'[491] with:

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[484] Ibid, 198: 'Clearly, a religious group includes converts and excludes those who have abandoned the religion….the importance of the precise meaning of "membership" in s.28(1)(a) is lessened by s.28(2)…a person who has not converted but is the spouse or an adopted child of a member and thereby in association with that member and members of his family etc who are members of the group'. 'Presumed membership' means presumed by the offender (see: Crime and Disorder Act 1998, s.28(2)); see also: *AG`s Reference (No 4 of 2004)* [2005] 1 WLR 2810 (CA) – on racial aggravation.

[485] Crime and Disorder Act 1998, s 28(1)(b). Whereas proof of demonstration under s 28 (1)(a) requires proof of what D did at the time of the offence, proof of motivation under s.28(1)(b) may be established by what the defendant may have done or said on other occasions: *G v DPP; T v DPP* [2004] EWHC 183 (Admin): Religious aggravation may exist whether the defendant is of the same religious group as the victim (see: *White* [2001] 1 WLR 1352 (CA)).

[486] R Card, J Molloy, *Card, Cross and Jones Criminal Law* (22nd edn, Oxford University Press 2016); making "motive" relevant to criminal liability is exceptional in the criminal law; see also 201: `A person who, motivated by hostility towards members of the Jewish religious community, attacked a bricklayer whom he knew was not Jewish who was working on the building of a synagogue would fall foul of s 28(1)(b), for example. It was for this reason that it was not necessary to extend to s 28(1)(b) the provision that membership of a racial or religious group includes association with it`.

[487] Section 2.2.

[488] Criminal Justice Act 2003, s 145(1) and (2); s 145(3): s 28 of the Crime and Disorder Act 1998 (the meaning of 'religiously aggravated') applies for the purposes of this section as it applies to the purposes of s 29 of that Act.

[489] Sir J Dingemans *et al*, 'The Protection for Religious Rights: Law and Practice' (Oxford University Press 2013) 457.

[490] Public Order Act 1986, Part 1, s 4(1)(a).

[491] Public Order Act 1986, Part 1, s 4(1)(b).

> ‘intent to cause that person to believe that immediate unlawful violence will be used against him or another… or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe such violence will be used or it is likely that such violence will be provoked’.[492]

Applying this to the context of religion, Addison explains that ‘a phrase such as “we’ll get you the next time you go to church”, addressed towards a Muslim convert to Christianity, could be said to cause a fear of immediate unlawful violence since the person might be going to church shortly after the threat’.[493] Moreover, it was held in the case of *Ramos* that ‘it is the victim’s state of mind that is crucial rather than the statistical risk of violence actually occurring within a very short space of time’.[494]

Also important to note, at this stage, is that the religious offences detailed in this section are only briefly commented upon by criminal lawyers in criminal law texts. The offences are frequently treated as examples but there is no real discussion of them provided. For example, Horder uses the example of ‘religious offences’ to describe the history of the criminal law in the United Kingdom, but these are not the same religious offences that are treated in Law and Religion texts.[495] Significantly, the same can be said of terrorism, which is often treated as a distinct area of law; rarely is terrorism treated as a significant discussion point in standard criminal law texts. For example, Smith, Hogan and Ormerod describe terrorism as a ‘cross border element’ of the criminal law, and treat it only to provide examples of other offences or criminal law theories such as when explaining the principle of the *actus reus*.[496] In the main criminal law textbooks, there are no chapters dedicated to the study of either the religious offences or to terrorism, and this underlines the importance and necessity of applying a Law and Religions lens both to the study of the religious offences, and to the study of counter-terrorism as it applies to religion.

This initial section, therefore, has identified that discussion from the field of Law and Religion surrounding the religious offences has so far focused, primarily, on two key elements: first, whether the offence of blasphemy has survived despite its abolition; second, and more implicitly, on the offences which protect religious belief. Under the newer religious

[492] Public Order Act 1986, Part 1, s 4(1).
[493] N Addison, ‘Religious Discrimination and Hatred Law’ (Routledge 2007) 132.
[494] *DPP v Ramos* [2000] Crim LR 768.
[495] J Horder, *Ashworth’s Principles of Criminal Law* (9th edn, Oxford University Press 2019) 25-27.
[496] D Ormerod, K Laird, *Smith, Hogan, and Ormerod’s Essential’s of Criminal Law* (4th edn, Oxford University Press 2021) 21 and 44; this is also how terrorism is treated in J Loveless, M Allen, C Derry, *Complete Criminal Law: Text, Cases, and Materials* (8th edn, Oxford University Press 2022).

offences, for example, believers are protected under the assumption that religion is to be respected and is, therefore, a force for good. The section has also highlighted that terrorism is routinely omitted from this discussion; there is rarely any discussion of offences which seek to prohibit the harmful practice of religion, such as section 1 of the Terrorism Act 2000. Moreover, it was highlighted that criminal lawyers do not dedicate chapters in textbooks to the study of the religious offences in the same way that the field of Law and Religion does; the same can be said of their treatment of the terrorist offences. For this reason, it is suggested the a Law and Religion lens is useful both to the study of the religious offences and to the study of the terrorism offences which are both routinely omitted from extensive study from the field of criminal law. The section has highlighted, however, that the existing Law and Religion literature does not recognise the terrorism offences as a significant area of study in the context of the religious offences. To counter this omission, the following section will present the terrorism offences in the context of the criminal law as it applies to religion – applying a Law and Religion lens – and exploring the extent to which studying the terrorism offences from this perspective would enhance the Law and Religion scholarship as it applies to religion and the criminal law.

3.3 Law, religion and the terrorism offences

As has been explored in the previous section, the field of Law and Religion has much to say about the religious offences which seek to protect religious belief. However, the scope of the existing literature is limited, and focuses only on the offences which protect religious belief and worship, related public order offences, the stirring up of religious hatred, and the religiously aggravated offences. As we saw, in the context of the criminal law, the literature does not tackle acts of terrorism which are *motivated* by religious causes. Moreover, there is rarely any mention of the Terrorism Act 2000 in the literature which, as we saw in Chapter Two, states explicitly that religious causes may be a potential motivation behind an act of terrorism.[497] Indeed, there is also rarely any recognition that the UK Government has explicitly stated that religion has, since the early 2000s, been recognised as the main driving force behind acts of terror. It is undeniable, however, that religion plays a central role in the law on counter-terrorism in the UK; as we saw in Chapter Two, all laws which prohibit terrorist activity have, since the early 2000s, been established with religion in mind. Whether

[497] Edge deals with this – in the context of proscribed organisations – in his 2002 text as cited in Chapter One (section 1.2.2): P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002) 119-121.

offences that deal with religiously motivated terrorism can be recognised as religious offences, however, is another matter entirely.

The following section, therefore, will begin with an evaluation of the extent to which acts of terrorism can be classified as religious offences. The following will explore terrorism through a Law and Religion lens, applying the relevant literature on religious offences to the law on both the Prevent Duty and the encouragement of terrorism, and exploring areas where the religious offences and the terrorism offences interact. The final sub-section will explore the extent to which Prevent Duty is dealt with by the Law and Religion literature, suggesting that the phenomenon of religious radicalisation – which includes the encouragement of terrorism – should be a concern for the field. Ultimately, the final sub-section will question why the scholarship has so far neglected to investigate this example of religion as a force for bad.

3.3.1 Terrorism through a Law and Religion lens

As stated, this initial sub-section will describe and focus on the offence of encouraging terrorism – the main 'glorification' offence which was introduced in Chapter Two of this thesis.[498] The following sub-section will look more specifically at religious radicalisation and the Prevent Duty through a Law and Religion lens. As a brief reminder, to commit the offence of the encouragement of terrorism, the defendant must publish or cause someone else to publish a statement which he 'intends or is reckless as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offences'.[499] Statements which glorify terrorism are understood to be those which an audience would 'reasonably understand' as being an 'indirect engagement to terrorism'.[500] Such statements include those which may be 'reasonably inferred' as glorifying terrorism.[501] In contrast to acts of religious hatred and religious aggravation, there is no requirement for intent under this offence; instead, 'offences where the offender is reckless as to the consequences of the statement which is published will be treated as more serious where the circumstances are such as to make it far more likely that terrorist action will be the result, than otherwise might be the case'.[502] As explained above,

[498] See section 2.2.3 of Chapter Two.
[499] Terrorism Act 2006, s 1(2).
[500] Ibid, s 5.
[501] Ibid, s 3; see also: s 20(2): '"glorification" includes any form of praise or celebration, and cognate expression are to be construed accordingly'. The other glorification offences are listed in sections 2, 5 and 6 of the Act. They are the offence of dissemination of terrorist publications, the offence of preparation for terrorism, and the offence of terrorist training.
[502] *R v Abubaker Deghayes* [2023] EWCA Crim 97 [24].

the ways in which the offence of encouragement interacts with the religious offences will now be addressed in the context of Law and Religion. This sub-section, therefore, seeks to underscore the importance of highlighting the religious dimension of counter-terrorism for the field of Law and Religion. Through exploring the Prevent Duty and the offence of encouragement, the sub-section will discuss the ways in which the exclusion of terrorism in these discussions indicates an omission which should be addressed.

First, on blasphemy: as we have seen, the field of Law and Religion deals with blasphemy primarily by questioning whether the offence has survived its abolition. However, as touched upon, in the context of counter-terrorism and its interaction with religion blasphemy is treated differently – there is a new dimension of the offence which is yet to be explored by Law and Religion scholars. As part of the most recent independent review into the statutory Prevent Duty, it was identified that the Government must prioritise '[improving their] understanding of blasphemy' to improve work which challenges the extreme Islamist ideology that fuels terrorism.[503] This recommendation was made by independent reviewer William Shawcross CVO because, more and more, Muslims have been murdered in the United Kingdom 'by those citing blasphemy or apostasy as justification'.[504] Put simply, hate crimes have been carried out against Muslims, on grounds of religion, by extremists who claim to follow the same faith. Expressions of blasphemy have been linked directly to these murders.[505] In response, Shawcross has explained that for the UK Government to fully 'understand, identify, and challenge extremist ideology', there must be 'greater emphasis [placed on] so-called blasphemy narratives, which have a strong sectarian orientation and have consistently been connected to acts of terrorism'.[506] This directly links terrorism to the religious offences discussed in the previous section,[507] and underscores the omission of terrorism in Law and Religion discussions of the criminal law. This also highlights the Christian-centric focus of

[503] W Shawcross CVO, 'Independent Review of Prevent' (2023) 158: 'Homeland Security Group should conduct research into understanding and countering Islamist violence, incitement and intimidation linked to 'blasphemy'. It should feed a strong pro-free speech narrative into counter-narrative and community project work'.
[504] Ibid, 147; see relevant news articles: S Iqbal and C McKay 'Asad Shah murder: Killer Tanveer Ahmed releases prison message', *BBC News* 31 January 2017; J Kane, 'Facebook page is set up PRAISING taxi driver who said he killed peace-loving Muslim shopkeeper' *Daily Mail* 8 April 2016; 'Speakers' Corner: Woman attacked with knife' *BBC News* 25 July 2021.
[505] For discussion in relation to the Charlie Hebdo incidents (related to extremism), see: E Polymenopoulou, 'Blasphemous Paintings, Cartoons and Other Religiously Offensive Art' in E Polymenopoulou (eds) *Artistic Freedom in International Law* (Cambridge University Press 2023) 190-220.
[506] W Shawcross CVO, 'Independent Review of Prevent' (2023) 148.
[507] Section 3.2.

the Law and Religion literature, to date: discussions of blasphemy have focused on the protection of Christianity and whether this extends to other faiths.

The field of Law and Religion are yet to comment on this significant recent development which links blasphemy directly to terrorism. Shawcross continued with a caution: 'those who legitimise these narratives, and refuse to condemn violence linked to blasphemy, should be regarded by Prevent as part of the problem that the scheme is seeking to counter'.[508] Indeed, as we have seen in the previous section,[509] blasphemy is no longer recognised as a crime in common law or in statute. It is important, then, to understand this new dimension of blasphemy in the context of terrorism, and for this new interpretation to be adopted by the field of Law and Religion: extremist individuals who use religion to justify their extremism are targeting mainstream Muslims and condemning them for blasphemous behaviour. It is therefore proposed that the field of Law and Religion adopt this new interpretation of blasphemy in the context of terrorism and incorporate it into future discussions about how the law interacts with religion for one key reason: this recent advancement indicates a clear interaction between blasphemy, terrorism and the religious offences.

As touched on in Chapter Two, the offence of the encouragement of terrorism has been described by Ekaratne as a viable alternative for the prosecution of offences that include acts of religious hatred.[510] In line with Sandberg's argument about the irrelevance of the religious offences,[511] Ekaratne explains that many offences that could be prosecuted under religious hatred provisions are, more often than not, prosecuted under the offence of encouragement and other terrorism offences instead.[512] Many Law and Religion scholars, however, including Sandberg, do not recognise the terrorism dimension of religious hatred in their commentary – and this neglect highlights an important omission in the Law and Religion literature on the

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[508] For full discussion of Islamist extremism, see Chapter Four of this thesis; see also: S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books 2017). This is also acknowledged in the most recent review of the Prevent Duty, see: W Shawcross CVO, 'Independent Review of Prevent' (2023) 147-148: 'In summary, to properly understand, identify, and challenge extremist ideology, Prevent must give greater attention to so-called blasphemy narratives, which have a strong sectarian orientation and have consistently been connected to acts of terrorism. When assessing for indications of Islamist extremism and radicalisation, it is essential that officials and practitioners have a good working grasp of this dimension of ideology. Those who legitimise these narratives, and refuse to condemn violence linked to blasphemy, should be regarded by Prevent as part of the problem that the scheme is seeking to counter. Beyond Prevent, it is also clear that the government needs to give more thought to how this threat can be responded to effectively'.

[509] Section 3.2.2.

[510] S C Ekaratne, 'Redundant Restriction: The U.K.'s Offence of Glorifying Terrorism' (2010) 23 *Harvard Human Rights Journal,* 213.

[511] See: R Sandberg, *Law and Religion* (Cambridge University Press 2011) 147.

[512] S C Ekaratne, 'Redundant Restriction: The U.K.'s Offence of Glorifying Terrorism' (2010) 23 *Harvard Human Rights Journal*, 213.

subject of religious offences. This is perhaps because, as Ekaratne puts it, 'the racial and religious hatred offences have limits in the terrorism context, and they do not map directly onto the glorification offence'.[513]

One common criticism of the religious hatred offences from the field is that they are rarely successfully prosecuted due to both the definition of 'religious hatred' and the rather restrictive freedom of expression clause.[514] However, for offences of religious hatred that constitute terrorism, prosecutions are rarely unsuccessful. This illustrates an important dimension of how the law treats religious hatred, and one which must be addressed in any study of Law and Religion: statements which offend religious groups are rarely prosecuted, and the right to freedom of expression is mostly always upheld; statements which preach or threaten support for terrorism are always prosecuted, and freedom of speech is, more often than not, a far lesser concern. Indeed, many of the unsuccessful prosecutions for religious hatred involve statements which upset or offend religious groups to some extent. Contrastingly, the majority of successful prosecutions for the encouragement of religiously motivated terrorism are based on threatening religious statements which encourage support for terrorism. Religion as a threat, rather than religion as something to be protected, is viewed more seriously by a court of law.

For example, as noted in Chapter Two,[515] there has been the very recent prosecution for the encouragement of terrorism on grounds of religion in the case of *R v Deghayes* which involved religious radicalisation and hate speech.[516] In the case, a spontaneous speech was given in a mosque to around 50 people, including children. The speech was perceived to encourage the actualisation of *Jihad* with key phrases including: 'Jihad, jihad, jihad, jihad is compulsory… by fighting by sword means jihad obligation upon you, not jihad by word of mouth'.[517] The defendant, whilst giving the speech, gestured a stabbing motion, concluding

[513] Ibid.
[514] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 143-144; see also: A W Jeremy, 'Religious Offences' (2003) 7 *Ecclesiastical Law Journal* 33, 127-142, 134; J Oliva, 'The Legal Protection of Believers and Beliefs in the United Kingdom' (2007) 9 *Ecclesiastical Law Journal*, 66-86, 79: 'The above difficulties have been made clear in the last few months in relation to the frequent comments made by members of the British National Party, which are undoubtedly racist, but which are unlikely to be regarded as 'incitement to racial hatred' due to the wording of the offence'.
[515] Section 2.2.3.
[516] *R v Deghayes* [2023] EWCA Crim 97 [7-10].
[517] Ibid: A spontaneous speech was given at a mosque to 50 people, including children. Phrases from the speech included 'Jihad, jihad, jihad, jihad is compulsory. Jihad by fighting by sword means jihad is a compulsory obligation upon you, not jihad by word of mouth, this is also, but jihad will remain compulsory until the day of resurrection and my livelihood is under the shadow of my spear and who doesn't like that, go fight Allah, go

his speech: 'the story carries out the act of jihad'. Imperative to the case, as we shall see, the speech was also video recorded.[518] The defendant was found to have committed a reckless offence of encouragement of terrorism: he did 'not care whether the effect of his speech was to cause people to commit acts of terrorism or not'.[519] Similar to the offence of religious hatred, there is no requirement for the prosecution to prove that anyone was actually encouraged by the defendant's behaviour.[520] Of the video recording, the Court stated:

> 'If such a statement were to be broadcast or published on the internet, or in some other way promulgated so that it reached a very large audience perhaps running into the millions, this would greatly increase the chance that some of those people would be highly likely to be responsive to a call to action'.[521]

From the perspective of Law and Religion, Edge has commented on hate speech and hate crime, albeit not in the context of counter-terrorism. However, as part of a wider discussion about religious hate speech directed towards protected groups, Edge explains that 'it is possible to identify a wide range of instances in which religious scripture appears to justify or require hostility towards a protected group, or their practices, in a way which fails to mirror current state policy on equality and non-discrimination'.[522] Edge uses the example of homosexuality, which is particularly applicable to religiously motivated terrorism in that there have been recent Prevent Duty referrals for hate speech encouraging extreme religious views on homosexuality.[523] Importantly, Edge continues: 'particular religious practices are condemned by the Qu'ran', for example, and these sometimes can be used to justify racial discrimination.[524] Edge does not comment, however, on the encouragement of terrorism in this context. For the purposes of this chapter, it is important to acknowledge that the field of

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fight Allah'. The speech was 'accompanied by a stabbing motion with the words 'the story carries out the act of Jihad'. The speech was video recorded.

[518] Ibid.

[519] Ibid [12].

[520] Terrorism Act 2006, s 1(5): 'It is irrelevant… (a) whether anything mentioned in those subsections relates to the commission, preparation or instigation of one or more particular acts of terrorism or Convention offences, of acts of terrorism or Convention offences of a particular description or of acts of terrorism or Convention offences generally; and, (b) whether any person is in fact encouraged or induced by the statement to commit, prepare or instigate any such act or offence'.

[521] *R v Abubaker Deghayes* [2023] EWCA Crim 97 [24].

[522] P W Edge, 'Oppositional Religious Speech: Understanding Hate Preaching' (2018) 20 *Ecclesiastical Law Journal*, 278-289, 281.

[523] L Clarence-Smith, 'Christian lecturer sacked over "homosexuality is invading the church" tweet' *The Telegraph* 18 March 2023; see also: C Simpson, 'Chaplain flagged to Prevent for school sermon on LGBT policy victim of "Church of Postmodernism" *The Telegraph* 9 May 2021.

[524] P W Edge, 'Oppositional Religious Speech: Understanding Hate Preaching' (2018) 20 *Ecclesiastical Law Journal*, 278-289, 281.

Law and Religion has indeed recognised the necessity of laws that achieve more than to simply protect religious belief, but understand religion, in some circumstances, as capable of inspiring great harm. Although the literature has not yet explicitly addressed this in the context of terrorism, this section – so far – has suggested that it is imperative that it does.

At present, and as introduced in Chapter One, the greatest terrorist threat facing the UK derives from Islamist extremism. Religiously motivated acts of terror, the UK Government has recognised, almost always occur after an individual has been radicalised; as we shall see, religious radicalisation, and the extremist ideology associated with it, has inspired many terrorist incidents in the UK over the past 20 or so years. In 2015, however, radicalisation became regulated by the statutory Prevent Duty. The following sub-section, then, will explore this further by looking specifically at religious radicalisation in the context of the religious offences and through a Law and Religion lens.

3.3.2 Radicalisation through a Law and Religion lens

Put simply, religious radicalisation has not received very much attention from the field of Law and Religion; the concept has been – on the whole – neglected. It is therefore is important to recognise this significant omission: religious radicalisation is not treated in standard Law and Religion texts nor by the wider literature on Law and Religion in sufficient detail. For example, although the Prevent Duty has been recently covered on the Law and Religion blog,[525] and – as we saw in Chapter One – fragmentally by the literature,[526] the extent of this is very much limited. This is odd: since the atrocity of 9/11, counter-terrorism legislation and guidance in the United Kingdom has been very much focussed on terrorism that is motivated by religious causes; in particular, terrorism that is motivated by a contrived version of Islam, separate from the mainstream religion.[527] This is not to say, however, that the extremists who subscribe to this extreme manifestation of Islam do not consider themselves to be Muslims – they do. This, it is proposed, is one of the issues that must be

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[525] F Cranmer, 'Report of the Independent Review of "Prevent"' 9 Feb 2023, available online at: <https://lawandreligionuk.com/2023/02/09/report-of-the-independent-review-of-prevent/> Last Accessed: 2 June 2023.

[526] See, for example: J Oliva, H Hall, *Religion, Law and the Constitution: Balancing Beliefs in Britain* (Routledge 2018).

[527] See, for example, the definition of 'terrorism' provided by the Terrorism Act 2000 s 1 which includes that 'religious causes' are a potential motivation for acts of terrorism. The ideology behind acts of Islamist terrorism will be discussed fully in Chapter Four.

discussed by the field of Law and Religion, not least to the extent that it affects faith communities.[528]

It is established that individuals are drawn into terrorism through a process referred to as radicalisation,[529] and it is the responsibility of selected 'specified authorities' to prevent this from happening.[530] The UK Government has defined the radicalisation process, in 'soft' law, as follows: radicalisation is 'the process by which a person comes to support terrorism or extremist ideologies associated with terrorist groups'.[531] Although there is no explicit mention of religion in this definition, it is implicit; the Government has recognised – and repeated, time and time again – that the most significant, and deadly, threat from terrorism comes from Islamist extremism and the ideology of *Salafi-Jihadism*,[532] an interpretation of Islam that urges its followers to take to the battlefield in order to appease God.[533] The UK Government does not define *Salafi-Jihadism* as such, however – in fact, it does not define it at all, and this will be one of the focuses of Chapter Four of this study. For now, it is important to recognise that the Government has made it very clear that religion and terrorism are linked, at least for the time being.

The Prevent Duty has a long history of allegedly stigmatising the Muslim community. As Wilkinson puts it, commenting on the various misconceptions of Islam as a result of UK counter-terrorism efforts:

> 'these failures of thinking have led to the failure of governments to create an effective long-term strategy that both identifies and disables terrorists without stigmatising the entire Muslim community as a whole, a strategy that takes into account and derives

[528] The implications of the Prevent Duty – and the religious dimension of terrorism – on faith communities will be discussed throughout Chapters Four, Five and Six.
[529] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) F.
[530] The Prevent Duty, put on a statutory footing by s 26 of the Counter-Terrorism and Security Act 2015, places a legal responsibility on all 'specified authorities' to have due regard to the need to prevent individuals from being drawn into terrorism.
[531] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) F.
[532] The ideology will be explored fully in Chapter Four of this thesis. HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 8, footnote 4: 'We define Islamist terrorism as acts of terrorism perpetrated or inspired by politico-religiously motivated groups or individuals who support and use violence as means to establish their interpretation of an Islamic society. In the UK context, the Islamist terrorist threat comes overwhelmingly from Salafi-Jihadi movements, which are inherently violent. We recognise that Islamism describes a spectrum of movements that hold a variety of views on the use of violence; some are conditional in their view on the use of violence and others are explicit in their rejection of it'.
[533] Again, this will be addressed and explained fully in Chapter Four of this thesis.

> benefit from Muslims' faith and their presence in Europe rather than ignoring or trivialising their faith and shutting them out of political and social life'.[534]

It is suggested that it is the task of Law and Religion scholars to study this disjunction and, further, to evaluate whether the law treats religion fairly in light of these new, harsher terrorist offences which deal with religion. As stated, the limits these offences place on religious freedom are arguably far greater than the limits imposed by Article 9(2) of the European Convention. This sub-section will attempt to initiate this discussion from a Law and Religion angle. In terms of whether the law on counter-terrorism – in particular, the statutory Prevent Duty – stigmatises the Muslim community, there is already a wealth of literature and debate outside the field. In terms of whether the law treats religion proportionately in light of these new terrorist offences, little has been said. Both will be explored below.

First, on whether the Prevent Duty stigmatises and unduly targets the Muslim community. I have previously – in a separately published study – evaluated the extent to which the Prevent Duty interacts with religion and how it can be criticised in light of this.[535] This arguments proposed in this article have already been developed in Chapter Two;[536] however, for the purposes of this chapter, it is suggested that the study demonstrates how the Prevent Duty can – and should – be discussed in the context of Law and Religion. Despite this, little has been written since. Outside the field, however, there has been plenty of commentary on the Prevent Duty and how it impacts the Muslim community. For example, there has been particular concern about the impact that the Prevent Duty has on freedom of expression in UK universities.[537] This example will be revisited and explored in greater detail as part of the discussion of Chapter 5, but is worth introducing here because it provides an example of how the Prevent Duty has impacted the lives of British Muslims.

In UK universities, the Prevent Duty must be upheld. This is because, as specified authorities, higher education bodies are tasked with having due regard to the need to prevent individuals from being drawn into terrorism under section 26 of the Counter-Terrorism and Security Act 2015.[538] The Prevent Duty, however, must be balanced with the requirement to uphold the

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[534] Ibid.
[535] R Riedel, 'Religion and Terrorism: The Prevent Duty' (2021) 23 *Ecclesiastical Law Journal* 3, 280-293.
[536] Section 2.4.3.
[537] M Aune, M Guest, J Law, 'Chaplains on Campus: Understanding Chaplaincy in UK Universities' (Research Centre of Trust, Peace and Social Relations, Coventry University, Canterbury Christ Church University, Durham University 2019).
[538] Counter Terrorism and Security Act 2015, s 26.

freedom of speech under Article 10 ECHR – appropriate weight must be afforded to each.[539] Despite this, the UK Government has stated that it did not 'envisage the new duty creating large new burdens on institutions and intend[ed] it to be implemented in a proportionate risk-based way'.[540] Statutory guidance was released that advised on external speakers, staff training, student welfare and IT regulations, amongst other aspects of university life that the Duty would touch.[541] Universities were urged, most importantly, to balance their 'legal duties in terms of both ensuring freedom of speech and academic freedom [whilst] also protecting student and staff welfare'.[542]

Despite this, the discharge of the Duty at UK universities has led to criticism that it unduly targets and alienates the Muslim community.[543] In particular, a recent study by Guest and others has uncovered that 'Muslim students are self-censoring in their working and personal lives in order to avoid being stigmatised as suspicious'.[544] The study found that due to the existence of a 'wider Islamophobic rhetoric and government policy on counterterrorism', Muslims were actively being 'discriminated against and that common negative stereotypes [were] echoed by staff and fellow students'.[545] Of course, the study has not benefited from the expertise of Law and Religion scholars, but findings strongly indicate that the Prevent Duty can be described as targeting the Muslim community in this context – whether intentionally or not. In terms of challenging this, work must be completed that not only distinguishes between harmful and mainstream Islam, but which fully acknowledges religion as central to terrorism.

Second, on whether religion is treated proportionately in light of these offences, the first question, perhaps, is whether the terrorist offences can be characterised as religious offences by the Law and Religion literature. The previous sections have indicated clearly that whether terrorism can be characterised as a religious offence is a question with no straightforward answer. In a broad sense, the answer is, simply: 'no'; it may be argued that terrorism is not *only* motivated by religion, and so cannot be characterised as a *religious* offence, just as it

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539 A Glees, 'Universities: The Breeding Grounds of Terror' *The Telegraph*, 6 June 2011.
540 Home Office, 'Prevent duty guidance: for higher education institutions in England and Wales' (2019) [4].
541 Ibid.
542 Ibid, [8].
543 D Barrett, 'Tackling Radicalisation: The Limitations of the Anti-Radicalisation Prevent Duty' (2018) 12 *European Human Rights Law Review* 530–541, 536; L Blackwood, *et al,* 'From Theorising Radicalisation to Surveillance Practices: Muslims in the Cross Hairs of Scrutiny' [2015] *Political Psychology 8;* Open Society Justice Initiative, 'Eroding trust: The UK's Prevent Counter-Extremism Strategy in Health and Education' (Open Society Foundations, 2016).
544 Guest *et al* 'Islam and Muslims on UK University Campuses: perceptions and challenges (2020) 42.
545 Ibid, 61.

cannot be categorised as a racial offence. However, it is worth questioning, at this stage, what is meant by a 'religious offence'. Sandberg suggests that a religious offence is characterised by the criminal law interacting with religion, but that there are 'a plethora of overlapping laws'.[546] Applying this, terrorism offences that deal with religion could indeed be categorised as religious offences: religion is central to them, but they also overlap with other areas of law.

On the question of proportionality – in particular, as to whether religious freedom is unfairly restricted by the terrorism offences as they treat religion – the answer is also not straightforward. The statutory Prevent Duty has, as we saw above, been described as having the potential to interrupt the freedom of expression and, on some occasions, the freedom to manifest religion and belief on the grounds that many referrals to the Prevent programme are done so on incorrect grounds: many would suggest that the Prevent Duty is disproportionate in its response to counter-terrorism; that it polices British Muslims and is used as a surveillance tool.[547]

However, on terrorism and religious offences more generally, it has been suggested, as we have seen, that the Racial and Religious Hatred Act 2006 and its freedom of expression clause leave the offences under the Act redundant. It may be argued, then, that the offences that deal with the encouragement of terrorism – and the Prevent Duty which deals with the prevention of radicalisation – remedy this. Put simply: a statement which is genuinely perceived to encourage or glorify terrorism is unlikely to be permitted on grounds of freedom of expression. Perhaps, then, the terrorist offences deal, indirectly, with religious hate speech that is otherwise caught by the freedom of expression clause, and are therefore are absolutely worth the study of scholars from the field and Law and Religion.

3.4 Conclusion

This chapter has concluded the discussion of the first part of the main research question underpinning this thesis, addressing: **why is study of the religious dimension of the Prevent Duty – in the context of religious radicalisation – necessary to the study of Law and Religion?** This initial question has been addressed throughout Chapters One to Three, and three main arguments have been made. These arguments will be outlined here, but will be revisited in detail and reflected upon in Chapter Seven of this thesis.

[546] R Sandberg, *Law and Religion* (Cambridge University Press 2011) 132.

[547] F Qurashi, 'The Prevent strategy and the UK "war on terror": embedding infrastructures of surveillance in Muslim communities' (2018) 17 *Palgrave Communications* 4, 1-13.

First, in Chapter One, the research question addressed was: **how is Prevent relevant to the field of Law and Religion?** It was argued that counter-terrorism is indeed relevant to the field of Law and Religion. This argument was made following an overview of the Law and Religion literature as it deals with: first, the historical development of law and religion in the United Kingdom; second, the way in which the literature treats the interaction between religion and the civil law; and, finally, how the literature describes the relationship between religion and the criminal law. The latter was revisited in Chapter Three. The suggestions made in Chapter One consisted of: first, that the although the Law and Religion literature suggests that UK law treats religion in a positive manner, there exist laws – such as the Prevent Duty and related counter-terrorism legislation – which contradict this by actively seeking to prohibit certain manifestations and interpretations of religion. Second, it was suggested that there has been little commentary on the history of religious radicalism in the United Kingdom, despite its relevancy to the field. Third, the chapter found that religion has been classified by the field as something which requires protection under the law; however, religion is not always recognised as a force for good by the law: counter-terrorism laws – including the Prevent Duty – seek to regulate religion far more harshly by protecting the public from it. Finally, it was highlighted by the chapter that most Law and Religion texts do not deal with terrorism; the texts and the literature listed in Chapter One are an exception to the general rule. The chapter argued that not treating terrorism in Law and Religion texts is a significant omission due to the relevancy of terrorism to the field. This argument – relating to how terrorism is relevant to the field – has also been addressed more implicitly throughout Chapters Two and Three.

In Chapter Two, the research question addressed was: **is religion central to terrorism law?** It was argued that religion is indeed central to counter-terrorism law in the United Kingdom. In making this argument, the chapter suggested, first, that the inclusion of 'religious causes' as part of the definition of 'terrorism' under the Terrorism Act 2000 means that every subsequent piece of legislation has relied on this definition. The chapter also suggested that although Law and Religion scholars do not view terrorism as a matter for the field, terrorism is indeed both a relevant and worthwhile area of study for the field. The chapter suggested that addressing terrorism would, firstly, shift the scholarship away from the outdated focus on Christianity – as we have seen, even in the literature which focuses explicitly on Islam in the UK, terrorism isn't treated as a substantial discussion point. Further, Chapters One and Two both highlighted that discussion of terrorism in the context of Law and Religion would

provide new dimensions through which to explore other contemporary legal issues such as education, employment, the status – and responsibilities – of religious organisations, faith communities and charities, and – as we saw throughout Chapter Three – the criminal law. Finally, Chapter Two suggested that introducing terrorism as a key issue for the field to discuss would allow for uncomfortable – but essential – discussions to take place about religion as a force for bad: religion need not always be recognised as a force for good to be an essential and protected part of society.

Finally, in Chapter Three, the research question addressed was: **is terrorism omitted in Law and Religion discussions of the criminal law?** It was argued that the field of Law and Religion has routinely omitted counter-terrorism in discussions of the criminal law. This chapter suggested that the terrorism offences are able to be described as religious offences, and so are relevant to the field of Law and Religion. Through a Law and Religion lens, the chapter has explored and explained the religious offences and how they are routinely treated by Law and Religion texts. In light of this, the chapter has suggested that the religious offences do indeed apply to terrorism, and the terrorism offences were designed with religion in mind; the chapter has also explored why.

The chapter highlighted that the field of Law and Reigion, in its treatment of the criminal law, deals primarily with questions surrounding the survival of the offence of blasphemy, and offences which seek to protect religious belief and worship. Terrorism offences are not recognised as religious offences by the field. In similar vein, criminal lawyers rarely treat the religious offences in much detail in standard criminal law texts, and the same applies to the terrorism offences. The chapter has argued, however, that the terrorism offences should be studied through a Law and Religion lens, and this argument is supported by reasoning that the offences both interact with religion and are criminal law offences. Further, the offences treat a different kind of religious problem than the existing religious offences by dealing with religion as a threat. As suggested in the final section of this chapter, the terrorist offences operate alongside the law on religious offences by catching statements and behaviours which would otherwise not be caught by the religious offences.

As explained in Chapter One, the second part of the main research question underpinning this thesis will be explored throughout Chapters Four to Six. Therefore, the following three chapters will address: **what are the implications of highlighting the religious dimension of the Prevent Duty for faith communities?** As was explained throughout this the chapter, the

radicals who subscribe to the extreme manifestation of Islam that drives religiously motivated terrorism consider themselves to be Muslims. It was proposed in the chapter that this should be addressed by the field of Law and Religion. However, it will be explored in the following chapters that it is both the centrality of religion to terrorism, and the nature of the current terrorist threat, that makes that the Prevent Duty and related counter-terrorism legislation important for faith communities.

Chapter Four:
The Prevent Duty and Religious Radicalisation

4.1 Introduction

The first part of this thesis has focused on why highlighting the religious dimension of the Prevent Duty – in the context of religious radicalisation – is necessary to the study of Law and Religion. The remainder of this thesis will focus on the implications for highlighting the religious dimension of the Prevent Duty for faith communities, addressing the second sub-research question underpinning this study: **what are the implications of highlighting the religious dimension of the Prevent Duty for faith communities?**

The UK Government has explicitly and predominantly focused on religion as the most significant driving force behind acts of terror in the United Kingdom. Due to this focus on religion, it would be sensible to presume that faith settings – such as places of worship – are listed as specified authorities under the Counter-Terrorism and Security Act 2015.[548] However, many faith settings are not listed as specified authorities under the Act,[549] and although some faith organisations are subject to the Prevent Duty indirectly, before any discussion about the extent to which the UK Government supports faith communities in combatting terrorism can take place, a preliminary question must be addressed: **how is the Prevent Duty of importance to faith communities?** Therefore, this chapter will consider the extent to which the role of faith communities in the context of the Prevent Duty has been underplayed by both the wider counter-terrorism scholarship and – perhaps most importantly – by the UK Government itself.

In addressing this initial research question, the first part of this chapter will describe government-issued guidance on the subject of radicalisation in the context of Islamist terrorism. The section will look specifically to the definitions provided by the Prevent Duty Guidance, the CONTEST Strategy, and then at how various government-issued frameworks explain the process of radicalisation in the context of risk assessment. This section will also look to other 'hard' and 'soft' law responses to radicalisation and extremism which have not yet been touched upon by this thesis, exploring the extent to which the UK Government has highlighted the role of the 'radicaliser' in the Islamist radicalisation process. The section will begin to explore and evaluate whether these definitions and descriptions sufficiently capture

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[548] Counter-Terrorism and Security Act 2015, Schedule 6.

[549] Although not the focus of the discussion in this chapter, as we shall see in Chapter Five, religious radicalisation does, indeed, take place in places of worship and in other faith settings.

both what it means to be an Islamist terrorist, and whether the radicalisation process itself has been sufficiently explained by the Government in this context.

In light of the findings of the first section, the second part of this chapter will explore two case studies which will be identified fully in the first section; first, that the UK Government does not sufficiently define Islamist terrorism in its guidance; second, that the description of the radicalisation process within government guidance does not correspond with the wider radicalisation literature – as to the stages of the process – and the radicalisation models developed by leading counter-terrorism scholars. These case studies were selected because they most clearly exemplify the disjunction between the Government guidance and the literature on the subject. Throughout, the section will highlight how the pivotal role of faith communities has been both underdeveloped and underappreciated by the Government in the context of the Prevent Duty.

4.2 Religious radicalisation and the Prevent Duty

In recent years, there have been numerous terrorist incidents with a religious character. Since the 9/11 bombings in 2001, counter-terrorism legislation has focused predominantly on terrorism motivated by religious causes – in particular, by Islamist terrorism.[550] This new and sustained threat has led to an increased urgency to tackle the root causes of terrorism; the extremist motivations behind these acts and the factors that lead an individual to engage with terrorism in the first place. The process by which an individual comes to support terrorism is referred to by both the counter-terrorism scholars and the UK Government as 'radicalisation', and this term is defined very succinctly in 'soft' law as: 'the process by which a person comes to support terrorism or extremist ideologies associated with terrorist groups'.[551] As we have seen, it is the responsibility of specified authorities to have 'due regard to the need to prevent people from being drawn into terrorism' through this process as part of the statutory Prevent Duty.[552] As part of this duty, specified authorities are expected to identify and to interrupt the radicalisation process by referring suspect individuals to the Channel

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[550] See, for example, the definition of 'terrorism' provided by the Terrorism Act 2000 s 1 which includes that 'religious causes' are a potential motivation for acts of terrorism. See, for discussion about the centrality of religion to terrorism: Chapter Two of this thesis.
[551] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) F.
[552] See: Counter-Terrorism and Security Act 2015, s 26(1): 'A specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism'; see also, Schedule 6: local government; criminal justice; education, child care, etc; health and social care; and police.

programme. Importantly, the Government explains that specified authorities are required to 'participate fully in work to prevent people from being drawn into terrorism'.[553]

In some ways, then, specified authorities may be described as being on the frontline of terrorism prevention – they are expected not only to identify radicalised individuals, but to report and refer them for support or police investigation, where appropriate. It may, therefore, be suggested that the ability to *identify* radicalised individuals – be that adults or children – is the most important responsibility for specified authorities. This is because when a specified authority is able to identify behaviours that may indicate that an individual is particularly susceptible to radicalisation, and refers that individual for support, a Channel panel is then able to intervene and support the individual before it is 'too late'; that is, before the individual is considered too much of a risk to be supported through the Channel programme and is only referred for police investigation. Channel panels are only able to support individuals who present with a terrorism vulnerability, not those who pose a terrorism risk.[554] Put simply, if an individual is to be supported through the Channel programme, they must still be experiencing some signs of being radicalised; Channel is not the means by which terrorist offenders are de-radicalised. However, the Government does not refer to the individual who is referred under the Prevent Duty as a 'radicalised individual'; instead, the radicalised individual is simply referred to as a 'person' in both 'hard' law and 'soft' law on the subject.[555] In 'soft' law, the radicalised individual is identified as someone who is often 'vulnerable' and who is 'capable of being injured; difficult to defend; [and] open to moral or ideological attack'.[556] However, for clarity, this chapter will refer to the individual as the 'radicalised individual'; as we shall see, this description is also used in the literature.

In acknowledging the gravity of the task placed upon specified authorities, the UK Government has defined terms such as 'radicalisation', 'extremism' and 'Islamist terrorism'

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[553] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) [12]: 'fulfilling the duty in section 26 of the Act, we expect all specified authorities to participate fully in work to prevent people from being drawn into terrorism. How they do this, and the extent to which they do this, will depend on many factors, for example, the age of the individual, how much interaction they have with them, etc. The specified authorities in Schedule 6 to the Act are those judged to have a role in protecting vulnerable people and/or our national security. The duty is likely to be relevant to fulfilling other responsibilities such as the duty arising from section 149 of the Equality Act 2010'; see also, for information: Equality Act 2010, s 149(1): A public authority must, in the exercise of its functions, have due regard to the need to – (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it'.

[554] For full discussion of the process, see Chapter Two section 2.3.2.

[555] See, for example, the Counter-Terrorism and Security Act 2015, s 26(1).

[556] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) F.

in the various guidance documents issued to support the discharge of the statutory Prevent Duty. Indeed, the Government has also included guidance – specifically for Channel panels – to help determine precisely how 'radicalised' an individual is. Although, on the face of it, this task appears straightforward – an individual is either a violent offender or they are not, for example – it is far more complicated than this: as we shall see, the line between an individual presenting with a terrorism vulnerability and as a terrorist risk is often unclear. Therefore, the extent to which each of these government-issued definitions serve their purpose must be called into question: as the greatest threat facing the United Kingdom from terrorism at this time, it is vital for those who are involved with the Prevent Duty – whether directly or implicitly – to understand what terrorism is, why it happens and how to prevent it from happening. In terms of those who are not directly involved with discharging the Prevent Duty, it is imperative to note, at this stage, that specified authorities are not the only individuals who come into contact with radicalised individuals. Due to the centrality of religion to counter-terrorism law in the United Kingdom, this section – and chapter as a whole – will evaluate the extent to which the Prevent Duty is of importance to faith communities, and whether this has been recognised by the Government, and in the literature which explores radicalisation and terrorism.

This section, therefore, will begin by outlining the government-issued definitions of Islamist terrorism, extremism and radicalisation in the context of the statutory Prevent Duty. Through an evaluation of these definitions, the section will explore the degree to which the Government understands Islamist terrorism and the radicalisation process in relation to guidance issued to Channel panels, as well as guidance issued to support the assessment of terrorists post-conviction. Finally, the section will explain and evaluate the Government's understanding of the role of the radicaliser in the radicalisation process, considering 'hard' and 'soft' law approaches which have not yet been addressed by this thesis. Throughout, the section will evaluate the extent to which these definitions sufficiently capture the terms they describe, as well as the neglected role of faith communities in this discussion.

4.2.1 Defining key terms under the Prevent Duty

The UK Government does not define 'radical Islam' in any of their 'soft' law guidance designed to support specified authorities in the discharge of the Prevent Duty. The definition of Islamist terrorism, however, is lengthy but is confined to a footnote, and refers to: 'acts of terrorism perpetrated or inspired by politico-religiously motivated groups or individuals who

support and use violence as a means to establish their interpretation of an Islamic society'.[557] The Government continues its definition by explaining that 'in the UK, the Islamist terrorist threat comes overwhelmingly from Salafi-Jihadi movements, which are inherently violent'. [558] Importantly, the UK Government explains that it '[recognises] that Islamism describes a spectrum of movements that hold a variety of views on the use of violence; some are conditional in their view on the use of violence and others are explicit in their rejection of it'.[559] Therefore, as part of its overview of the terrorist threats facing the United Kingdom, the Government has only defined Islamist terrorism; no other form of terrorism has been defined as part of the CONTEST Strategy. As a result of this, and as we saw in Chapter Two, the Prevent Duty has been criticised for being increasingly Islamophobic,[560] and it is this criticism which demonstrates precisely how the Prevent Duty is of importance to faith communities: it is crucial that the Government addresses the stigmatisation of Islam perpetrated by the Prevent Duty by fully distinguishing radical Islam from mainstream Islam in its guidance on the subject.

However, it is suggested that the Government has failed to achieve this distinction. Although it may be argued that the Government *has* successfully distinguished between mainstream and extreme Islam by stating that it recognises that not all Muslims support the use of violence, and by including a direct reference to the ideology that inspires Islamist terrorism – *Salafi-Jihadism* – the Government does not define the ideology. Therefore, it is questionable whether the definition of Islamist terrorism sufficiently captures what it means to be a religiously motivated terrorist. If, as the 'hard' law implies,[561] the focus of the law is on the motivation behind the act of terrorism – be that religious, political, racial or ideological – it would make sense for the religious ideology which motivates terrorists to be fully described in government guidance on the subject.

Instead, the Government make a perfunctory attempt to explain the ideology of *Salafi-Jihadism* by reference to the infamous proscribed organisations of *Daesh* and *Al Qa'ida*.[562] In

[557] Ibid.
[558] Ibid.
[559] Ibid.
[560] J Holmwood, L Aitljadj, 'The People's Review of Prevent' *Prevent Watch* (2022).
[561] See, for example: Terrorism Act 2000, s 1 for the definition of terrorism which includes 'religious causes'.
[562] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 16 [40]: 'Daesh and Al Qa'ida have a common ideological (and operational) lineage. Their shared ideological anchor is Salafi-Jihadism, a violent hybrid ideology, cherry-picking from a broad range of religious and political influences. Both groups hold in common an absolute rejection of democracy, personal liberty and human rights, as well as a commitment to restoring a self-proclaimed "Caliphate" and establishing a brutal and literalist interpretation of sharia law. They hold the West and its allies responsible for the suppression of Islam and

the latest version of the CONTEST Strategy, it is explained by the Government that these two terrorist organisations possess 'a common ideological (and operational) lineage';[563] in particular, that they have the *Salafi-Jihadi* ideology in common. As stated, the UK Government does not provide any further explanation of the ideology, and instead focuses on describing the shared values of *Daesh* and *Al Qa'id*a.[564] Importantly, the Government state, both groups blame 'the West and its allies for the suppression of Islam and oppression of Sunni Muslims around the world'.[565] Again, instead of providing an explanation – or definition – of the ideology behind these acts of violence, the Government instead opt to describe the atrocities carried out by *Daesh* and *Al Qa'ida*,[566] further sensationalising Islamist terrorism.

It is evident that, although technically defined, the Government's definition of 'Islamist terrorism' is of little value – there is no real detail provided as to its meaning, and the definition does not sufficiently capture what it means to be a religiously motivated terrorist. By failing to adequately distinguish between mainstream and radical Islam, the definition also contributes to the stigmatisation of Islam and, as a result of this, the importance of the Prevent Duty to faith communities persists. Although it is certainly implied that the Government does not believe that mainstream Muslims are terrorists, this is not explicitly

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oppression of Sunni Muslims around the world. Meanwhile, whilst Daesh claims to represent Islam, it uses atrocities – including beheadings, crucifixions, murdering children, slavery and rape – as weapons, including against Muslims. Daesh and Al Qa'ida have woven the war in Syria, and the wider humanitarian crisis, into their core narratives, propagating a sense of injustice that presents the action or inaction of international actors as part of a wider and ongoing religious conflict between the West and Sunni Islam'.

[563] Ibid.

[564] Ibid, [39-40]: 'The existence of a broadly consistent set of ideas and narratives is an important factor in motivating terrorist groups of all kinds, including Daesh, Al Qa'ida and extreme right-wing organisations. Their propaganda also inspires individuals who maintain no formal affiliation with a particular group. Although individuals may also be attracted to terrorist groups for social, cultural, material, psychological and other reasons, ideology remains a strong driver. Daesh and Al Qa'ida have a common ideological (and operational) lineage. Their shared ideological anchor is Salafi-Jihadism, a violent hybrid ideology, cherry-picking from a broad range of religious and political influences. Both groups hold in common an absolute rejection of democracy, personal liberty and human rights, as well as a commitment to restoring a self-proclaimed "Caliphate" and establishing a brutal and literalist interpretation of sharia law. They hold the West and its allies responsible for the suppression of Islam and oppression of Sunni Muslims around the world. Meanwhile, whilst Daesh claims to represent Islam, it uses atrocities – including beheadings, crucifixions, murdering children, slavery and rape – as weapons, including against Muslims. Daesh and Al Qa'ida have woven the war in Syria, and the wider humanitarian crisis, into their core narratives, propagating a sense of injustice that presents the action or inaction of international actors as part of a wider and ongoing religious conflict between the West and Sunni Islam'.

[565] Ibid: 'Daesh and Al Qa'ida have woven the war in Syria, and the wider humanitarian crisis, into their core narratives, propagating a sense of injustice that presents the action or inaction of international actors as part of a wider and ongoing religious conflict between the West and Sunni Islam'.

[566] Ibid; see also, for a detailed historical account of Islam: M Wilkinson, *The Genealogy of Terror* (Routledge 2019) 17-50.

stated. The UK Government are therefore not actively challenging media representations of Islam which present the faith as dangerous.

The failure of the Government to fully define the ideology of *Salafi-Jihadism* that motivates Islamist terrorists has two main practical consequences. First, specified authorities who are relying on the Government's guidance to discharge their duty under Prevent are not fully supported in understanding Islamist terrorism and, therefore, may not be able to distinguish it from the ordinary manifestation of Islam. The specified authorities, as we have seen, are expected to identify, understand and interrupt the radicalisation process under the 2015 Act.[567] It is questionable whether specified authorities are fully supported in achieving this if there is no definition provided for the ideology behind the most prominent terrorist threat facing the UK. Second, it is therefore evident that the lack of definition contributes to the stigmatisation of the ordinary manifestation of Islam and fails to challenge the moral panic surrounding the faith. This has a direct impact on faith communities, meaning that the Prevent Duty is very much of importance to them.

Unfortunately, the definition of 'extremism' provided by the Government is also insufficient in terms of its clarity. Provided as part of the Prevent Duty Guidance's glossary, 'extremism' is not described in a way which relates it specifically to Islamist terrorism, and is instead defined as:

> 'vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas'.[568]

The definition makes no reference to Islamist terrorism and is therefore inconsistent with the Government's definition of 'Islamist terrorism'. Instead, the definition focuses on vague British values and prioritises tolerance. Although important, it may be suggested the principles underpinning the definition of extremism lack the religious element that the other definitions in this context rely on. As stated, there is an inconsistency across these definitions. Furthermore, some academics have suggested that the focus on British values has had a negative impact on the religious freedom of Muslims in the United Kingdom, [569] and this

[567] Counter-Terrorism and Security Act 2015, s 26.
[568] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) F: Glossary of terms: 'Extremism' means (as defined in the 2011 Prevent strategy).
[569] J Holmwood, L Aitljadj, 'The People's Review of Prevent' *Prevent Watch* (2022) 37.

underlines the importance of the Prevent Duty for faith communities: any and all expressions which are perceived to go against British values have the potential to be considered indicators of extremism.[570] The UK Government does, however, distinguish between non-violent and violent extremism. 'Non-violent extremism' is defined in the Prevent Duty Guidance in ambiguous terms: 'extremism which is not accompanied by violence'.[571] This, it is proposed, is an oversimplification by the Government: as we shall see throughout the following section (below at 4.3), in the context of Islamist terrorism, the distinguishing factor between non-violent and violent extremism has a religious element, too.

As the greatest threat facing the United Kingdom at present, it is surprising to see that there is no guidance from the Government as to the stages of the religious radicalisation process, as part of neither CONTEST nor the Prevent Duty Guidance. The Government has therefore provided no guidance to support specified authorities in identifying precisely how 'radicalised' an individual has become – that is, whether they are a terrorist risk or whether they present with a terrorism vulnerability. This, the Government implies, is the responsibility of the Channel panels. However, as we shall see in the following sub-section, the guidance directed towards Channel panels as to the radicalisation process itself is also limited.

4.2.2 Government frameworks to measure risk

As introduced briefly, aside from defining what radicalisation is, neither the Prevent Duty Guidance nor the CONTEST Strategy offer any assistance as to the stages of the radicalisation process itself. Despite this, and as we shall see (section 4.4 below), the radicalisation process is far from linear, and is not only characterised by the presence – or absence – of violence. Put simply, it is not simply a case of determining whether an individual is or is not a terrorist. It is necessary, however, to outline the limited Government guidance on the stages of the radicalisation process – as well as its understanding of the role of the radicaliser in this process – before the true extent of this omission can be explored.

From the definition of 'non-violent extremism' contained in the Prevent Duty Guidance, it is implied that the Government recognises – at least to some extent – that the presence of violence is important in determining whether a radicalised individual is capable of becoming a terrorist. Indeed, the Government also recognises that radicalisation is a process. However, this is the only recognition in both CONTEST and the Prevent Duty Guidance of the stages of

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[570] Ibid.

[571] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) F.

the radicalisation process. As stated, it appears that the Government feels that while it is the responsibility of specified authorities to detect radicalisation, it is not their responsibility to measure or assess it. In light of this, we will look to the radicalisation assessment frameworks – again provided by the Government – which are used by both Channel panels to assess vulnerability to terrorism, and by His Majesty's Prison and Probation Services (HMPPS) to assess convicted terrorist offenders. The extent to which each of these frameworks adequately explain the radicalisation process – including its stages – will be assessed; as we shall see in section 4.4 of this chapter, the literature from the fields of psychology, political science and social science suggests that it is impossible to determine the risk level of a radicalised individual without first establishing which 'stage' of the process they are at.[572] It is important to note, however, that not all of these frameworks deal with religious radicalisation, and most of them are claimed to be applicable to all forms of extremism. However, many of the frameworks, which have been studied extensively in recent years,[573] are used to assess religious extremists; that is, they are used to assess when religious belief has been taken 'too far'. This underscores once again how the Prevent Duty, through these frameworks, is important for faith communities; ultimately, the frameworks have the potential to interfere with the freedom of religion under Article 9 of the European Convention.

The frameworks available for practitioner use in the UK are: first, the Extremism Risk Guidance (ERG22+),[574] developed by Her Majesty's Prison and Probation Services (HMPPS), which overlaps with the VERA-2R;[575] second, the Identifying Vulnerable People

[572] For frameworks outside the UK, see: IR-46 (Islamic Radicalisation) used by the Dutch National Police, the MLG Version 2 (Multi-Level Guidelines) used in North America and Europe, the TRAP-18 (Terrorist Radicalisation Assessment Protocol) used in Canada, the US and Europe, and the VERA-2R (Violent Extremism Risk Assessment Version 2 Revised); see also, for detailed comparison between the radicalisation assessment tools: S Cornwall, M Molenkamp, 'Developing, Implementing and Using Risk Assessment for Violent Extremist and Terrorist Offenders' (Radicalisation Awareness Network, 2018); see also: M Lloyd, 'Extremism Risk Assessment: A Directory' (Centre for Research and Evidence on Security Threats 2019); L van der Heide, M van der Zwan, M van Leyenhorst, 'The Practitioner's Guide to the Galaxy – A Comparison of Risk Assessment Tools for Violent Extremism' (vol 1, International Centre for Counter-Terrorism 2020) 55-78.
[573] See, for example: L van der Heide, M van der Zwan, M van Leyenhorst, 'The Practitioner's Guide to the Galaxy – A Comparison of Risk Assessment Tools for Violent Extremism' (vol 1, International Centre for Counter-Terrorism 2020); see also: M Lloyd and C Dean, 'The Development of Structured Guidelines for Assessing Risk in Extremist Offenders' (2015) 2 *Journal of Threat Assessment and Management* 1, 40-52; Ministry of Justice, 'The Structural Properties of the Extremism Risk Guidelines (ERG22+): a structured formulation tool for extremist offenders' (2019).
[574] M Lloyd and C Dean, 'The Development of Structured Guidelines for Assessing Risk in Extremist Offenders' (2015) 2 *Journal of Threat Assessment and Management* 1, 40-52. Her Majesty's Prison and Probation Services also use Extremism Risk Screening for offenders – the VERA 2. See: E Pressman, J Flockton, 'Calibrating Risk for Violent Political Extremists and Terrorists: The VERA 2 Structured Assessment' (2012) 14 *The British Journal of Forensic Practice* 4.
[575] E Pressman, J Flockton, 'Calibrating Risk for Violent Political Extremists and Terrorists: The VERA 2 Structured Assessment' (2012) 14 *The British Journal of Forensic Practice* 4.

Guidelines (IVP), developed by psychologists at the University of Liverpool;[576] and, finally, the UK Government's Vulnerability Assessment Framework,[577] which is used to guide decisions about whether an individual requires support for a terrorism vulnerability. As a necessary precursor, although the IVP Guidelines is worth mentioning, it will not be dealt with in detail – the guidelines are not a framework for assessors to use, and instead describe risk behaviour; they are not a assessment framework, as such, and are therefore not of much relevance to this discussion.[578] Briefly, the IVP Guidelines were developed by psychologists at the University of Liverpool and published in 2010.[579] The Guidelines consist of a checklist screening instrument used pre-offence to 'allow practitioners to identify those people most in need of support' for extremism-related vulnerabilities.[580] The IVP Guidelines were designed to inform understandings of what radicalisation is and how it could be identified, but is not an assessment tool.[581]

As for the assessment frameworks used by practitioners, first there is HMPPS' Extremism Risk Guidelines (ERG22+), which is used by trained and registered users within HMPPS for all offenders who have been convicted of terrorist activity. Since 2011, all convicted terrorist offenders have been subject to the ERG22+, and the framework provides insight as to why an individual may have engaged with terrorist activity and how their extremism was motivated.[582] Before the ERG22+ was developed, 'those convicted under terrorist legislation were typically considered by NOMS officials [National Offender Management Service] to be

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576 J Cole *et al*, *Guidance for Identifying People Vulnerable to Recruitment in Violent Extremism* (University of Liverpool 2010).
577 HM Government, 'Channel: Vulnerability assessment framework' (2012).
578 J Cole *et al*, *Guidance for Identifying People Vulnerable to Recruitment in Violent Extremism* (University of Liverpool 2010).
579 Ibid.
580 Ibid.
581 For further discission of the IVP Guidelines, including a study of 182 participants who committed terrorist offences, see: V Egan, *et al* 'Can You Identify Violent Extremists Using a Screening Checklist and Open-Source Intelligence Alone?' (2016) 3 *Journal of Threat Assessment and Management* 1, 21-36. The study classified the individuals using the OSINT method (use of information publicly available – eg, through Google searches) against the IVP and found that: 'exploratory findings indicate that using the total unweighted IVP score [meaning that the IVP was developed for use as an ideologically neutral tool] is the optimal way of using the IVP, and that it is best applied to screening for conventional violent extremists. The IVP checklist total was not systematically sensitive or specific for identifying persons convicted for injuring, killing, or being involved in a bombing campaign, though it showed sporadic associations with these outcomes in subgroup analyses. The confidence limits on the AUCs were such that with better data, a more conclusive result could be made of the measure's validity. The IVP guidance was developed to identify all types of violent extremists (including recruiters and facilitators), so our specific (and more violent) outcomes perhaps focus on severe outcomes relative to process and "joint enterprise" type offenses committed by persons included in the cohort'.
581 L van der Heide, M van der Zwan, M van Leyenhorst, 'The Practitioner's Guide to the Galaxy – A Comparison of Risk Assessment Tools for Violent Extremism' (vol 1, International Centre for Counter-Terrorism 2020).
582 Ibid.

high risk of serious harm by virtue of their offence alone, making it difficult to deploy case management and operational resources proportionately and to manage risk effectively'.[583] The training takes place over two days and involves instruction as to using the guidelines; a history of the ERG22+ including the key literature and evidence underpinning it; how the guidelines are intended to be used (including their limitations); a risk and needs assessment; translation training as to risk/protective factors; how assessments can be reported; and practice with case studies.[584]

The ERG22+ assessment is based on the 'personal and contextual factors and circumstances that contributed to an individual's engagement in an extremist group, cause and/or ideology, and offending'.[585] The framework consists of 22 factors and is categorised into three domains.[586] The assessor must focus their assessment on four main questions: first, 'what contextual circumstances seem to have contributed (or could contribute) to their offending?'; second, 'what personal attributes (needs, susceptibilities) seem to have contributed (or could contribute) to their offending?'; third, 'what did the person get out of (or could get out of) their offending?'; finally, 'what circumstances or attributes could protect them from offending in the future?'.[587] The factors themselves are considered where relevant, and each

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583 M Lloyd and C Dean, 'The Development of Structured Guidelines for Assessing Risk in Extremist Offenders' (2015) 2 *Journal of Threat Assessment and Management* 1, 40-52.
584 M Lloyd, 'Extremism Risk Assessment: A Directory' (Centre for Research and Evidence on Security Threats 2019) 16 [3.1]: 'The content of training: Two day training: 1. How to use structured professional guidelines to assess risk of extremist offending. 2. A brief history of the ERG; how the structured guidelines were developed, the context in which they were developed, the limitations of the evidence-base and scope for future refinement. 3. The key literature, evidence and theories upon which the structured guidelines have been developed. 4. How the guidelines are intended to be used and reported, including their scope and limitations. 5. The significant risk (and protective), factors and circumstances associated with extremist offending that need to be considered as part of a risk and needs assessment. 6. How to translate analysis of risk/protective factors and circumstances into conclusions about risk, and recommendations to inform decision making e.g., sentence management, interventions, release decisions etc. 7. How such assessments can be effectively reported. 8. Practice with three case studies'.
585 Ministry of Justice, 'The Structural Properties of the Extremism Risk Guidelines (ERG22+): a structured formulation tool for extremist offenders' (2019) 5.
586 See, for detailed discussion: M Lloyd and C Dean, 'The Development of Structured Guidelines for Assessing Risk in Extremist Offenders' (2015) 2 *Journal of Threat Assessment and Management* 1, 40-52, 45: 'In the ERG, the factors have been brigaded under three dimensions of Engagement, Intent and Capability that clarifies their relationship to risk as well as to need. Engagement replaced Beliefs and Motivation from the SRG. Engagement was a term emerging in the literature that reflected a commitment to ideology, group or cause, and feedback from assessors was that relevant beliefs could be adequately captured by the engagement factors. The three dimensions of the ERG are not derived therefore from statistical analysis but from a conceptual understanding of the functional distinction between engagement and intent and the self-evident relevance of capability to extremist offending. In line with Ajzen and Fishbein's theory of reasoned action we separated the original SRG factors that accounted for the individual's engagement with ideology or cause from those associated with a readiness to offend; the former constituting 'engagement' factors and the latter constituting 'intent' factors. This separation was broadly endorsed within two national exercises in which a total of 35 offender managers supervising extremist offenders were asked to place the original SRG factors along a pathway either side of a threshold that represented readiness to offend'.
587 Ibid, 47.

assessment is individualised to the offender: 'case formulation allows for the possibility that other factors not previously identified may emerge as significant in the individual case'.[588] It is evident, then, that the ERG22+ is focussed on *why* an individual offended; even as part of the final question – as to protecting the offender from offending in the future – there is no question of how 'radicalised' the individual is at this stage.

In summary, domain one is entitled 'Engagement' and it sets out the possible reasons why and circumstances in which a person engages in activity associated with terrorism. The factors include: the 'need to redress injustice', the 'need to defend against threats', issues with 'identity, meaning and belonging', a 'need for status', a desire for 'excitement, comradeship & adventure', a 'need to dominate others', 'susceptibility to indoctrination', 'political, moral motivation', 'opportunistic involvement', 'family and/or friends support extremism', 'transitional periods', 'group influence and control', and 'mental health issues'.[589] The Engagement dimension is described by the creators of the ERG22+ as reflecting 'a commitment to ideology, group or cause'.[590] Although this will be discussed fully in section 4.4 of this chapter, this stage of the ERG22+ reflects the early stages of the radicalisation process set out in the literature, but this is not acknowledged by the Government.

Second, there is the 'Intent' domain which seeks to inform the assessor about whether the individual intended to carry out an act of terrorism.[591] The dimension comprises factors such as: 'over-identification with group, cause or ideology', 'Us & Them thinking', 'dehumanisation of the enemy', 'attitudes that justify offending', 'harmful means to an end', and 'harmful end objectives'.[592] The creators of the ERG22+ acknowledge the importance of this second domain as it is used to distinguish between the degree of intent and engagement:[593] many individuals who are convicted under terrorism legislation 'are mostly convicted for offences that fall short of an act of violent terrorism',[594] whereas 'some have a

[588] Ibid, 49.
[589] Ibid, Figure 2: ERG22+ Dimensions and Factors.
[590] Ibid, 45: 'Engagement was a term emerging in the literature that reflected a commitment to ideology, group or cause, and feedback from assessors was that relevant beliefs could be adequately captured by the engagement factors. The three dimensions of the ERG are not derived therefore from statistical analysis but from a conceptual understanding of the functional distinction between engagement and intent and the self-evident relevance of capability to extremist offending'.
[591] Ibid, 42: 'It is self-evident that many individuals share extreme beliefs (are 'radicalised') but have no intention of carrying out an act of terrorism, and that is possible for someone who has carried out a terrorist act to desist from violence without relinquishing their ideology or cause'.
[592] Ibid, Figure 2: ERG22+ Dimensions and Factors.
[593] Ibid, 42.
[594] Ibid.

clear intent to offend that can be deduced from their actions'.[595] This distinction is important because it allows assessors to consider possible risk of harm, 'make sense of past offending and make judgments about possible future offending'.[596] Moreover: 'changes in engagement and intent may be expressed in terms of disengagement (the opposite of engagement) and/or desistance (the opposite of intent)'.

Finally, there is the category of 'Capability' which seeks to assist assessors in deciding if an individual is capable of causing harm. This domain consists of factors relating to the individual and their personal capabilities: 'Personal knowledge, skills and competencies', 'access to networks, funding, equipment', 'criminal history' and 'any other factor'.[597] Assessors must 'use their judgment to consider the role these factors played in the offence and could play in the future', as well as how to 'protect individuals from being drawn into future offending'.[598] The framework is not a 'tick-box' exercise and 'requires careful analysis of the individual push and pull factors and the context of the offending'.[599] The assessment is used to 'build credible hypotheses about risk and need' for the offender.[600] Conclusions are formulated in a written report and used to 'inform risk decisions and risk management strategies'.[601]

There is no direct reference to religion or Islam within the ERG22+, and this is because the framework is designed to assess risk from all forms of terrorism. However, a recent study (comparing its effectiveness with other frameworks) suggested that because the ERG22+ was 'developed on the limited international literature available at the time, and casework focussed on al-Qaeda inspired [Islamist] extremism',[602] it is therefore difficult to know how appropriate the ERG22+ is for use with other types of extremist offenders.[603] This also

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[595] Ibid.
[596] Ibid.
[597] Ibid, Figure 2: ERG22+ Dimensions and Factors; see also at 47: Any other factor' refers to factors that may come to light during the assessment that are not already listed. – 'The 22 ERG factors are consulted for their relevance, and the + suffix accommodates any other factor/s that appears relevant'.
[598] Ibid, 42.
[599] Ibid.
[600] Ibid.
[601] Ibid.
[602] M Lloyd, 'Extremism Risk Assessment: A Directory', Centre for Research and Evidence on Security Threats, 2019, 18.
[603] Ibid. As for other limitations of the framework: 'Information on reliability and validity not yet available. It has not been established that the factors in the ERG 22+ are either correlates or predictors of risk. Given the low base rate of extremist recidivism it may not be possible to validate their role for some time… As with all assessments, the ERG 22+ is dependent upon the accuracy and extent of the information used. Incomplete or unreliable information could limit the weight that can be placed on the ERG, or aspects of it. Remains the intellectual property of HMPPS, not available for casual use'.

underscores the importance of the ERG22+ – and the Prevent Duty more generally – for faith communities: the ERG22+ has only been used on religiously motivated offenders. However, 'further research and refinement is underway to ensure the ERG remains appropriate and responsive to different types of extremism, and different cohorts e.g., women and young people'.[604] It is evident, however, that the ERG22+ does not fully capture the radicalisation process itself; instead, the framework was designed to measure risk against the factors that lead an individual to offend, and how these can be interpreted to prevent that individual from offending again. Although these factors may support understandings of *why* an individual may offend (or re-offend), they provide little insight into the distinction between mainstream and radical Islam, and the religious radicalisation process more generally.

Second, there is the Vulnerability Assessment Framework.[605] Developed by the National Offender Management Service (NOMS), Channel and the police, the Vulnerability Assessment Framework was issued by the UK Government for use by Channel panels in identifying vulnerability to terrorism, and is used pre-conviction. As noted in Chapter Two, a Channel panel is required to take a multi-agency approach to Prevent referrals. In doing so, the panel must consult the Vulnerability Assessment Framework to guide decisions about an individual's potential vulnerability to terrorism. It is explicitly stated by the Government that the framework should not be treated as a conclusive means to determine the level of risk,[606] but should instead be used by the panel to assess whether the individual is a risk to themselves (they are vulnerable to radicalisation) or a risk to those around them (they are a terrorist risk).

The framework itself comprises the same three dimensions as the ERG22+: engagement, intent and capability.[607] Again, like the ERG22+, the Vulnerability Assessment Framework consists of 22 factors to be considered, and the Government states that each dimension must be considered independently of the others.[608] Therefore, the ERG22+ and the Vulnerability

[604] Ibid.
[605] HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 51, Annex C.
[606] Ibid.
[607] Ibid; see also: HM Government, 'Channel: Vulnerability assessment framework' (2012).
[608] Ibid, 2: 'The assessment framework involves three dimensions: engagement, intent and capability, which are considered separately'; see also: HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 58 [83]: 'The criteria are considered separately, as experience has shown that it is possible to be engaged without intending to cause harm, and that it is possible to intend to cause harm without being particularly engaged. Experience has also shown that it is possible to desist (stop intending to cause harm) without fully disengaging (remaining sympathetic to the cause), though losing sympathy with the cause (disengaging) will invariably result in desistance (loss of intent)'.

Assessment Framework are used in similar ways to assess risk. The Government also notes that there is no 'single route to terrorism' and no 'single profile of those who become terrorists',[609] and so the Vulnerability Assessment Framework should be used to source 'information required to make an appropriate assessment about vulnerability' and not to 'profile' individuals.[610] It is therefore not for Channel panel members to assume that any of the characteristics or experiences listed 'will necessarily lead to individuals becoming terrorists',[611] but it is implied that the Vulnerability Assessment Framework will provide insight for Channel panel members into the radicalisation process itself. Channel panel meetings should consider a case monthly and, in advance, an anonymised Vulnerability Assessment Framework 'should be circulated in full to panel members relevant to the case by the Channel Case Officer';[612] the panel members are expected to 'contribute their knowledge, experience and expertise' in light of the assessment information.[613]

The first dimension of the Vulnerability Assessment Framework is 'engagement' and this initial 'step' involves the individual's 'engagement with a group, cause or ideology'. Encouragingly, the Government implicitly references the work of Wiktorowicz – a leading radicalisation model scholar who will be revisited in section 4.4.2 below – by referring to the engagement factors as 'psychological hooks' that entice the individual towards supporting terrorism.[614] The Government explains that these so-called hooks 'include needs, susceptibilities, motivations and contextual influences and together map the individual pathway into terrorism'.[615] This includes: 'feelings of grievance and injustice'; 'feeling under threat'; 'a need for identity, meaning and belonging [and] status'; 'a desire for excitement and

[609] HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 58 [84].
[610] Ibid.
[611] Ibid.
[612] Ibid, 30 [103].
[613] Ibid; see also: 39 [132]: 'The Channel Case Officer is responsible for regularly liaising with the support provider(s), updating the VAF and for assessing progress. Where there is a live case or referrals presented for consideration, a Channel panel should be held monthly. The Channel Case Officer should update the vulnerability assessment every three months as a minimum, to ensure that the progress being made in supporting the individual is being captured. Vulnerability assessments should be reassessed more frequently to inform a key panel meeting, where the provision of support has reached a particular milestone, or there have been significant changes to circumstances or levels of risk'; see also: HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 52, Annex C: 'Completing a full assessment for all 22 factors requires thorough knowledge of the individual that may not be available at the point of the initial referral. However, there are a number of behaviours and other indicators that may indicate the presence of these factors'.
[614] HM Government, 'Channel: Vulnerability assessment framework' (2012) 2; see also: Wiktorowicz work on 'cognitive openings' (which make a person more receptive to radicalisation): Q Wiktorowicz, *Radical Islam Rising: Muslim Extremism in the West* (Rowman & Littlefield Publishers 2005).
[615] Ibid.

adventure [as well as] a need to dominate and control others'; '[a] susceptibility to indoctrination'; 'a desire for political or moral change [and] opportunistic involvement';[616] 'family and friends involvement in extremism';[617] 'being at a transitional time of life'; 'being influenced or controlled by a group'; and 'relevant mental health issues'. It appears that these factors relate to the non-violent extremism that the Government refers to in its Prevent Duty Guidance but does not sufficiently explain. Implicitly, then, it may be presumed – in light of stage one of the Vulnerability Assessment Framework – that by 'non-violent extremism' the Government is referring to worldviews or behaviours which align with extremist ideology but where no action has been taken by the individual towards committing an act of terrorism. As we shall see throughout section 4.3, these non-violent factors are common to all the worldviews of Islam but do not necessarily indicate a desire to engage in terrorist activity. It is appropriate, then, for the Government to sufficiently define – and refer to – non-violent extremism in this context. As we shall see, at present, the first dimension of the Vulnerability Assessment Framework only implicitly captures the initial stages of the radicalisation process as portrayed by the literature. This is because, common to both the ERG22+ and the Vulnerability Assessment Framework, there is no explicit reference towards Islam or to religion. This is significant because the Government has stated explicitly, in its guidance on the subject, that Islam is central to its understanding of radicalisation, extremism and terrorism.

The second dimension of the Vulnerability Assessment Framework – intent – refers to the intention of the individual to 'cause harm'.[618] The Government explains that 'not all those who become engaged by a group, cause or ideology go on to develop an intention to cause harm'[619] and, because of this, the second dimension must be considered separately by the

[616] Involvement or links with extremist groups refers to: HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 58 [85-86]: 'Association with organisations that are not proscribed is not, on its own, reason enough to justify a Prevent referral. If professionals at a local level determine that someone attracted to the ideology of such groups also exhibits additional behavioural indicators that suggest they are moving towards terrorism, then it would be appropriate to make a referral. It would be the presence of additional behavioural indicators that would inform whether a referral should be made and considered for adoption at Channel. Association with or support for a proscribed group is a criminal offence. It may be appropriate in some cases for individuals believed to be on the periphery of proscribed organisations to be referred to Prevent to offer support. Professionals at a local level should contact the police where there are concerns that a proscription offence may have been committed. Where these concerns come to light within Channel panel discussions, it is the role of the CTCO to escalate them'; see also: Terrorism Act 2000, ss 11-13 for criminal offences involving belonging to, supporting, or displaying support for a proscribed organisations.
[617] See, for additional work on this: M Sageman, *Leaderless Jihad: Terror Networks in the Twenty-First Century* (University of Pennsylvania Press 2008).
[618]HM Government, 'Channel: Vulnerability assessment framework' (2012) 3.
[619] Ibid.

Channel panel.[620] The factors listed 'describe the mindset that is associated with a readiness to use violence' and can include: 'over-identification with a group or ideology'; '"them vs us" thinking'; 'dehumanisation of the enemy'; 'attitudes that justify offending'; 'harmful means to an end'; and 'harmful objectives'.[621] As we shall see, many of these factors represent the middle stages of the radicalisation process as portrayed by the literature, but are not explicitly referred to as such.

The third – and final – dimension deals with the individual's capability to cause harm.[622] The criminal law understands intent as the subjective state of mind (*mens rea)* that accompanies the criminal act *(actus reus).* An individual must have both intent and capability to carry out the act. 'Harm', in this context, refers to 'self, others or the wider public'.[623] At this stage, the Government acknowledges that 'not all those who have a wish to cause harm on behalf of a group, cause or ideology are capable of doing so [because] plots to cause widespread damage take a high level of personal capability, resources and networking to be successful'.[624] Therefore, Channel panels are expected to not only identify what the individual intends to do, but evaluate whether they are in fact capable of doing it.[625] Factors that the panel are required to consider include the individual's 'knowledge, skills and competencies', their 'access to networks, funding or equipment' and their overall 'criminal capability'.[626] The UK Government, through the Vulnerability Assessment Framework, states that any individual referred to a Channel panel who has a history of violence, crime or involvement with criminal networks should be observed as having the capability to cause harm.[627] This means that any individual who has had any past involvement with terrorism would be considered to be capable of causing harm, even if they were a child at the time.

It is clear, through an exploration of the radicalisation assessment frameworks, that although the ERG22+ and the Vulnerability Assessment Framework are not designed to identify the stages of the radicalisation process, they do so implicitly. These frameworks also indicate an

[620] Ibid.
[621] Ibid.
[622] HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 58 [82].
[623] Ibid, footnote 21: 'Harm' also 'incorporates escalation towards non-violent terrorism-related offences (as per the breadth of the UK's terrorism legislation), in addition to plans or attempts to commit any relevant acts of violence'.
[624] HM Government, 'Channel: Vulnerability assessment framework' (2012) 3.
[625] Ibid.
[626] Ibid.
[627] HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 51: Annex C.

inconsistency as to how the Government frames the threat from terrorism; the frameworks do not deal specifically with Islam, whereas all other Government guidance in this area does. This indicates that either the UK Government perceives the threat from terrorism to be much wider than Islamist terrorism, or – more likely – that there is an inconsistency as to how specified authorities and Channel panels operate: specified authorities are actively looking for signs of Islamist radicalisation, whereas Channel panels are dealing with radicalisation on a far more general scale. The potential impact that this could have on faith communities is clear: neither specified authorities nor Channel panels are provided with any guidance as to how to distinguish between radical and mainstream Islam. This underscores the importance of the religious dimension of the Prevent Duty for faith communities: with no real understanding of radical Islam, the stigmatisation of Muslim communities will continue to be perpetrated by those misinformed by Government guidance on the subject.

The Government has also neglected to describe the role of the radicaliser within these frameworks; that is, the individual – usually working with a terrorist group or organisation – who radicalises another individual. As we shall see (section 4.4.), the literature states that the role of the radicaliser is important to understanding the radicalisation process itself. The following section, therefore, will evaluate the extent to which the Government sufficiently explains the role of the radicaliser. In doing so, the section will look at areas of both 'hard' and 'soft' law not yet touched upon by this thesis, but which are exceptions to the general Government guidance which does not deal in much detail with the motive of the radicaliser and their role in the radicalisation process.

4.2.3 The radicaliser

As we saw in Chapter Two, to 'radicalise' another individual is not a statutory offence under UK law. There are, of course, the offences related to the glorification of terrorism – which include the encouragement of terrorism – and these may be framed, implicitly, as criminalising the act of 'radicalising'. However, the law has not yet recognised these as such. For the purpose of this sub-section, then, which will explore the neglected role of the radicaliser in the radicalisation process, two areas of law – one 'hard' law, one 'soft' law guidance – will be explored. Throughout, the extent to which the Government recognises the significance of the role of the radicaliser – and in what contexts – will be evaluated; the implications of this on faith communities will be commented on where appropriate.

Perhaps the only other statutory provision which could be framed as dealing with the act of radicalising is section 12 of the Terrorism Act 2000. This provision deals with low-level radicalisation and non-violent extremism in the form of 'reckless' expressions of support for proscribed organisations, which are prohibited by the Act: 'A person commits an offence if the person expresses an opinion or belief that is supportive of a proscribed organisation [and] in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation'.[628] This, it appears, represents the radicaliser and the radicalised individual. Section 12 of the Act, then, may be said to implicitly create the criminal offence of radicalisation, but it is important to note that this has not been explicitly recognised by the Government. Importantly, it is also an offence if the individual 'arranges, manages or assists in arranging or managing a meeting' to support, further the activities of, or to be addressed by a proscribed organisation.[629] It is a defence – when committing an offence under subsection 12 – if the individual can prove that they had 'no reasonable cause to believe that the address [mentioned above] would support a proscribed organisation to further its activities'.[630] A meeting must be in person and does not consist of any other communication between a radicaliser to the radicalised individual. The extent to which the offence may deal with radicalisers is limited, therefore, in two ways; first, most radicalisers knowingly support – and are part of – proscribed organisations; second, many radicalisers communicate with radicalised individuals over the internet.[631]

Section 12 differs from the offence of encouragement as previously introduced, and involves expressions of, and behaviours that indicate, support rather than direct encouragement. Rather than criminalising the role of the radicaliser, then, this provision perhaps illustrates the difficulty in distinguishing between violent and non-violent extremism; as stated – and as we shall see – radicalisers are often considered to be fully aware of their involvement with terrorist organisations and to be knowingly encouraging others to engage with terrorism. In light of this, section 12 may not deal with radicalisation at all; instead, it may be considered

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[628] Terrorism Act 2000, s 12(1A) (amended by the Counter-Terrorism and Border Security Act 2019, s.1).

[629] Ibid, s 12(2)(a)-(c): 'A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is – (a) to support a proscribed organisation, (b) to further the activities of a proscribed organisation, or (c) to be addressed by a person who belongs or professes to belong to a proscribed organisation'.

[630] Ibid, s 12(4): 'Where a person is charged with an offence under subsection (2)(c) in respect of a private meeting it is a defence for him to prove that he had no reasonable cause to believe that the address mentioned in subsection (2)(c) would support a proscribed organisation or further its activities'; see also: s. 12(2)(c) for relevant offence.

[631] Ministry of Justice, 'Internet and radicalisation pathways: technological advances, relevance of mental health and role of attackers' (2022).

to define and criminalise non-violent extremism. Put simply, an offender caught by section 12 would have no known involvement with a terrorist organisation, but would have expressed beliefs which align with one: an individual who is unlikely to be fully aware of their involvement in terrorism, as opposed to a violent extremist who would be. In this instance, it is difficult to draw the line between the radicaliser and the radicalised individual – it appears unlikely that an individual who only recklessly encourages terrorism could be described as a 'radicaliser'. It is therefore worth questioning, in light of this provision, whether activity only amounts to violent extremism when the radicalised individual is *aware* that they are working with a proscribed organisation – at this stage, they could be described as a radicaliser, but not before. For this reason, it is likely that the offence of encouragement would be better suited to criminalise the act of purposefully radicalising another indivdiual. It may be inferred that whether the radicaliser goes on to commit an act of terrorism or not is immaterial – the radicaliser holds views that are inherently violent simply because, through encouraging others, they are doing so with the intention of inciting violence. Therefore, this provision highlights not only the difficulty in distinguishing the roles of the radicaliser and the radicalised individual – of the violent and non-violent extremist – but underlines how important it is that the Government distinguishes between the two. The law, at present, does not sufficiently describe the radicalisation process; at present, there is an insufficient distinction made between the radicaliser and the radicalised individual.

In light of this, section 12 also underlines the importance of the Prevent Duty – and the need for clear and appropriate definitions – for faith communities. As we have seen, the UK Government has ensured that specified authorities are encouraged to look specifically for potential Islamist terrorists. However, whether specified authorities are adequately equipped to do so is another matter entirely: without sufficient definitions – and without clear distinctions drawn between radical and mainstream Islam, and non-violent and violent extremism – the ordinary manifestation of faith may be perceived to be dangerous. As we shall see in section 4.3, the Government fail to recognise that extremism is often motivated by extreme scriptural interpretation. This means that many of the concepts that drive Islamist terrorists also feature in the daily lives of mainstream Muslims. As noted, this will be discussed later in this chapter; for now, it underscores further the extent to which the Prevent Duty – and its representation of Islam – is of importance to faith communities.

To further establish what religious radicalism means, and to more appropriately guide specified authorities in their discharge of the Prevent Duty, the UK Government has also

provided limited sector-specific 'soft' law guidance on radicalisation which deals specifically with the role of the radicaliser. This guidance, as stated, can be described as the exception to the rule – it is rare for the guidance which supplements the Prevent Duty to deal directly with the role of the radicaliser. The Government has provided a list of 'factors and characteristics associated with being susceptible to radicalisation' in the guidance for schools.[632] Importantly, although this guidance explains the reasons why an individual – in this case, a child – may become radicalised, it also deals explicitly with the actions of the radicaliser themselves. As explained, this particular guidance is directed towards schools, but this is not arbitrary: the Education sector saw the highest number of Prevent programme referrals between 2022-23,[633] with the average age of the child referred being 17 years-old.[634] It is appropriate, therefore, for the Education sector to be provided with detailed guidance on the radicalisation process. The extent to which the Government achieves this will be evaluated below.

What is particularly significant about this guidance is that – as noted – no other sector has been provided with advice relating to identifying the signs of radicalisation; that is, the Government has implicitly recognised the gravity of the task of teachers to detect whether school children are candidates to become violent extremists by providing them with more detailed guidance. It may be considered odd, then, that the focus of the Government in this guidance is of equal parts on the children who are being radicalised as it is on the adults who are doing the radicalising. To some extent, it may be suggested that the Government focus *more* on the children in this scenario; for example, there is no element of the Vulnerability Assessment Framework which urges Channel panels to identify whether an individual is engaging in the radicalisation of another. The school guidance also provides no definition of religious radicalisation; it is therefore presumed that the definition of 'radicalisation' provided by the Prevent Duty Guidance is to be relied upon. Instead, the guidance includes a list of 'push' factors which relate to the behaviour of the radicalised individual, and 'pull'

[632] See, for example: Department for Education, 'Guidance: Understanding and identifying radicalisation risk in your education setting' (2022) (note: applies only to England).
[633] Home Office, 'Individuals referred to and supported through the Prevent Programme, April 2021 to March 2022' (2023) [2.1]: 'The year ending 31 March 2022 saw the highest proportion of referrals received from the Education sector since comparable data are available. This marks an increase compared to year ending March 2021, where referrals from the Education sector were at their lowest proportion (1,221 of 4,915; 25%) since comparable data are available, and the only reporting period where Education referrals accounted for less than 30% of all referrals. The public health restrictions in place during the COVID-19 pandemic likely contributed to the decreased proportion of Education referrals in the previous reporting period. The Education sector has accounted for 32% of all referrals since the year ending March 2016'.
[634] Ibid, [3.2]. The youngest median age being referred from the Education sector was 14 years.

factors which deal with the role of the radicaliser.[635] As addressed throughout this section, the Prevent Duty Guidance and the CONTEST Strategy do not define the stages of the radicalisation process, and although the radicalisation assessment frameworks do so implicitly, this is insufficient.

As we have seen, the Government has been largely ambiguous as to the role of the radicaliser in the radicalisation process. It is therefore encouraging to see the role of the radicaliser acknowledged by the Government in the school guidance – it implies an understanding that individuals, particularly children, do not often engage with extremism or terrorism of their own volition; children are often encouraged – or, perhaps, groomed – by a radicaliser. Despite this, the word 'radicaliser' is not used within the guidance; instead, the Government refer to the 'extremist or terrorist group, organisation or individual'.[636] The role of children in the radicalisation process will be discussed further in Chapter Five; however, it is important to note here that the 'push' factors describe the child as exhibiting signs of being a violent extremist. These include: the child feeling 'isolated' and expressing feelings that 'they do not belong or have [a] purpose'; the child may have 'low self-esteem' and unmet aspirations.[637] They may feel 'anger or frustration; a sense of injustice; [or be] confused about life'.[638] The child may have 'real or perceived personal grievances'.[639] These push factors are vague and could relate to many harms that a child may be subjected to, both within and outside the religious radicalisation context;[640] they are not specific to Islamist terrorism. Despite this, these factors do provide some indication of how a radicalised individual may behave. It is the responsibility of the Government, however, to ensure that specified authorities are equipped to distinguish radicalisation from other harms that children may be subjected to. Although not the responsibility of faith communities on a legal basis, this again underscores the importance of the Prevent Duty to them: specified authorities – in this instance, teachers – are provided with no support as to identifying the signs of *religious* radicalisation.

The 'pull' factors listed in the school guidance refer to what the 'extremist or terrorist group, organisation or individual' may do. Although there is no explicit reference to a 'radicaliser' here, it is presumed that this is who the Government is referring to: they may offer 'a sense of

[635] Department for Education, 'Guidance: Understanding and identifying radicalisation risk in your education setting' (2022).
[636] Ibid.
[637] Ibid.
[638] Ibid..
[639] Ibid.
[640] This will be discussed fully throughout Chapter Five and Six.

community and a support network', promise 'fulfilment or excitement' and make 'the child, young person or adult… feel special and part of a wider mission'.[641] The individual may offer a 'very narrow, manipulated version of an identity that often supports stereotypical gender norms' and offer 'inaccurate answers or falsehoods to grievances'.[642] The individual may be in support of 'conspiracy theories' or possess an 'us vs them' mentality.[643] In doing so, they may place the blame on 'specific communities' for grievances the target may have, and they may encourage 'the use of hatred and violent actions to get justice' by 'encouraging ideas of supremacy'.[644] It is evident that many of the 'pull' factors are far more closely correlated to engagement with extremism. For example, we are told that the radicaliser will prey on their individual's 'push' factors – their vulnerabilities, perhaps – to engage the individual with extremist ideology and the radicalisation process. However, it must be recognised that there is still no mention of religion. What is particularly striking is the similarity of many of these 'pull' factors with other criminal behaviours.[645] For example, when an adult grooms a child – particularly in the context of sexual exploitation – there is always an aspect of exchange between groomer and victim – this may be tangible or intangible; for example, the adult may give the child gifts or money, or offer a sense of belonging.[646] In the context of the religious radicalisation of children, we are told that the radicaliser often uses the individual's pre-existing vulnerabilities to manipulate the individual: they may promise 'fulfilment or excitement' and make the individual 'feel special and part of a wider mission'.[647] For now, it is important to note that the Government is yet to recognise the similarity in language

[641] Department for Education, 'Guidance: Understanding and identifying radicalisation risk in your education setting' (2022).
[642] Ibid.
[643] Ibid.
[644] Ibid.
[645] See Chapter Six of this thesis for full discussion.
[646] Department for Education, 'Child sexual exploitation: Definition and a guide for practitioners, local leaders and decision makers working to protect children from child sexual exploitation' (2017) 6: 'One of the key factors found in most cases of child sexual exploitation is the presence of some form of exchange (sexual activity in return for something); for the victim and/or perpetrator or facilitator. Where it is the victim who is offered, promised or given something they need or want, the exchange can include both tangible (such as money, drugs or alcohol) and intangible rewards (such as status, protection or perceived receipt of love or affection). It is critical to remember the unequal power dynamic within which this exchange occurs and to remember that the receipt of something by a child/young person does not make them any less of a victim. It is also important to note that the prevention of something negative can also fulfil the requirement for exchange, for example a child who engages in sexual activity to stop someone carrying out a threat to harm his/her family. Whilst there can be gifts or treats involved in other forms of sexual abuse (e.g a father who sexually abuses but also buys the child toys) it is most likely referred to as child sexual exploitation if the 'exchange', as the core dynamic at play, results in financial gain for or enhanced status of, the perpetrator'.
[647] Department for Education, 'Guidance: Understanding and identifying radicalisation risk in your education setting' (2022).

between descriptions of the radicalisation process and the grooming of children; this will be explored fully in Chapter Six of this thesis.

To summarise, this section has set out the Government guidance which supports specified authorities in the discharge of the statutory Prevent Duty. The section began by describing, specifically, the definition of 'Islamist terrorism' under the CONTEST Strategy and the definitions of 'radicalisation', 'extremism', and 'non-violent extremism' under the Prevent Duty Guidance. Second, the section explained and explored the extent to which the Government has identified the stages of the radicalisation process through the various radicalisation assessment frameworks which are used pre- and post-offence. Finally, the section has explored the extent to which the Government recognises the role of the radicaliser in the radicalisation process in the context of children. This section has drawn two conclusions: first, that Islamist terrorism has not been sufficiently defined by the Government in guidance on the subject; second, that the stages of the radicalisation process have not been fully captured by the Government in neither the guidance nor the assessment frameworks. Throughout, the section has explored what this means for faith communities.

The following sections of this chapter will explore these findings as case studies in light of the abundant literature on the subject from the fields of psychology, political science and social science. First, as to what Islamist terrorism means, and whether the Government has sufficiently captured this in light of the literature; second, as to what the stages of the religious radicalisation process are – as described by the literature – and, again, whether the Government has adequately addressed this. Throughout, the importance of this to faith communities will be explored.

4.3 Islamist terrorism

As we have seen in the previous section, the Government defines 'Islamist terrorism' by reference to violence, and by reference to the ideology of *Salafi-Jihadism*. However, importantly, the Government does not define *Salafi-Jihadism* itself, meaning that it fails to sufficiently capture what it means to be an Islamist terrorist – or even a follower of radical Islam. Indeed, the literature on this subject – particularly from the fields of psychology, political science and social science – is abundant, and focusses on the mindset of the religious extremist as they move through the radicalisation process, seeking to identify *how* an individual comes to commit an act of, for example, Islamist terrorism. For the purposes of this section, the individual who is being radicalised – or who is considered susceptible to

radicalisation – will again be referred to as the 'radicalised individual'; a great deal of the literature focusses on the behaviour of the radicalised individual. As we shall also see throughout the following sections, the literature views faith communities as an integral part of the radicalisation process.

This section, therefore, will begin by describing the literature which focuses on the radical individual themselves and on the meaning of 'radical'. As noted in the previous section, the Government does not sufficiently describe the radicalised individual nor their worldview. The section will then explore how the literature distinguishes between a violent – and non-violent – extremist; again, as explained, the Government does not sufficiently capture this distinction in its guidance on the subject. Leading on from this, the section will explore both the meaning of Islamist terrorism and the ideology that underpins it – *Salafi-Jihadism* – through the lens of the literature. As explained in the introduction to this chapter, is useful to examine the literature in this area because it highlights the clear disconnection between how the government-issued guidance describes Islamist terrorism – and radicalism in general – and what the literature states. Throughout, the section will continue to explore the importance of the Prevent Duty to faith communities.

4.3.1 The radical individual

In light of insufficient Government guidance on the subject, it is appropriate to begin this section by explaining how the literature describes the radicalised individual as they embark upon their radicalisation journey. As we saw, the UK Government's definition of Islamist terrorism provides no insight into the radical individual's psychological state – both during and before they begin their journey towards terrorism. The literature, however, has much to say about this, and this sub-section will illustrate, first, the extent to which the Government's definition of Islamist terrorism is insufficient and, second, the importance of this for faith communities.

McCauley and Moskalenko describe the radicalised individual as someone who undergoes a substantial change in their belief system, feelings and behaviour in the direction of increased support for political conflict.[648] It is important to note that this sentiment is also mirrored in Wilkinson's work, who suggests that, to some degree, an individual's susceptibility to

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[648] C McCauley, S Moskalenko, 'Mechanisms of Political Radicalisation: Pathways Toward Terrorism' (2008) 20 *Journal of Terrorism and Political Violence* 3, 415-433, which discusses the various paths towards radicalisation. In particular, see: 421-422. Of note, a distinction is made between activism and radicalism.

radicalisation is related to scriptural interpretation.[649] Importantly, Bailey and Edwards note that the word 'radical' itself has been used 'to describe those agitating for democracy against despotism' for some time now.[650] Therefore, the word 'radical', the literature reveals, is a relatively subjective term and is not as negative as media representations of radicalism imply.[651] It is important, then, for this section to set out not only the history of the word radical, but also to describe how the term is understood by the literature today; this will exemplify further the inconsistencies between government guidance on radicalism and what the literature states.

The word 'radical', etymologically, is derived from the word 'root' (Latin: *radix*, root), and its genitive 'of or having roots' (*radicalis*).[652] 'Radical', therefore, translates to 'going to the origin, essential'.[653] As an adjective, and in the political context, the word 'radical' was first used to describe a desire for reform: '[the desire for] change from the roots' in 1786.[654] The word was used, for example, to describe the more extreme division of the British Liberal

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[649] M Wilkinson, *The Genealogy of Terror* (Routledge 2019) 73.
[650] G Bailey, P Edwards, 'Rethinking "Radicalisation": Microradicalisations and Reciprocal Radicalisation as an Intertwined Process' (2017) 10 *Journal for Deradicalisation* 2, 255-281, 259: 'he Oxford English Dictionary's earliest use of 'radical' dates from the 1830s, when it was applied to American political groups that favoured democracy and opposed slavery. More generally, radicalism-literally going to the root, a 'rip it up and start again' approach of fundamental change-has been ascribed to suffragettes (although not suffragists), Martin Luther King, Nelson Mandela, Margaret Thatcher, and retrospectively to Jesus, Copernicus, Mohammed and Thomas Paine. Whether in goal or methods, radicalism implies that there is enough of a contradiction between two viewpoints that politics as usual will not suffice. The history of the re-categorising of Mandela, for example-from terrorist to radical and thence to secular saint demonstrates that such definitions are contingent on the cultural and historical context'. Bailey and Edwards reference the work of Schmid, here – see: A Schmid, 'Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review' (2013) *International Centre for Counter-Terrorism – The Hague*, 5-8 which looks at the historical meaning of 'radical' in the context of radicalisation. The paper suggests that 'based on the history of political ideas, the concept of 'radicalism' might, in the view of this writer, usefully be described in terms of two main elements reflecting thought/attitude and action/behaviour respectively: 1. Advocating sweeping political change, based on a conviction that the status quo is unacceptable while at the same time a fundamentally different alternative appears to be available to the radical; 2. The means advocated to bring about the system-transforming radical solution for government and society can be non-violent and democratic (through persuasion and reform) or violent and non-democratic (through coercion and revolution). Radicals then are not per se violent and while they might share certain characteristics (e.g. alienation from the state, anger over a country's foreign policy, feelings of discrimination) with (violent) extremists, there are also important differences (such as regarding the willingness to engage in critical thinking). It does not follow that a radical attitude must result in violent behaviour – a finding well established by decades of research'.
[651] Ibid, 259. Bailey and Edwards use the example of Nelson Mandela to illustrate this, arguing that Mandela was recategorised 'from terrorist to radical and thence to secular saint' in his lifetime.
[652] 'Radical', *Online Etymology Dictionary*. Available online at: <https://www.etymonline.com/search?q=radical> Last Accessed: 5 November 2018.
[653] Ibid.
[654] Between 1796 and 1803, government spies found evidence of revolutionary conspiracy amongst underground radicals. See, for general discussion: E Evans, *The Birth of Modern Britain, 1780-1914* (Longman 1997); see also: E Evans, *Parliamentary Reform in Britain, c 1770-1918* (Routledge 1999).

Party.[655] More recently, 'radical' was defined by the *Oxford English Dictionary* as the act of 'believing or expressing a belief that there should be extreme social or political change'.[656] 'Radical', therefore, is diverse, and currently carries four definitions across the fields of politics, linguistics, chemistry and mathematics. However, although 'radical' has its use across disciplines, it is argued that the word has become specialised to politics: 'A person who advocates thorough or complete political or social reform; a member of a political party or part of a party pursuing such aims'.[657]

In terms of its relevancy for faith communities, over the past twenty years or so, the word 'radical' has become increasingly associated with religion and, in particular, with Islamist terrorism. As Nash writes, of the previously listed government-issued definitions which deal with religiously motivated terrorism: '[these] political definitions beget concept drift and mission creep. The clearest indication of this is that policy-makers have settled in a vain war with abstract nouns like "extremism", "hate", "Islamism", "racism" and "terror"'; he continues to explain that English law has, so far, been unsuccessful in 'wiping out these evils', but that this is unsurprising: 'up to 80 per cent of everyday human expression would be considered outrageous if encountered out of context', he explains.[658] As we have seen, there exists a growing moral panic surrounding Islam,[659] and media representations of Islam post-9/11 demonstrate that this panic continues: for some, Islam is perceived to be an inherently dangerous faith and is now directly associated with terrorism.[660] To exemplify this, 'radical Islam' became the most frequent use of the adjective between the years of 1990 and 2010.[661] Throughout the early 2000s, therefore, to be described as a 'radical' was both

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[655] In the 19th and early 20th centuries, the 'Liberal Party' was one of the two main parties opposing the Conservative Government – an alliance of Whigs and free trade Peelites. The 'radicals' of the group were those in support of the American and French Revolutions of the 1850s. The Liberal party passed the welfare reforms that created the basis of the welfare state in Britain.

[656] *Oxford English Dictionary*.

[657] *Oxford English Dictionary:* The political definition 'is a person who advocates thorough or complete political or social reform; a member of a political party or part of a party pursuing such aims'. Within the scope of linguistics, radical is 'any of the root letters that form a base word'. As for chemistry, it is 'a group of atoms behaving as a unit in a number of compounds'. Finally, in terms of mathematics: 'a quantity forming or expressed as the root of another'.

[658] P Nash, *British Islam and English Law: A Classical Pluralist Perspective* (Cambridge University Press 2022) 3.

[659] See, for discussion of moral panics: S Cohen, *Folk Devils and Moral Panics* (Taylor & Francis 2011).

[660] K Moore, P Mason, J Lewis, 'Images of Islam in the UK: The Representation of British Muslims in the National Print News Media 2000-2008' (Cardiff School of Journalism, Media and Cultural Studies 2008). Available online at: <http://orca.cf.ac.uk/53005/1/08channel4-dispatches.pdf> Last Accessed: 26 January 2019; see also: M Lianos, *Dangerous Others, Insecure Societies: Fear and Social Division* (Routledge 2016); see also: J A Piazza, 'Is Islamic Terrorism More Dangerous?: An Empirical Study of Group Ideology, Organisation, and Goal Structure' (2009) 21 *Journal of Terrorism and Political Violence*.

[661] D Mohanned, 'Radical' (2014) *Lexiculture: Papers on English Words and Culture*. Available online at: < https://glossographia.wordpress.com/2014/03/14/lexiculture-radical/> Last Accessed: 4 December 2018.

explicitly linked with religion and an undesirable trait: a 2008 study uncovered that ‘negative assessments [of British Muslims were] particularly prominent in [UK] tabloids’ at the time; and that ‘negative assessments of Islam [outnumbered] positive assessments by more than one to four’.[662] Again, this underscores the importance of the Prevent Duty to faith communities: because ‘radical Islam’ remains undefined in ‘hard’ law, and – as we have seen – there has been no attempt to morally neutralise the term by the Government through providing a clear definition of the term as part of the Prevent Duty, which is not used to challenge the stigmatisation of Islam due to its association with radicalism and terrorism.

According to Wilkinson, an explicit distinction between the various manifestations of Islam is crucial, particularly when dealing with terrorism: ‘on the surface, all [manifestations] look and sound Islamic and yet, in reality are very different and have their own distinguishing characteristics’.[663] This important commentary demonstrates the impact of the UK Government’s failure to distinguish appropriately between the various forms and worldviews of Islam. As Wilkinson explains:

> ‘Governments and think tanks have tended to address the “How to respond?” question without understanding in sufficient depth or detail what it is they are addressing. No one has, as yet, provided a systematic and philosophically robust account of the similarities and crucial differences between Mainstream Islam, Ideological Islam, Non-Violent Islamist Extremism and Violent Islamist extremism’.[664]

It is undoubtable, then, that Wilkinson’s account of the different manifestations of Islam would be invaluable to the Government. This important work demonstrates how religious radicalisation – and the Prevent Duty – is very much of importance to faith communities in England and Wales.

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[662] K Moore, P Mason, J Lewis, ‘Images of Islam in the UK: The Representation of British Muslims in the National Print News Media 2000-2008’ (Cardiff School of Journalism, Media and Cultural Studies 2008). Available online at: <http://orca.cf.ac.uk/53005/1/08channel4-dispatches.pdf> Last Accessed: 26 January 2019; see also: S Poole, ‘What does “radical” actually mean? Well it depends who you ask...’ *The Guardian* 23 October 2015; see also: A Fitzgerald, ‘Being labelled as a “radical” is meant to be an insult. History tells us otherwise’ *The Guardian* 20 January 2014.

[663] M Wilkinson, *The Genealogy of Terror* (Routledge 2019) 52; see also: 52-53: The worldviews are, according to Wilkinson: ‘Traditional Islam, which falls within the general category of Mainstream Islam’; ‘Activist Islam, which falls at the intersection of Mainstream Islam and Islamism’; ‘Ideological Islamism, which falls within the category of Islamism’; ‘Non-violent Islamist Extremism, which falls at the intersection of Islamism and Islamist Extremism’; and ‘Violent Islamist Extremism, which falls within the category of Islamist Extremism’.

[664] Ibid, 4.

In a broader sense, and in relation to the wider significance of defining terms such as 'religion', Sandberg suggests that definitions are absolutely essential in law, but that there has 'never been a universal definition [of religion] in English law', despite there being a number of definitions 'in relation to religion and belief'.[665] Edge explains: 'to refer to "the" legal definition of religion can be misleading';[666] defining religion, he suggests, depends entirely on the wider context: 'there is no reason why a statute intended to protect individuals from being victimised because of their membership of a religious group should be interpreted in exactly the same way as a statute intended to provide fiscal benefits from the State for bodies doing socially useful work'.[667] In the context of individuals, then, defining the word 'religious' allows us to classify them: 'acts of inclusion and exclusion have political, economic and social effects' and 'this applies even where there is no explicit definition'.[668] As Sandberg explains: 'defining religion is, therefore, "an exercise of power" which can have serious repercussions'.[669] This also applies to defining religion by reference to negative classifications: in terms of its implicit definition, 'radical Islam' indisputably leads to a direct association between Islam and terrorism. This underlines the importance of the Prevent Duty to faith communities: with no definition provided by the UK Government of radical Islam, the phrase has become almost interchangeable with 'radical *religion'*. This, in turn, has become directly associated with Islam; there is rarely any discussion of radical Christianity, for example, in media headlines that sensationalise terrorism, despite the emergence of new international terrorist threats that are motivated by Christianity.[670] As we have already seen, the lack of definition of radical Islam – and Islamist terrorism – also impacts faith communities due to the negative association of terrorism and Islam.

It is evident that the negative classification of – and moral panic surrounding – Islam has only been exacerbated by media representations in the UK: 'the print news media is one site

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[665] R Sandberg, 'Clarifying the Definition of Religion Under English Law: The Need for a Universal Definition' (2018) 20 *Ecclesiastical Law Journal* 2, 132-157, 132.
[666] P W Edge, *Religion and Law: An Introduction* (Ashgate 2006) 28.
[667] Ibid.
[668] Ibid; see also: P W Edge, *Legal Responses to Religious Difference* (Kluwer Law 2002); R Sandberg, 'Clarifying the Definition of Religion Under English Law: The Need for a Universal Definition' (2018) 20 *Ecclesiastical Law Journal* 2, 132-157.
[669] R Sandberg, 'Clarifying the Definition of Religion Under English Law: The Need for a Universal Definition' (2018) 20 *Ecclesiastical Law Journal* 2, 132-157, 133; citing A Aldridge, *Religion in the Contemporary World: a sociological introduction* (3rd edn, Oxford 2013) 22; see also: P Edge, 'Determining religion in English courts' (2012) 1 *Oxford Journal of Law and Religion* 2, 402–423.
[670] J Hinchliffe, 'Wieambilla shootings labelled Australia's first Christian terrorist attack' *The Guardian* 16 February 2023.

of representation through which ideas about Muslims in Britain are constructed'.[671] Since 9/11, journalists have used the phrase 'radical Islam' to intentionally evoke unease: between the years 2000 and 2008, negative news stories about Muslims have increased, 'partly explained by the [devotion] to terrorism and terrorism related stories'.[672] As a result, a third of stories about British Muslims were about terrorism.[673] Stories post-2008 have continued to focus on 'Muslims as a threat (in relation to terrorism), a problem (in terms of their difference in values) or both (Muslim extremism in general)'.[674] Through the Prevent Duty Guidance and CONTEST, the UK Government had the opportunity to challenge media representations of Islam through distinguishing between radical and mainstream Islam; however, as we saw, the definitions provided in the context of the Prevent Duty do not achieve this.

It is proposed, then, that the insufficient definition of Islamist terrorism is significant for faith communities because it has implicitly contributed to the Islamophobia facing British Muslims at the hands of the media. Therefore, the Prevent Duty is important for faith communities to the extent that the Duty does little to challenge negative depictions of Islam. It is clear that there is insufficient clarity in the law as to how individuals become radicalised to support and engage in terrorism, and it remains unclear what religious radicalism looks like in the context of the Prevent Duty because the UK Government have so far failed to accurately define it. As for radical Islam itself, it may be inferred that the Government is in fact relying on media representations and implicit definitions of the term to further sensationalise terrorism; as discussed above, this has the potential for great harm, and this harm has materialised as Islamophobia and the moral panic surrounding Islam. There are therefore growing concerns that the Prevent Duty actively stigmatises the Muslim community, and this underscores the extent to which the Prevent Duty is of increasing importance to faith communities. This is

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[671] K Moore, P Mason, J Lewis, 'Images of Islam in the UK: The Representation of British Muslims in the National Print News Media 2000-2008' (Cardiff School of Journalism, Media and Cultural Studies 2008). Available online at: <http://orca.cf.ac.uk/53005/1/08channel4-dispatches.pdf> Last Accessed: 26 January 2019; see also: J E Richardson, *(Mis)Representing Islam: The Racism and Rhetoric of British Broadsheet Newspapers* (John Benjamins 2004): the persuasive technique of journalism also includes expressions of opinion which are 'embedded in argumentation that makes them more or less defensible, reasonable, justifiable or legitimate as conclusions'.

[672] Ibid; see also C Allen, J Nielson, *Summary Report on Islamophobia in the EU After 11 September 2001* (European Monitoring Centre on Racism and Xenophobia 2002); see also: L Fekete, *Integration, Islamophobia and Civil Rights in Europe* (Institute of Race Relation 2006).

[673] Ibid.

[674] C Allen, J Nielson, *Summary Report on Islamophobia in the EU After 11 September 2001* (European Monitoring Centre on Racism and Xenophobia 2002); see also: L Fekete, *Integration, Islamophobia and Civil Rights in Europe* (Institute of Race Relation 2006).

emphasised by the passionate scholarly response to the recent review of the Prevent Duty;[675] it should therefore be a priority for the UK Government to explain how Islamist terrorists differ from Muslims who follow mainstream Islam.

This sub-section has illustrated how the Government's failure to define Islamist terrorism means that the focus of the law – both 'hard' and 'soft' – remains firmly on Islam. It has been established that, for this reason, the Prevent Duty is important for faith communities across England and Wales, particularly in terms of the Government's failure to distinguish between mainstream and extreme Islam. In light of this, the following sub-section will outline the ways in which the literature suggests that Islamist terrorism is distinct from mainstream Islam, relying on the work of scholars from the fields of psychology, political science and social science. It is these fields which have theorised about radicalisation in most detail. Here, the extent to which this lack of distinction impacts faith communities can be explored further.

4.3.2 *Salafi-Jihadism*

Radical Islam has been described by Mohanned as a religion 'whose core beliefs promote backwardness and justify violence or "*Jihad*" against the "other"'.[676] Thus, radical Islam is understood by the wider literature as a religion in and of itself – a belief system so extreme in comparison to the ordinary manifestation of Islam that it has taken its own form, characterised by violence. As discussed in the previous sub-section, it is for this very reason that the Prevent Duty remains of importance to faith communities: because the Government has failed to sufficiently define Islamist terrorism, common misconceptions about the ideology which motivates it continue to grow.

Salafi-Jihadism is characterised by two key principles of the Islamic faith – *Salafism* and *Jihadism*. *Salafism* relates the individual's desire to return to the root of Islam; it is 'a philosophy that believes in progression through regression'.[677] The Permanent Committee for Scholarly Research and Fatwas defines *Salafi* Muslims as 'the righteous predecessors of the first three generations of Muslims'[678] who seek to '[revive] Islam of its first three generations'.[679] In terms of the religious beliefs they hold, *Salafis* are considered to be closest

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[675] See, for example: J Holmwood, L Aitlhadj, 'The People's Review of Prevent: A Response to the Shawcross Report' *Prevent Watch* (2023).
[676] D Mohanned, 'Radical' (2014) *Lexiculture: Papers on English Words and Culture*. Available online at: <https://glossographia.wordpress.com/2014/03/14/lexiculture-radical/> accessed 4 December 2018.
[677] S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books 2017) 7.
[678] Permanent Committee for Scholarly Research and Ifta, 'What is "Al-Salafiyah"? What do you think of it?', vol. 2: Al-'Aquidah (2) Fatwa no. 1361.
[679] S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books 2017) 7.

in terms of both temporal and physical proximity to the Prophet Muhammad,[680] and they attempt to imitate the first Muslims in their religious practice.[681] *Salafis* are, by their very nature, 'less inclined towards active political engagement', and Hegghammer suggests that *Salafism* as a belief system is a 'theological, not a political category'.[682] Although Maher also acknowledges *Salafism* as more theological, he notes that 'divisions within the tradition are best understood with reference to its fault lines, which principally cut across cleavages of power' and therefore relate in some way to politics.[683] As we shall see, it is this link between *Salafi-Jihadism* and mainstream Islam that means that the Prevent Duty – and its treatment of radical Islam – is very much important for faith communities.

In line with Wilkinson's previously introduced work on the classification of the manifestations of Islam,[684] there has also been work to categorise the various forms of *Salafi* Muslims. For example, Wiktororwicz – in the early 2000s – organised *Salafis* into three broad categories: *Purists*, *Politicos* and *Jihadis*.[685] This broad classification has later been used by scholars including Hafez and Brachman, both of whom have made attempts to refine the categories.[686] Maher has also attempted to achieve this, suggesting that Wiktorowicz's

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[680] Ibid.
[681] Ibid.
[682] T Hegghammer, 'Jihadi-Salafis or Revolutionaries? On Religion and Politics in the study of Militant Islam' in R Meijer (eds), *Global Salafism* (Oxford University Press 2014) 246.
[683] S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books 2017) 9.
[684] M Wilkinson, *The Genealogy of Terror* (Routledge 2019) 52.
[685] Q Wiktorowicz, 'Anatomy of the Salafi Movement,' (2006) 29 *Studies in Conflict and Terrorism* 3, 207; see also, 208: 'The different contextual readings have produced three major factions in the com-munity: the purists, the politicos, and the jihadis. The purists emphasize a focus on nonviolent methods of propagation, purification, and education. They view politics as a diversion that encourages deviancy. Politicos, in contrast, emphasize application of the Salafi creed to the political arena, which they view as particularly important because it dramatically impacts social justice and the right of God alone to legislate. Jihadis take a more militant position and argue that the current context calls for violence and revolution. All three factions share a common creed but offer different explanations of the contemporary world and its concomitant problems and thus propose different solutions. The splits are about contextual analysis, not belief'; see also: endnote 3: the term "purist" is taken from International Crisis Group, *Indonesia Backgrounder: Why Salafism and Terrorism Mostly Don't Mix*, Asia Report No. 83, 13 September 2004'.
[686] M Hafez, *Suicide Bombers in Iraq: The Strategy and Ideology of Martyrdom* (United States Institute of Peace 2007) 65 who suggests that instead of 'purist' we should refer to 'apolitical' or 'conservative'; see also: J Brachman, *Global Jihadism: Theory and Practice* (Routledge 2009), who argues that the categories are limited and should instead form eight categories: 26: 'The categories are, at best, fluid, dynamic and only rough approximations of the personalities and issues that divide the movement. However, they are significantly more nuanced than the categories currently used by Western policy-makers, analysts, and law enforcement agencies to discuss Establishment Salafists, Global Jihadists and those in between. Each of these branches of Salafist thought look to different religious figures and texts for legitimacy and intellectual guidance. Their different religious interpretations have dramatic implications for the political, social, and economic behavior of their adherents. Can a "good" Muslim listen to music? Should a "good" Muslim boycott companies who do business with Israel? Is it acceptable for a "good" Muslim to fight to overthrow a Muslim government when that government fails to implement Sharia comprehensively? Each Salafist subset gives its followers slightly different answers and religious justifications to these and a variety of other questions. But the categorization

model is 'too broad to capture the relationship between how these actors view their connection to power and the manner in which they wish to engage with, or change it'.[687] Maher suggests, instead, that the focus should be on the method for change – be that violence, activism or what he refers to as 'quietism':[688] rejection is closely aligned with violence, challenge with activism, and advice with quietism.[689] Therefore, the categories are, according to Maher: the quietists, who advise in private; [690] the activist-challengers, who 'publicly [air] their disagreements with the government, and [call] on it for reform';[691] the violent-challengers, who 'started life as activist-challengers by contesting elections and urging acts of civil disobedience (such as general strikes) to bring about social change' but moved towards 'armed resistance'; [692] and the violent-rejectionists who are individuals that Maher describes as 'irreconcilably estranged from the state': the 'entire notion of the modern nation state is a heterodox affront to Islam whereby temporal legislation usurps God's sovereignty'.[693] It is the violent-rejectionists who subscribe to the ideology of *Salafi-Jihadism*, Maher argues.[694] Maher suggests that the reason that violent-challengers should not be described as *Salafi-Jihadis* is because 'although many violent-challengers are undoubtedly *Salafis* who also believe [and practice] in *jihad*, their worldview does not believe in the absolute reconstruction of either the international order or the nation-state'.[695] Therefore, many *Salafis* are non-violent and practice their faith as activists or 'challengers' of the State; it is the use of violence, combined with a rejection of the State, which creates a *Salafi* who is capable of engaging with terrorism.

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provides nothing more than a rough topography of the Salafist terrain in order to help observers speak in more nuanced terms about the ideology'.

[687] S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books 2017) 9.

[688] Ibid, 10.

[689] Ibid.

[690] Ibid, 9: 'For example, the official clerical body in Saudi Arabia known as the Council of Senior Scholars (*Majlis Hay' at Kibār al- 'Ulama'*) advises the House of *al-Sa'ūd* in private, but eschews public dissent or open challenge to the government'.

[691] Ibid, 10: These individuals 'are more directly engaged with the political process, lobbying and campaigning for organic change in accordance with Islamic precepts. Moreover, their belief in maintaining social order and unity leads them to reject radical or revolutionary upheaval'.

[692] Ibid, for example, Maher references the Islamic Salvation Front (FIS): 'Having taken up arms [in 1993], it is best to think of the FIS as violent challengers because they had not rejected either the state or the international order at this stage. Their political agenda was Islamist in orientation but their horizons were nonetheless confined to Algeria's borders'.

[693] Ibid, 11: these individuals believe that the state and system 'needs radical overhaul and reordering while its agents must be confronted'.

[694] Ibid: 'only violent-rejectionists are consider Salafi-Jihadis for the purposes of this book'.

[695] Ibid.

It is the component of *Jihad* which has become associated with terrorism and has contributed to the moral panic surrounding Islam.[696] However, Maher alludes to the fact that participating in *Jihad* is not inherently violent. As we shall see in the following section, this much is true – *Jihad* simply refers to striving for one's best and the struggle for a holy life against sin or evil.[697] As a key argument to this section, it is important, therefore, for faith communities to recognise the impact that the Prevent Duty has had – and continues to have – on misconceptions about Islam.

4.3.3 *Jihad* and the *Tawḥïd*

Despite its strong association with violence, as stated, *Jihad* is not an inherently violent principle. Often referred to as the sixth pillar of Islam, the Islamic Supreme Council of America explains that the practice of *Jihad* is not, as it is commonly associated, 'a declaration of war against other religions'.[698] As we have seen, however, the UK Government does not acknowledge this in the Prevent Duty Guidance and, as we shall see, its failure to address the true meaning of *Jihad* demonstrates further the significance of the Prevent Duty for faith communities.

In fact, 'military action in the name of Islam has not been common in the history of Islam', and 'warfare in the name of God is not unique to Islam'.[699] Instead, the Arabic word for war is '*al-harb*', and the direct translation of *Jihad* is 'struggling' or 'striving'.[700] It is important to note that there are several different categories of *Jihad*: against hypocrites, against unbelievers, against the devil, and of the self. [701] Further, and on a theological basis, Muslims of various persuasions have engaged in *Jihad*, not just *Salafis* but *Sufis*, too,[702] and the majority of Islamic scholars acknowledge that the Quranic verses dealing with *Jihad* were tied to a specific set of circumstances at the time of writing: previously, it was the task of

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[696] A Grattan, '"Jihadi John": the making of a moral panic' *The Justice Gap* 29 May 2015.
[697] The *Oxford English Dictionary* defines *Jihad* as: 'A struggle against the enemies of Islam'. *Jihad* has also been translated to mean 'holy war'.
[698] Legal rulings: 'Jihad: A Misunderstood Concept from Islam – What Jihad is, and is not' *The Islamic Supreme Council of America.* Available online at: <https://wpisca.wpengine.com/?p=9> Last accessed: 25 April 2023.
[699] Ibid.
[700] Ibid, 1-2: 'The concept of "holy war" does not occur in the term Jihād, which in Arabic would be al-ħarb al-muqaddasah. Throughout the entire Qur'ān, one cannot find a term that expresses the meaning "holy war." Rather the meaning of combative Jihād expressed in Qur'ān or hadith is simply war… Jihād in its meaning is 'to struggle' as a general description. Jihād derives from the word juhd, which means at-ta'b, fatigue. The meaning of Jihād fī sabīlillāh, struggle in the Way of Allah, is striving to excess in fatiguing the self, to exhaust the self in seeking the Divine Presence and in bringing up Allah's Word, all of which He made the Way to Paradise'.
[701] Ibid, 3; see also: I Qayyim al-Jawzīyyah, Provisions for Hereafter: (*Zād al-Ma'ad)* (dar-salam.org, 2017).
[702] See, for detailed discussion: I Alexandrani, 'Chapter 4: Sufi Jihad and Salafi Jihadism in Egypt's Sinai: Tribal Generational Conflict' in V Collombier, O Roy (eds) *Tribes and Global Jihadism* (Oxford University Press 2018) 83-104.

clerics to consider when war was or was not justified and how it should be waged – and uniting the concept of *Jihad* with war was a means to an end; a way to motivate believers to fight to win the battle. Therefore, because *Jihad* is common to all manifestations of Islam, and because it has now become directly associated with terrorism due to the Government's ill-designed definition of 'Islamist terrorism', it must be recognised that the Prevent Duy is of much importance to faith communities: it is the *Salafi-Jihadi* ideology that is inherently violent, not the principle of *Jihad* alone, and it is the responsibility of the Government to distinguish it as such. However, this insufficient attempt to distinguish between the components of *Salafi-Jihadism* has an impact on how Islam is viewed by specified authorities who are looking for signs of radicalisation to report on. To find a more accurate description of Islamist terrorism, then, is crucial; both for the specified authorities who are tasked with identifying signs of terrorism, and for faith communities who are harmed by these misconceptions.

It is important to recognise that *Salafi-Jihadists* are, by the very nature of their beliefs, 'violent-rejectionists' of the State in its current form; they have been described by scholars as individuals who 'are irreconcilably estranged from the state'.[703] Further, every act of violence performed by groups adhering to the ideology of *Salafi-Jihadism* refers to scriptural sources as a form of justification,[704] and Maher argues that the development of the ideology was in fact an angry retort: 'The 2003 invasion of Iraq was instrumental in giving shape and definition to what is recognised as *Salafi-Jihadism* today'.[705] Thus, groups such as the Islamist *Jihad*, *al-Jama'aal-Islamiyya* (and the Algerian GIA) all reacted similarly to the invasion of Iraq.[706] Physical territory is not a necessity nor coveted for those who subscribe to the ideology. Those who opt to act in the name of *Salafi-Jihadism* are inspired by the ideology alone. It has been described as a 'political religion' where 'individuals attempting to find meaning for themselves therefore create the conditions in which politics would serve as religion'.[707] It is recognised that many counter-terrorism scholars view religious and political terrorism as the same thing. Although this is not strictly true, it is understood for the purpose of this chapter that extremists motivated by religion often use political methods to achieve their goals: 'it is not a question of religious actors seeking religious change, but a clear

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[703]S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books 2017) 11.
[704] Ibid, 17-18.
[705] Ibid, 17.
[706] Ibid.
[707] Ibid, 27.

attempt to return society to a previous political-religious condition and value system'.[708] Thus, *Salafi-Jihadism* may be described as the politicisation of Islam by some. However, it is submitted that although the *Salafi-Jihadi* ideology is often recognised as a desire for political change; at its core, it is motivated by religion: each of the listed groups believed that they had suffered at the hands of the West.

The centrality of religion to the ideology – and to Islamist terrorism – means that it must be made clear by the Government that subscribers to the *Salafi-Jihadi* ideology are not in any way followers of mainstream Islam; as of yet, this distinction has not been fully addressed and, as explained, highlights the impact that the Prevent Duty has on faith communities. The belief system of *Salafi-Jihadis* supports not only a desire to return to the very root of Islam, but to *act* on this desire. Central to this is the principle of *Tawḥïd* which is understood as putting one's absolute trust and fear in Allah alone. The *Tawḥïd*, as a principle, unites the doctrines of monotheism and the omnipotence of God, and has been described as 'the central pillar of Islam'.[709] Acting on the *Tawḥïd* unites the oneness of Lordship and predestination.[710] It is necessary to understand how this principle fits in with the ordinary manifestation of Islam before it is applied to *Salafi-Jihadism*. For Muslims, each individual life is preordained, and only the will of Allah has the ability and the audacity to intervene in that individual's life. The Qur'an states that 'no soul can ever die except by Allah's leave and at a term appointed';[711] 'so put your trust [in Allah] if ye are indeed believers'.[712] Thus, the intersection of divine will and the omnipotence of Allah is central to the principle of the *Tawḥïd*, and the above quotations are just a few examples of the many verses taken from the Qur'an and interpreted to adhere to the ideology of *Jihad*: 'anyone who truly believed in this could not then refuse to participate in *Jihad* because of fear'.[713] The Government does acknowledge this interpretation of Sharia law, but make no mention of the *Tawḥïd* specifically,[714] and this, it is submitted, is a major oversight: the specified authorities who discharge the Prevent Duty must be able to fully understand and distinguish between extreme and mainstream

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[708] B Prinsloo, 'The etymology of "Islamic extremism": A misunderstood term?' (2018) 4 *Cogent Social Sciences* 1, 1-8, 4; and, for example, the idea that Muslims should live under one Islamic state ruled by sharia law. For detailed discussion, see: M P Auerback, *Islamic State of Iraq and Syria (ISIS)* (Salem Press 2014).
[709] S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books 2017) 145.
[710] Ibid, 146; see also; 'Abd al-'Aziz bin 'Abdallah bin Baz, *Explanations of important lessons for every Muslim* (Dar-us-salam Publications 2002) 157-160. That is, the unity of lordship; divinity and; names, qualities and attributes.
[711] The Qur'an verse 3:145.
[712] The Qur'an verse 7:34.
[713] S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books 2017) 161.
[714] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 16 [40]: 'Establishing a brutal and literalist interpretation of sharia law'.

interpretations of the pillars and principles of Islam. Further, associating the *Tawḥïd* only with the most extreme manifestations of Islam is indisputably harmful for faith communities.

The *Tawḥïd*, as Wilkinson explains, is relevant to all worldviews of Islam. For example, for mainstream Muslims, the *Tawḥïd* simply represents 'the Unity of God [and] the need to worship Him without partners'.[715] For Muslims who subscribe to an activist interpretation of Islam, Wilkinson suggests that the principle represents, still, the Unity of God, but that it also 'implies the need to encourage good action and challenge injustice'.[716] For those Muslims who subscribe to Islamism – of which he refers to as 'ideological Islam' – he writes that the *Tawḥïd* is interpreted, again, as the Unity of God, but this time it 'implies the requirement to establish an Islamic State following Sharia law exclusively'.[717] Of non-violent Islamist extremists – of whom we will revisit later in this chapter (see section 4.4.1 below) – he explains that the principle, again referring to the Unity of God, 'implies the requirement to establish an Islamic State following Sharia law exclusively and to repudiate all other religions and political ideologies as an article of faith'.[718] Finally, he explains that for those who are violent Islamist extremists, the *Tawḥïd* represents the Unity of God as 'the requirement to establish an Islamic State following Sharia law exclusively and to repudiate and *destroy* all other religions and political ideologies and adherents, including non-Muslims and "wrong" Muslims as an article of faith'.[719] It is evident, then, that followers of the *Salafi-Jihadi* ideology make the *Tawḥïd* central to their purpose, stating that the *Tawḥïd* is 'impossible to establish in everyday life if one does not take to the battlefield'.[720] The UK Government must prioritise making a distinction between the various worldviews of Islam in 'soft' law guidance. As Wilkinson so clearly demonstrates, although a principle – or pillar – such as the *Tawḥïd* may be interpreted by extremists to encourage violence, it is also adopted by mainstream Muslims as an integral part of their faith.

Jihad, therefore, represents the political system through which the *Tawḥïd* may be actualised. The mere utterance of worship is insufficient, and the principle requires action:

> 'The real difference [between the believers and unbelievers] lies in the conscious acceptance of this doctrine and complete adherence to it in practical life. Mere

[715] M Wilkinson, *The Genealogy of Terror* (Routledge 2019), Plate 4 between 5-6.
[716] Ibid.
[717] Ibid.
[718] Ibid.
[719] Ibid. (emphasis added).
[720] S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books, 2017) 157.

repetition of the word "food" cannot dull hunger; mere chanting of a medical prescription cannot heal the disease'.[721]

As we have seen, the UK Government, so far, has focused on portraying the *Salafi-Jihadi* ideology as home-grown and incubated within British Muslim communities. Through CONTEST, the Government has suggested that the war in Syria is used as propaganda by *Salafi-Jihadi* extremists to 'propagate a sense of injustice that presents the action or inaction of international actors as part of a wider and ongoing conflict between the West and *Sunni* Islam'.[722] However, 'western governments as a whole like to pretend that their policy blunders, notably those of military intervention in the Middle East since 2001, did not prepare the soil for al-Qaeda and ISIS'.[723] This, of course, means that the Prevent Duty is very much of importance for faith communities; the Government is implying that terrorists are radicalised inside faith communities, and this will be revisited in Chapter Five of this thesis.

Therefore, although the *Salafi-Jihadi* ideology is often recognised as a desire for political change, at its core the movement is motivated by religion, and this reinforces the importance of the Prevent Duty for faith communities: the ideology itself is centred around returning to the roots of Islam. In line with this, the UK Government should prioritise accurately describing the *Salafi-Jihadi* ideology if it is to fully support specified authorities in discharging their duty. At present, faith communities are at risk of being unduly targeted due to misconceptions about extreme and mainstream Islam. Extremist ideologies are, by their very nature, complex, and those required under the Prevent Duty to interrupt these ideologies must be equipped with an appropriate level of understanding. Due to the most significant

[721] S Maududi, *Towards Understanding Islam* (UKIM Dawah Centre, undated) 59: 'But the difference between the believers and the unbelievers does not result from the mere chanting of a few words. Obviously, the mere utterance of a phrase or two is not in itself important. The real difference lies in the conscious acceptance of this doctrine and complete adherence to it in practical life. Mere repetition of the word 'food' cannot dull hunger; mere chanting of a medical prescription cannot heal the disease. In the same way, if the *Kalimah* is repeated without an understanding, it cannot work the revolution which it is meant to bring about. This can occur only if a person grasps the full meaning of the doctrine and accepts and follows it in letter and spirit. We avoid fire because we know that it burns; we keep away from poison because we know that it can kill. Similarly, if the real meanings of Tawhid are fully grasped, we avoid, in belief as well as in action, every form of disbelief, atheism and polytheism. This is the natural consequence of belief in the Unity of God'.

[722] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018).

[723] P Cockburn 'Britain refuses to accept how terrorists really work – and that's why prevention strategies are failing' *The Independent* 8 June 2017: 'A big mistake in British anti-terrorist strategy is to pretend that terrorism by extreme Salafi-jihadi movements can be detected and eliminated within the confines of the UK. The inspiration and organisation for terrorist attacks comes from the Middle East and particularly from Isis base areas in Syria, Iraq and Libya. Their terrorism will not end so long as these monstrous but effective movements continue to exist. That said, counter-terrorism within the UK is much weaker than it need be'.

threat, at present, from terrorism deriving from Islamist terrorism, it is vital for specified authorities to understand the *Salafi-Jihadi* ideology behind it.

This section has demonstrated, then, that the definition of Islamist terrorism put forward by the UK Government in the Prevent Duty Guidance is too narrow – it does not fully encapsulate what Islamist terrorism means, including the ideology and motivations behind it. There has been no attempt made by the Government to use this definition to accurately distinguish between radical and mainstream Islam.[724] Therefore, in light of the existing literature on the subject, it is argued that the definition provided by the Government is incomplete; it both fails to sufficiently capture what it means to be religiously radical, and address the stages of radicalism. As we shall see in the following section, the radicalisation process is far more than the moment an individual commits the offence of terrorism.

4.4 Radicalisation

As explained in the introduction of this chapter, this section will look at the second case study which underpins the significance of the disjunction between the government guidance on radicalisation, and what the literature states. This section, then, will look towards the radicalisation process itself, of which there is a wealth of literature. Importantly, however, the literature has not yet fully addressed the importance that the radicalisation process – and the various depictions of it – holds for faith communities, and this will be explored throughout the following sub-sections.

The first part of this section will discuss the radicalisation process itself – in light of the literature from the fields of psychology, political science and social science – in a general sense, looking towards the motivations behind each stage, as well as how each stage is characterised by the literature – often, as we shall see, by reference to violence. The section will consider, to some extent, the role of violence in distinguishing the early stages of radicalisation from the later stages. As we saw throughout section 4.2.2, although the UK Government has implicitly described the stages of the radicalisation process, the lack of explicit reference to the literature is troubling, and this will be highlighted.

In the second part of this section, the radicalisation models will be explored and evaluated in the context of the Prevent Duty; that is, depictions of the radicalisation process, proposed in 'steps' or stages' by the literature, will be compared with government descriptions of the

[724] This argument has developed my 2021 article: R Riedel, 'Religion and Terrorism: The Prevent Duty' (2021) 23 *Ecclesiastical Law Journal* 3, 280-293.

process. Throughout, the extent to which faith communities have been underappreciated in the development of these models will be commented upon.

4.4.1 The radicalisation process and violence

It must be recognised that the radicalised individual – at least at the beginning of their journey – is not necessarily someone who is violent or who wishes to commit an act of terrorism imminently; as we saw in section 4.3.1, radicalism itself is not necessarily a bad thing. Instead, the candidate for radicalisation is often someone who wishes to change the existing structure of a state or system. This, however, is not reflected in government guidance on the subject; non-violent extremism, as we saw, is merely described as extremism without violence. There has therefore been little attempt by the Government to classify and characterise the early stages of the radicalisation process, where violence is not contemplated by the radicalised individual, or even the latter stages of the process, where violence is contemplated but not always used.

Implicitly, at least, the Government has indicated through its guidance that violence is a helpful determining factor as to whether someone is, in fact, capable and engaged with terrorism. The literature also reflects this, depicting that, at some stage throughout the radicalisation process, the radicalised individual begins to consider using violence to achieve their religious objective.[725] It is at this stage that the individual should be considered dangerous, and we may begin to classify these individuals as sitting within the 'violent-rejectionist' category – previously discussed – as proposed by Maher, or the 'non-violent Islamist extremist' category as proposed by Wilkinson.[726] At this stage, the literature suggests, the individual most likely *should* be considered a danger to themselves and to others. Put another way: non-violent extremism – or, perhaps, 'radicalism' – does not involve action (or violence) and could be described as mere activism, whereas the contemplation – or use – of violence could not. For example, as we saw in the previous section – and as Maher describes – a group could continue to be described as being in the 'violent-challenger' category until they decide to use violence to achieve their theological ideal.[727] It is therefore submitted that contemplating violence to achieve a theological – or political – cause is likely to be the initial step towards committing an act of terrorism. It is important, therefore, for the

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[725] It may also be motivated by an political, ideological or racial cause – see the Terrorism Act 2000 s 1.
[726] M Wilkinson, *The Genealogy of Terror* (Routledge 2019) between 5-6.
[727] S Maher, S*alafi-Jihadism: The History of an Idea* (Penguin Books 2017) 10.

UK Government to more effectively distinguish violent extremism from non-violent extremism. This is reflected by the literature.

Bartlett and Miller suggest that through understanding the distinction between violent and non-violent extremism, we are better able to understand what it means to be a radical individual.[728] To engage in an act of terrorism, an individual must, at some stage, become capable of using serious violence. Therefore, the UK Government's definition of extremism is – at once – too narrow and too wide. The use of – or intention to use – violence should be understood as the only precursor to imminent terrorist activity:

> 'It is the duty of Muslims, according to violent Islamist extremist ideologues, not only to identify the salvation of God in the separation of the Blessed from the Damned, but also to be the *agents* of the Divine destiny by bringing about the eradication of the Damned from the Earth as a prelude to their eternal castigation in Hell-Fire'.[729]

This, once again, highlights the significance of the Prevent Duty for faith communities: religion is central to the Prevent Duty, but fully distinguishing violent from non-violent extremists is not a priority for the Government.

In light of this, it is suggested that non-violent extremism is understood – and described – in more detail than the Government currently provide. Just as a distinction must be made between the various manifestations of Islam, the same can be said of violent and non-violent extremism. This, as highlighted by my 2021 article,[730] means that the Prevent Duty is important for faith communities. By way of example, Bailey and Edwards refer to acts of non-violent extremism as 'microradicalisations' which are defined as 'the small movements that contribute to parts of society or [the] state as becoming more conflictual or less harmonious with other parts of the social whole'.[731] These microradicalisations are described as non-violent because they do not pose a threat to wider society,[732] but do play an important

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[728] J Bartlett, C Miller, 'The edge of violence: towards telling the difference between violent and non-violent radicalisation' (2012) 24 *Journal of Terrorism and Political Violence* 1, 1-21.
[729] W M Wilkinson, *The Genealogy of Terror* (Routledge 2019) 73
[730] R Riedel, 'Religion and Terrorism: The Prevent Duty' (2021) 23 *Ecclesiastical Law Journal* 3, 280-293.
[731] G Bailey, P Edwards, 'Rethinking "Radicalisation": Microradicalisations and Reciprocal Radicalisation as an Intertwined Process' (2017) 10 *Journal for Deradicalisation* 2, 255-281, 265. Referring to the 'small parts of a radicalisation journey' as microradicalisations, they argue, is more suited because this conceptualizes 'the anger felt by large numbers of people when faced with perceived injustice or threat. By including smaller and less serious processes, we can note that many people radicalise but that most never move far enough to come to the attention of the authorities, and that they more often deradicalize than move on to ever greater conflict'. This idea is based on the work of Lipsky; see: M Lipsky, *Street Level Bureaucracy: Dilemmas of the Individual in Public Services* (Russell Sage Foundation 1980).
[732] Ibid, 265.

role in the radicalisation journey which is described as 'more than the moment of becoming a radical'.[733] These initial steps may be understood as a form of pre-radicalisation, perhaps, and could fall into line with Maher's category of the 'activist-challenger' or even his 'violent-challenger', as introduced previously (section 4.3.1). At this stage, it is evident that the individual is not contemplating violence, just that they desire for change. Indeed, work carried out by Silva has found that these lower-level acts of radicalisation are 'perhaps the most pervasive framework for understanding micro-level transitions towards violence'.[734] Therefore, these microradicalisations – or early stages of the radicalisation process – should not be overlooked due to their perceived harmlessness; they are indicators that an individual may be becoming radicalised. For example, Bartlett and Miller suggest that an individual may join a local political party with the hopes of bringing about progressive change to their community;[735] this would amount to engaging with microradicalisations.

These lower level indications of radicalisation are often framed by the literature as warning signs or behaviours that indicate an individual is being radicalised but – importantly – the literature also explains that these microradicalisations may indicate nothing of the sort; that is, the radicalisation journey may not begin in this way. This demonstrates the complexities of the radicalisation process which are not highlighted in government guidance. For example, as we saw in section 4.2.2, the Government does implicitly reference examples of microradicalisation in its assessment frameworks; however, there is no recognition that these 'signs' may indicate nothing at all. Therefore, encouraging specified authorities to identify signs of radicalisation this early in the radicalisation process may be futile: an individual engaging with activism to bring change to their community is – more often than not – harmless. Further, providing specified authorities with factors and 'signs' that indicate low levels of radicalisation may be harmful, specifically in the context of Islamist terrorism which, as we have seen, is not sufficiently defined by the Government. The impact this may have on faith communities is serious and could lead to the policing of innocent individuals in the ordinary manifestation of their faith.

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[733] Ibid, 266.
[734] D Silva, '"Radicalisation: the journey of a concept" revisited' (2018) 59 *Race and Class* 4, 34-53, at 34.
[735] J Bartlett, C Miller, 'The edge of violence: towards telling the difference between violent and non-violent radicalisation' (2012) 24 *Journal of Terrorism and Political Violence* 1, 1-21, 7: Based on interview data gathered, they found that 'many radicals channel their energy through community or political work. One radical volunteered at a local correctional facility, counselling inmates, another even travelled to Afghanistan to set up various community programmes, to "contribute in the way that I can." In general, political involvement tended to focus on foreign policy across both group'.

It would, however, be an oversight to ignore that, in the realm of religion, this is not so straightforward. Religion, Berman and Innaccone suggest, can be used as a 'powerful tool of organisation and persuasion'.[736] For example, a vulnerable individual – perhaps a child – may join a religious community in the hopes of bringing about change to their community, or to address their own sense of injustice in some way. This would be considered harmless. However, if that same individual, perhaps unknowingly, was drawn into supporting proscribed organisations who shared the same beliefs as the individual and the community, this has the potential for far greater harm. The Government readily acknowledge this: non-violent groups have the potential to 'create an atmosphere conducive to terrorism and can popularise views which terrorists then exploit'.[737]

Other scholars have written on the radicalisation process and on extremism more broadly, but still with particular reference to religion, reinforcing the importance of the Prevent Duty – and religious radicalisation – for faith communities. In terms of identifying risk to radicalisation, Kundnani suggests that if we are able to find a 'set of religious beliefs' that are held by terrorists 'and shared with a wider group of radicals', then 'a model can be developed in which such beliefs are seen as "indicators" of radicalisation'.[738] It is vital, however, that these beliefs are rejected by what Kundnani describes as 'moderate' Muslims.[739] This, as we have seen, is not the approach taken by the Government; it is clear, however, that this is the overwhelming scholarly opinion. For example, Prinsloo suggests that extremism should be considered a spectrum with the so-called 'radical actor' on one side, a person 'who is extremely dissatisfied with society as it is and is therefore impatient with less extreme proposals for changing it'.[740] On the other side, there are the 'reactionary actors' who are

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[736] E Berman, L Innaccone, 'Religious Extremism: the Good, the Bad and the Deadly' Working Paper 11663 (National Bureau of Economic Research 2005) 2-35, 21: 'In much of the world, however, and especially in the Middle East, religion and governments remain tightly bound. The leaders of government use religion to enhance their popularity and legitimacy, and religious leaders use political power to direct state resources toward their constituents. Here again, the credence-oriented technology of religious organizations confers important benefits. When used with care, it becomes a powerful tool of organization and persuasion. The leaders of sects are especially adept at "delivering" the votes of members. Note also that repressive regimes, mosques and churches are often the only places where opposition political organization is possible at all. If only for that reason, political Islam is likely to be a going concern for quite a while'.

[737] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2015) [8].

[738] A Kundnani, 'Radicalisation: the journey of a concept' (2012) 54 *Race & Class* 2, 3-25.

[739] Ibid.

[740] B Prinsloo, 'The etymology of "Islamic extremism": A misunderstood term?' (2018) 4 *Cogent Social Sciences* 1, 1-8, 2: 'A radicalised individual can be defined as a person who is extremely dissatisfied with society as it is and is therefore impatient with less extreme proposals for changing it. Hence, radicals favour an immediate and fundamental change in the society'.

considered by Prinsloo to be at the 'extreme end' of the political spectrum.[741] Both actors, then, are actively seeking political change, but it is the direction of that change which is significant. Thus, a distinction is made by Prinsloo: 'The direction of the change sought by all actors except for reactionaries, is considered to be progressive'.[742] This, Prinsloo explains, also enables us to distinguish between non-violent and violent extremism: 'merely desiring political change does not equate to extremism', he writes.[743] Prinsloo suggests factors that can be used to determine whether an actor is a non-violent or violent extremist. It is important to note that although Prinsloo refers to 'political' extremism, he uses the example of Islamist extremist group Islamic State, who is driven by the ideology of *Salafi-Jihadism*, according to the UK Government.[744] Thus, although many scholars who study terrorism more widely view extremism as a spectrum linked to politics and violence, this is not strictly applicable to radical Islam, or even to radical religion in general. Although characterised by violence, Islamist terrorism is not driven solely by it; instead, it is a means to an end. The radicalisation process is not linear, and is more than the moment that an individual commits an act of terrorism. This underscores the importance of defining each stage of the process, something the UK Government have so far failed to do.

4.4.2 The radicalisation models

The home-grown element of the terrorist attacks of the early 2000s prompted the formulation of several radicalisation models by leading scholars in the fields of psychology and political science. The extent to which the government guidance on this subject – that is, the implicit guidance, explored above, which sets out the stages of the radicalisation process – reflects the theory of these models will be explored throughout this sub-section. It is important to remember, at this stage, that the terrorism prevention system in the United Kingdom is not designed with the radicaliser in mind; it is instead concerned with preventing individuals from being radicalised. It is worth considering, therefore, whether the literature reflects this.

Much of the work throughout this chapter has suggested that understanding an individual's extremism on an individual basis – taking into account their worldviews and their

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[741] Ibid: 'Only the reactionary actor proposes retrogressive change – therefore s/he would like to see society return to a previous status, condition or value system. Note that reactionaries reject claims to human equality and instead favour distributing wealth and power unequally on the basis of race, social class, intelligence, or religion. They further reject notions of social progress as de-fined by people to their left and look back to other previous held norms and values'.
[742] Ibid.
[743] Ibid.
[744] See: HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 8, footnote 4.

vulnerabilities – is important for all types of terrorism, including Islamist terrorism. It makes sense, then, that scholars from the fields of psychology and political science have fashioned models to describe the radicalisation process, which commonly involve steps or stages. Although no easy feat, the models are intended to explain and distinguish each stage of the process from the next. It may be suggested that, in his work, Wilkinson has implicitly addressed the radicalisation process by detailing the difference in the worldviews of Islam; however, to create a radicalisation model was not the intended result of Wilkinson's work, and so it will not be treated here in any detail. For Islamist terrorism, the radicalisation process is – as we have seen – often understood by reference to 'an antagonistic misinterpretation of Islam which attempts to denote that violence and backwardness are a "basic" attribute to the faith'.[745] The following radicalisation models, therefore, will be explored and compared below in relation to their various stages. This exploration will be guided by questions of: first, whether they are reflected in government guidance; and, second, their significance for faith communities.

The first stage, common to most radicalisation models, involves some kind of 'cognitive opening', as termed by leading terrorism scholar Wiktorowicz, and this initial stage is common to all of the models. According to Wiktorowicz, the cognitive opening is characterised by a 'pyschological crisis' where the individual has their accepted belief system disturbed in some way.[746] As noted previously (section 4.2.2), the cognitive opening is implicitly dealt with as part of the Vulnerability Assessment Framework, indicating that government guidance and the literature are consistent on this point. However, as noted, the government guidance does not note explicitly that this cognitive opening represents the initial stages of the radicalisation process.

Importantly, Wiktorowicz defines the radicalisation process as theological in nature; that is, that the process is directly linked to religion; he characterised it as a theological-psychological process where the extreme religious worldview is encouraged – or caused – by 'cognitive openings'.[747] In this way, government guidance – based on the assessment frameworks – does not correlate with the literature; as we saw, there is no explicit reference

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[745] See, for discussion: M Monshipouri, 'The West's Modern Encounter with Islam: From Discourse to Reality' (1998) 40 *Journal of Church and State*; J L Esposito, *The Islamic Threat: Myth or Reality?* (Oxford University Press 1999).
[746] Q Wiktorowicz, *Radical Islam Rising: Muslim Extremism in the West* (Oxford: Rowman & Littleford 2005) 85-135.
[747] Ibid.

to religion as part of the ERG22+ or the Vulnerability Assessment Framework. This perhaps highlights an inconsistency in the Government's approach to radicalisation and terrorism: in the guidance directed towards specified authorities – for example, the Prevent Duty Guidance – religion is established as absolutely fundamental to identifying the signs of radicalisation; in fact, Islamist terrorism is the only form of terrorism defined in the CONTEST Strategy. However, in the government-issued assessment frameworks, there is no mention of religion or Islam – the frameworks are far broader and purport to apply to all forms of terrorism. Put simply, specified authorities are advised to identify signs of Islamist terrorism, whereas Channel panels are advised to assess *all* forms of terrorism. In this way, the inconsistency between the guidance and the literature highlights the importance of the Prevent Duty to faith communities.

Returning to the stages themselves, Borum characterises the first stage of the process as involving grievances that are based on some dissatisfying event or circumstance;[748] for Moghaddam, who published the 'staircase to the terrorist act' model in 2005,[749] the first stage involves those who subscribe to mainstream Islam – that is, the 'majority of people' – who begin on the ground floor of the staircase.[750] He explains that these individuals are not to be described as extremists.[751] Silber and Bhatt, in partnership with the New York Police

[748] See: R Borum, 'Radicalsiation into Violent Extremism I: A Review of Social Science Theories' 4 *Journal of Strategy Security* 4, 7-36; see also: R Borum, 'Radicalisation into Violent Extremism II: A Review of Conceptual Models and Empirical Research' (2011) 4 *Journal of Strategic Security* 4, 37-62.

[749] F M Moghaddam 'The Staircase to Terrorism: A Psychological Exploration' (2005) 60 *American Psychologist* 2, 161-169, at 161: 'To provide a more in-depth understanding of terrorism, I have used the metaphor of a narrowing staircase leading to the terrorist act at the top of a building. The staircase leads to higher and higher floors, and whether someone remains on a particular floor depends on the doors and spaces that person imagines to be open to her or him on that floor. The fundamentally important feature of the situation is not only the actual number of floors, stairs, rooms, and so on, but how people perceive the building and the doors they think are open to them. As individuals climb the staircase, they see fewer and fewer choices, until the only possible outcome is the destruction of others, or oneself, or both. This kind of "decision tree" conceptualization of behavior has proved to be a powerful tool in psychology'.

[750] Ibid: 'To provide a more in-depth understanding of terrorism, I have used the metaphor of a narrowing staircase leading to the terrorist act at the top of a building. The staircase leads to higher and higher floors, and whether someone remains on a particular floor depends on the doors and spaces that person imagines to be open to her or him on that floor. The fundamentally important feature of the situation is not only the actual number of floors, stairs, rooms, and so on, but how people perceive the building and the doors they think are open to them. As individuals climb the staircase, they see fewer and fewer choices, until the only possible outcome is the destruction of others, or oneself, or both. This kind of "decision tree" conceptualization of behavior has proved to be a powerful tool in psychology'.

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Department, based their radicalisation model around case studies of the many international terrorist attacks which occurred throughout the early 2000s. For Silber and Bhatt, the first stage consists of 'pre-radicalisation' which refers to an individual before they have been exposed to extremism:[752] 'despite the absence of a psychological profile… there is a commonality among a variety of demographic, social, and psychological factors that make individuals more vulnerable to the radical message'.[753] As a result, individuals become 'candidates' for radicalisation, they suggest: 'living within and as part of a diaspora provides an increased sense of isolation and a desire to bond with others of the same culture and religion'.[754] The Government does not mirror this language in any of the guidance related to the radicalisation process; as we saw (section 4.2), the individuals are not referred to as 'candidates for radicalisation' or as 'radicalised individuals', but as 'persons'. Indeed, the Government also does not rely case studies to the same extent that they are used by Silber and Bhatt; as noted, the Government do refer to some of the atrocities carried out by Islamist terrorists, but not by way of explaining the radicalisation process. This indicates that the Government both underplay the role of the radicaliser in the process – that is, why some individuals are perceived to be 'candidates' for radicalisation, and other are not – and fail to provide much insight as to why individuals commit acts of terrorism by evaluating past terrorist attacks.

The literature also indicates that the Government have wholly underplayed – at least in terms of the assessment frameworks – the role of religion in the radicalisation process. However, for Sageman, who also designed a four part radicalisation model, religious ideology is not recognised as the sole cause behind acts of terrorism: 'these perspectives imply an overly passive view of terrorists, who are the recipients of social forces or slaves to appealing ideas'.[755] Precht, on the other hand, explicitly links radicalisation with religion in his model

[752] M D Silber, A Bhatt, *Radicalisation in the West: The Homegrown Threat* (New York Police Department Intelligence Division 2007) 19.
[753] Ibid, 22: 'The demographic make-up of a country, state, city, or town plays a significant role in providing the fertile ground for the introduction and growth of the radicalization process. Enclaves of ethnic populations that are largely Muslim often serve as "ideological sanctuaries" for the seeds of radical thought. Moreover, the greater the purity and isolation of these ethnic communities, the more vulnerable they are to be penetrated by extremism--under the guise that it represents a purer, more devout form of Islam'.
[754] Ibid: 'The demographic make-up of a country, state, city, or town plays a significant role in providing the fertile ground for the introduction and growth of the radicalization process. Enclaves of ethnic populations that are largely Muslim often serve as "ideological sanctuaries" for the seeds of radical thought. Moreover, the greater the purity and isolation of these ethnic communities, the more vulnerable they are to be penetrated by extremism--under the guise that it represents a purer, more devout form of Islam'.
[755] M Sageman, *Leaderless Jihad: Terror Networks in the Twenty-First Century* (University of Pennsylvania Press 2008) 23.

which was created with funding from the Danish Ministry of Justice.[756] For Precht, stage one involves, yet again, a period of 'pre-radicalisation', similar to the NYPD report authored by Silber and Bhatt. Precht uses the example of a diaspora community, like the NYPD report, to elucidate phase one.[757] It is here, he argues, that the individual finds religious motivation for their journey.

The second stage of the radicalisation process is described by Silber and Bhatt as a period of 'self-identification' and 'the point where the individual begins to explore *Salafi* Islam while slowly migrating away from their former identity'.[758] Individuals who are most vulnerable to engaging with this stage are more often than not at a 'crossroad in life' – this may be economic, social, political or personal in nature.[759] The second stage of the process is vital – similar to the third stage of Moghaddam's staircase – in that it often determines whether individuals will leave the process altogether or continue towards terrorism.[760] This is not reflected to the extent that it deserves in the government guidance on the subject; there is rarely detailed discussion of individuals leaving the radicalisation process, and why they may choose to. However, Silber and Bhatt suggest that whether an individual will choose to continue their journey is based on two forms of evidence, again not explained by the Government: first, the individual continues their progression towards supporting *Salafi* Islam;[761] second, they are in regular attendance of a *Salafi* mosque.[762] This mention of

[756] T Precht, 'Home Grown terrorism and Islamist Radicalisation in Europe: From Conversion to Terrorism' (Danish Ministry of Justice 2007) 33.
[757] Ibid, 34; see also: M D Silber, A Bhatt, *Radicalisation in the West: The Homegrown Threat* (New York Police Department Intelligence Division 2007) 22: 'Living within and as part of a diaspora provides an increased sense of isolation and a desire to bond with others of the same culture and religion. Within diaspora Muslim communities in the West, there is a certain tolerance for the existence of the extremist subculture that enables radicalization. For the individual, radicalization generally takes place in an atmosphere where others are being radicalized as well'.
[758] M D Silber, A Bhatt, *Radicalisation in the West: The Homegrown Threat* (New York Police Department Intelligence Division 2007) 30: 'This stage, which is largely influenced by both internal and external factors, marks the point where the individual begins to explore Salafi Islam, while slowly migrating away from their former identity – an identity that now is re-defined by Salafi philosophy, ideology, and values. The catalyst for this "religious seeking" is often a cognitive event, or crisis, which challenges one's certitude in previously held beliefs, opening the individual's mind to a new perception or view of the world'.
[759] Ibid: 'Individuals most vulnerable to experiencing this phase are often those who are at a crossroad in life – those who are trying to establish an identity, or a direction, while seeking approval and validation for the path taken. Some of the crises that can jump start this phase include: Economic (losing a job, blocked mobility). Social (alienation, discrimination, racism – real or perceived). Political (international conflicts involving Muslims). Personal (death in the close family) Political and personal conflicts are often the cause of this identity crisis. A political crisis is sometimes brought about by some of the "moral shock" tactics used by extremists in spewing out political messages, arguments, and associated atrocities that highlight some particular political grievance that Islam has with the West, or with one's own government. These messages are usually proliferated via literature, speeches, TV, websites, chatrooms, videotapes, or other media'.
[760] Ibid.
[761] Ibid, 31.
[762] Ibid.

mosques underlines the relevancy – once again – of these models to faith communities; there is a direct link drawn between the radicalisation process and attendance at places of worship. As we have seen, however, there is a stark and important difference between *Salafi* Islam and the ideology of *Salafi-Jihadism*. In line with this, Precht explains the second stage as the 'conversion' stage.[763] For Wiktorowicz, however, this stage is characterised by the individual engaging in 'religious seeking': 'the greater the role of Islam in an individual's identity, the greater the likelihood he or she will respond to the opening through religious seeking'.[764] Not only does this underline the role of faith to the process, this is not addressed in government guidance on the subject.

The latter stages of the radicalisation process tend to overlap between the various models but are characterised by some key concepts nonetheless; these include indoctrination, participation in extremism, and the acceptance of violent *Jihad.* Again, none of this is reflected fully in the government guidance. For Moghaddam, the staircase floors between three and five involve, to varying degrees, individuals who are beginning to engage with 'the morality of terrorist organisations; [and] these individuals now begin to see terrorism as a justified strategy'.[765] This is when the individual begins engaging with violent extremism. The floors past floor three – floors four and five – describe recruitment and,[766] finally, becoming 'psychologically prepared' for committing acts of terrorism.[767] Similarly, Wiktorowicz describes the middle and final stages of the process as involving 'frame

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[763] T Precht, 'Home Grown Terrorism and Islamist Radicalisation in Europe: From Conversion to Terrorism' (Danish Ministry of Justice 2007) 34: 'Conversion 1) From no faith to religious identity 2) More radical interpretation of Islam 3) Shift from one faith to another (e.g. Christianity to Islam) Identification 1) Increased identification with and acceptance of the cause of extremism Triggers 1) Glorification of Jihad, activism, "wanting a cause" 2) Foreign policy towards the Muslim world 3) Charismatic person /leader Meeting places Same as phase [one]'; see also pp. 35-36.

[764] Q Wiktorowicz, *Radical Islam Rising: Muslim Extremism in the West* (Oxford: Rowman & Littleford 2005) 21; 99.

[765] F M Moghaddam 'The Staircase to Terrorism: A Psychological Exploration' (2005) 60 American Psychologist 2, 161-169, 162: 'The most important transformation that takes place among those who reach the third floor is a gradual engagement with the morality of terrorist organizations; these individuals now begin to see terrorism as a justified strategy. Those who become more fully engaged with the morality of terrorist organizations and keep climbing up the staircase are ready for recruitment as active terrorists'.

[766] Ibid, 165: 'After a person has climbed to the fourth floor and entered the secret world of the terrorist organization, there is little or no opportunity to exit alive. In most cases, the first category of new recruits consists of those who will be relatively long-term members and who become part of small cells, each typically numbering four or five persons, with access to information only about the other members in their own cells'; also at 166: 'During their stay on the fourth floor, then, individuals find that their options have narrowed considerably. They are now part of a tightly controlled group from which they cannot exit alive'.

[767] Ibid, 166: 'Thus, individuals who reach the fifth floor become psychologically prepared and motivated to commit acts of terrorism, sometimes resulting in multiple civilian deaths'.

alignment' and 'socialisation',[768] which involves the individual being 'cultured' into adopting the ideology.[769] Sageman's work reflects this; he considers the process to involve friendship.[770] Importantly, both Sageman and Wiktorowicz recognise the role of the radicaliser in the process. It is at this final stage, however, that the individual fully accepts extremist ideologies as part of their own reality and worldview. Finally, the individual enters the phase of '*Jihadisation'* which marks the conclusion of the radicalisation journey.[771] At this stage, the individual is no longer a radicalised individual: they are now a terrorist.

Also worth mentioning in the context of faith, Silber and Bhatt's NYPD report references 'radicalisation incubators' which are described as 'venues that provide the extremist fodder or fuel for radicalising'.[772] Radicalisation incubators are described as a 'critically important' part of the radicalisation process.[773] The list of potential incubators is extensive and includes 'mosques [including Salafi mosques], cafes, cab driver hangouts, flophouses, prisons, student associations, non-governmental organisations, hookah (water pipe) bars, butcher shops and book stores'.[774] Many of the radicalisation incubators listed are harmful stereotypes and operate only to enhance the stigma surrounding the Muslim community; it is perhaps a positive sign that the Government does not reflect this in its guidance. In some ways, however, it could be considered beneficial for the Prevent Duty Guidance to include material on the so-called radicalisation incubators; for example, it may be helpful for the Government

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[768] Q Wiktorowicz, *Radical Islam Rising: Muslim Extremism in the West* (Oxford: Rowman & Littleford 2005) 17.
[769] Ibid, 6.
[770] M Sageman, *Understanding Terror Networks* (University of Philadelphia Press 2004) 135.
[771] M D Silber, A Bhatt, *Radicalisation in the West: The Homegrown Threat* (New York Police Department Intelligence Division 2007) 43: 'This is the phase in which members of the cluster accept their individual duty to participate in jihad and self-designate themselves as holy warriors or mujahedeen. Ultimately, the group will begin operational planning for jihad or a terrorist attack. These "acts in furtherance" will include planning, preparation and execution. By the jihadization phase, small group dynamics play a much more prominent role. While during the earlier stages, the group members may have been only acquaintances, meeting each other in Salafi chat rooms, at university or simply by being friends, by the jihadization phase the group has solidified and hardened. Individuals see themselves as part a movement and group loyalty becomes paramount above all other relationships'.
[772] Ibid, 20.
[773] Ibid: 'Critically important to the process of radicalization are the different venues that provide the extremist fodder or fuel for radicalizing – venues, to which we refer to as "radicalization incubators"'.
[774] Ibid: 'These incubators serve as radicalizing agents for those who have chosen to pursue radicalization. They become their pit stops, "hangouts," and meeting places. Generally these locations, which together comprise the radical subculture of a community, are rife with extremist rhetoric. Though the locations can be mosques, more likely incubators include cafes, cab driver hangouts, flophouses, prisons, student associations, non-governmental organizations, hookah (water pipe) bars, butcher shops and book stores. While it is difficult to predict who will radicalize, these nodes are likely places where like-minded individuals will congregate as they move through the radicalization process. The Internet, with its thousands of extremist websites and chat-rooms, is a virtual incubator of its own. In fact, many of the extremists began their radical conversion while researching or just surfing in the cyber world'.

to investigate what the 'radicalisation incubators' of today are, such as online chat rooms. In line with this, Sageman's work is based on the idea that 'tomorrow's terrorists are likely to be the associates of today's terrorists' – often referred to as the 'bunch of guys' theory – and is similar to how counter-terrorism policing focuses on identifying terrorist suspects through association with other terrorists.[775] However, Sageman's method has since been described as an oversimplification.[776]

It is important to note that, on the whole, government guidance on the subject of radicalisation makes little use of the existing literature, both implicitly and explicitly, despite both focusing on the radicalised individual, and having less to say on the role of the radicaliser.[777] Common to all of these models, however, and the government guidance, is that there is little discussion of the significance of scriptural interpretation in the religious radicalisation process. The models also do not emphasise the fact that many individuals who are suspected of being radicalised are also under the age of 18;[778] that is, they are children who are radicalised by adults. This final and important point will be explored fully in Chapters Five and Six.

4.5 Conclusion

This chapter has begun to highlight the religious dimension of the Prevent Duty for faith communities by exploring how the Prevent Duty is of importance for faith communities. The chapter has argued that the Government's definition of Islamist terrorism is too narrow, and does not sufficiently capture what it means to be a religious radical, but that it also does little to distinguish between mainstream and extreme Islam. That is, the Government makes no attempt to distinguish between harmful radical religion and the ordinary manifestation of faith. The impact of this for faith communities, the chapter suggests, is serious: the Government's definition of Islamist terrorism contributes to the negative profiling of Islam, underscoring the importance of the Prevent Duty for faith communities.

As for the Government's depiction of the radicalisation process itself, the chapter argues that because the Government does not explicitly state that the radicalisation process has stages – characterised, as we have seen, by activism, non-violence, violence and, ultimately, by

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[775] M Sageman, *Leaderless Jihad: Terror Networks in the Twenty-First Century* (University of Pennsylvania Press 2008) 70-81.

[776] A Kundnani, 'Radicalisation: the journey of a concept' (2012) 54 *Race & Class* 2, 3-25.

[777] It is important to note that both Wiktorowicz and Sageman do mention the role of the radicaliser in their work.

[778] Home Office, 'Individuals referred to and supported through the Prevent Programme, April 2021 to March 2022' (2023) [3.2]. The youngest median age being referred from the Education sector was 14 years.

engagement in terrorism – there is little attention paid to *how* an individual becomes a terrorist, only to the signs that indicate they already are one. This, the chapter suggested, is unhelpful in two ways; first, it does not address the cause of terrorism; second, although specified authorities are directed to look specifically for signs and factors which indicate Islamist terrorism, Channel panel members are tasked with dealing with *all* forms of terrorism, highlighting an inconsistency in approach.

Indeed, the Government's guidance is also rather detached from the extensive literature on the subject, and this, the chapter has argued, indicates an underappreciation for the role of faith communities in the formulation of the Prevent Duty. The role of faith in the radicalisation process has been wholly underplayed by the Government so far; it is therefore no surprise that faith settings have not been listed as specified authorities under the Counter-Terrorism and Security Act 2015. This chapter also identified that that there are other omissions within the government guidance – and within the assessment frameworks – which underscore this disjunction between the guidance and the wider literature. For example, that the Government wholly underplay the role of the radicaliser, and the role of children in the process. These two points will be addressed in Chapters Five and Six of this thesis.

Chapter Five:
The Prevent Duty and Faith Communities

5.1 Introduction

As we have seen explored in the previous chapters, radicalisation, extremism and religion are now directly associated with each other, not least because the UK Government has explicitly linked them through counter-terrorism statute and guidance. As we saw in Chapter Four, the most significant threat from terrorism derives from a specific brand of Islamist terrorism – the ideology of *Salafi-Jihadism*. As we saw throughout the chapter, the wider scholarly community, including the fields of psychology and political science, agree that radicalisation has no single cause and follows no single trajectory.[779] However, it is evident that Islamist terrorists are motivated by a specific dedication to their faith which motivates them to commit terrorist atrocities and this means that the Prevent Duty is important for faith communities.

Due to this strong connection between radicalisation and faith, it would not be difficult to presume that places of worship and faith communities in general are under a statutory obligation to prevent individuals from being drawn into religiously motivated terrorism. However, they are not; no such statutory obligation exists. The faith sector has no specified authorities attributed to it under the Counter-Terrorism and Security Act 2015, and places of worship have no legal obligation to have due regard to the need to prevent individuals from being drawn into terrorism. Faith communities are not provided with sector specific training to conquer radicalisation in their institutions, despite the fact that the Government has described these institutions as 'ungoverned spaces'.[780] These 'ungoverned spaces' are characterised by the Government as settings where radicalisation and extremist ideology is able to 'flourish without firm challenge and, where appropriate, by legal intervention'.[781] As we saw in the previous chapter, radicalisation theorists also view mosques as places where radicalisation can thrive.

These ungoverned spaces, then, do not have a legal duty to comply with the Government's vision for Prevent to incorporate the work of faith communities in tackling extremism. In 2011, the Government explained that as part of the Prevent Strategy, the Faith sector had an individual part to play in the so-called war on terror. Indeed, also in 2011, the Home Office

[779] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 23 [75]: 'We recognise that radicalisation is a complex process for individuals, and that there is no single factor at work'.
[780] HM Government, 'Prevent Strategy' (2011) 9 [3.39].
[781] Ibid.

introduced targeted 'priority areas' which consisted of identified sectors where radicalisation was considered to be of particular concern; this list included the faith sector.[782] It was stated explicitly that these 'priority areas' would be 'at the forefront of the work to tackle radicalisation'.[783] The list also included the sectors of education, health, criminal justice and the charity sector.[784] Interestingly, each of the other priority areas are now listed as specified authorities who must discharge the Prevent Duty, aside from the charity sector.[785] However, although charities and the Charity Commission are not listed as specified authorities under the Act, the Government has provided the charitable sector with guidance relating to the Prevent Duty and challenging terrorism.[786] Ultimately, there is no legal responsibility to confront radicalisation within faith communities, and these 'ungoverned spaces' remain both unregulated and unsupported. To this end, this chapter will investigate the fifth research question addressed by this thesis: **how can faith communities be supported?**

In addressing this research question, the first section of the chapter will explore why the faith sector is not legally obligated to deal with radicalisation under the statutory Prevent Duty, and is therefore not supported by the Government to tackle radicalisation. Recognising the faith sector as an ungoverned space and previously listed priority area, the section will

[782] Ibid, 8 [3.37-3.38]: 'Priority areas include education, faith, health, criminal justice and charities. The internet is also included here as a sector in its own right although delivery of Prevent programmes through the internet is a theme running through this review and strategy. Some progress has been made in and with all these sectors. Some sectors (like faith) have been at the forefront of work to tackle radicalisation in this country. But more can and must be done. Like other areas of Prevent, programmes must be proportionate to the risks we face; we look to engage with these sectors because they are capable of addressing and resolving some of the challenges we face'; see also: 80 [10.114-10.115]: 'Historically, many terrorist groups have tried to legitimise their actions by reference to theology. Religion has provided both a motivation and an apparent justification for their actions. Contemporary terrorist groups therefore belong to a tradition: Al Qa'ida and like-minded organisations seek to radicalise and recruit people using what purports to be a theological argument. Members of Al Qa'ida often also seek specific religious sanction and approval for terrorist operations. That approval is sometimes provided by other members of Al Qa'ida who claim religious credibility, sometimes by members of other organisations and sometimes by people with no direct contact with any terrorist group but who broadly support their ideology, aims and objectives. It follows that faith institutions and organisations can play a very important role in preventative activity. They can lead the challenge to an ideology that purports to provide theological justification for terrorism. They will often have authority and credibility not available to Government. They can provide more specific and direct support to those who are being groomed to terrorism by those who claim religious expertise and use what appear to be religious arguments. They can also play a wider and no less vital role in helping create a society which recognises the rights and the contributions of different faith groups, endorses tolerance and the rule of law and encourages participation and interaction. People who subscribe to these values and principles are unlikely to turn to terrorism'.

[783] Ibid, 9 [37-38].

[784] Ibid.

[785] Counter-Terrorism and Security Act 2015, s 26; Schedule 6. However, as we shall see, the Charity *Commission* serves as an important regulatory body for places of worship; see, for discussion in the context of counter-terrorism: P W Edge, 'Hard Law and Soft Power: Counter-Terrorism, the Power of Sacred Places, and the Establishment of an Anglican Islam' (2010) 12 *Rutgers Journal of Law and Religion* 2, 359-381.

[786] As we shall see, charities are provided with guidance as to how not to be taken advantage of by terrorist organisations.

evaluate whether the sector is already sufficiently equipped to deal with radicalisation. For example, the section will explore whether the sector already has Prevent policies in place such as safeguarding policies that already cover radicalisation, or whether government guidance can be applied indirectly to the faith sector. If, however, it is established that the faith sector is not able to tackle radicalisation alone, this section will then explore how much support the Government has offered the faith sector through other means. The section will close with an examination of whether it is the responsibility of the UK Government to provide further support to the Faith sector to ensure that it is fully equipped to deal with radicalisation in places of worship and within wider faith communities.

Building on this analysis, the second part of this chapter will begin to explore alternative lenses through which to view and understand radicalisation in the context of children in faith communities; children have been selected as a case study because, as we saw in Chapter Four, children make up the largest category of referrals to the Prevent programme. For this reason, and due to the scope of this thesis, adults will not be discussed. The chapter will consider, for example, whether religious radicalisation can be framed as a category of child abuse, or, as will be explored in Chapter Six, as a form of child exploitation. This chapter will look at two categories of child abuse which have the potential to encompass radicalisation. These are forced religious conversion (as opposed to voluntary religious conversion), and spiritual abuse. Moreover, and in conclusion, the chapter will explore whether it would be more appropriate for the UK Government to support faith communities with guidance that deals with the religious radicalisation process and exposure to extremism as a matter of child welfare.

5.2 Religious radicalisation in the faith sector

As stated, the first section of this chapter will begin by exploring why the faith sector has not been recognised as a specified authority by the UK Government. In exploring this, the section will elucidate why the decision was made to not include faith communities in the first instance, as well as the implications that this has had on the fight against radicalisation and the freedom of religion in the England and Wales. The second part of this section will discuss further the analysis which began in Chapter Four: whether radicalisation is of importance for faith communities in the UK. This section will look specifically at the impact of radicalisation on out-of-school settings with a religious character. The third part of this section will provide an evaluation as to whether the faith community has existing and robust Prevent protocols in place and is therefore sufficiently equipped to deal with radicalisation

without government support. This section will evaluate and compare data gathered on the Prevent and safeguarding protocols (and the government guidance where applicable) of places of worship, university chaplaincies and religious charities. This final part of the section will explore whether it is necessary for the UK Government to more fully support faith communities in the fight against radicalisation.

5.2.1 Faith communities and the Prevent Duty

The House of Lords made the decision not to include faith communities as specified authorities in 2015.[787] The decision was made for two reasons: first, that faith is a private matter; second, that counter-terrorism, at the time, was part of a wider community cohesion and integration programme. Therefore, radicalisation was not recognised as a faith-related problem. This reasoning has not since been addressed by the Government, but will be explored here; first, on the basis that the practice of faith is a private, not public, matter.[788] This reasoning was based on the perception that the individual practice of faith is private and should not be scrutinised unnecessarily.[789] This was perhaps related to concerns about interrupting the manifestation of belief under Article 9 of the European Convention on Human Rights (ECHR). However, Article 9(2) of the ECHR makes it clear that the manifestation of religion or belief is a qualified right:

> 'Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others'.[790]

Therefore, although an individual has a legal right to practice their faith however they please, there are numerous instances – for example, for the protection of public order, health or

[787] This was accepted implicitly by the House of Commons.
[788] HL Deb 16 December 2014, vol 589, col 1310: 'The leaders of our faith groups play an essential role. Increasingly, Muslim leaders are condemning many of the atrocities, even so far as to issue fatwas and to say that they are un-Islamic activities. There is, however, further to go, because it is one thing to condemn something, but the big challenge is to build an alternative narrative that says it is not justified by religion or Islam, and that the way in which quotes from the Koran [sic] are twisted and perverted to justify violence is absolutely wrong. Government cannot play that role, and nor should they: it ought to be the role of respected scholars and religious leaders in the community. That work is essential, because the violence is justified by reference to a perverted view of a religion, which is a betrayal of mainstream, moderate Muslims'.
[789] The specified authorities, are, essentially, public sector bodies.
[790] See, for full detail: J Renucci, 'Article 9 of the European Convention on Human Rights' Council of European Publishing (2005).

morals, or for the protection of others, as listed above – when it is permissible or even necessary to interfere with the exercise of that right.[791]

Indeed, and as we have seen in previous chapters,[792] UK case law has addressed religion and terrorism related incidents, but without specific reference to Article 9 ECHR. These cases relied on the right to family life or freedom of expression as grounds for protection against prosecution for terrorism-related activity, but there was no reliance on the right to freedom of religion. In reality, the qualified element of Article 9(2) will *always* prohibit extremism and violence in the name of religion. Therefore, on the face of it, there is no good reason for the UK Government to exclude the faith community from the list of specified authorities under the Counter-Terrorism and Security Act 2015; there would be no way for the Prevent Duty to possibly interfere with Article 9 unless faith communities were practicing extremism and encouraging terrorism. Including the faith sector as part of the list of specified authorities would open a potential dialogue between the government and faith communities, as well as provide valuable insight about religiously motivated terrorism, helping to distinguish it from the ordinary manifestation of faith. This is substantiated by the research of theorists into the radicalisation process; as set out in Chapter Four, mosques are considered radicalisation 'incubators'.[793]

The second reason why the faith sector was excluded from the list of specified authorities was because counter-terrorism was framed as an integration and community cohesion matter, not a faith issue, in the early 2010s.[794] This was based on the highly contested **c**oncept that if individuals felt unwelcome to practice their belief or culture then they should leave the UK: 'people who do not accept the British way of life should find another acceptable country where they can live happily, and leave us alone'.[795] However, relatively recent work has identified that alienating potential extremists only exacerbates their extremism.[796] This is only one of the implications of excluding faith communities from counter-terrorism efforts.

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[791] Article 9(2) ECHR.
[792] See Chapters Two and Three.
[793] See Chapter Four, section 4.4.2.
[794] HL Deb 30 November 2011, vol 733, col 304: 'I have expressed my views many times, in speech as well as in print. People who do not accept the British way of life should find another acceptable country where they can live happily, and leave us alone. Often they come here as economic migrants and then oppose our common values… Could the Minister tell me what these wider policies and programmes are that are not part of Prevent? Surely these are things that promote cohesion, interfaith dialogue and citizenship. If the success of the programme depends on our sense of belonging—which is what I call integration—then how could this not be a part of Prevent? By separating integration and extremism, the Prevent strategy will create its own pitfalls'.
[795] Ibid.
[796] See: A Ventriglio, D Bhugra, 'Identify, Alienation, and Violent Radicalisation' in D Marazziti, S Stahl (eds) *Evil, Terrorism and Psychiatry* (Cambridge University Press 2019) 19.

Indeed, as we shall see in section 5.2.6, the Prevent programme did not flourish as a community cohesion initiative. This evidences that counter-terrorism efforts should focus on more than integration, and that extremism is generated by more than social isolation.

In summary, a few of the implications of excluding the faith sector from the list of specified authorities have been explored in this sub-section. For example, it was suggested the exclusion implied a lack of initiative from the Government to educate and inform the public on the difference between the ordinary manifestation of Islam and extremism, and has exacerbated the isolation of potential extremists in the UK. On a more positive note, a more active effort to include faith communities in discussions about terrorism has the potential to open a healthy dialogue that challenges extremism, as well as educates and informs the public. Despite this, there are two very significant implications of excluding the faith sector from the list of specified authorities.

First, some organisations with a faith element that are classified as specified authorities are not adequately tackling extremism. For example, the recently published Independent Inquiry into Child Sexual Abuse (IICSA) has uncovered that this is particularly true for out-of-school settings such as after school clubs and Muslim *madrassas*. The inquiry found that children were being subjected to abuse in religious out-of-school settings, and this included extremism-based abuse and radicalisation.[797] Therefore, it is unquestionable that radicalisation is a real concern for faith communities. Second, some settings within the faith community are not listed as specified authorities but are required to prevent terrorism under the 2015 Act, and have no faith-specific guidance from the Government. For example, although the literature has not yet recognised this, some specified authorities – such as universities – have faith-based components such as their chaplaincies that, as part of the university, are required to accommodate the university's obligation to prevent terrorism. These two implications will be dealt with in the following sub-sections (5.2.2 and 5.2.3).

5.2.2 Preventing radicalisation in out-of-school settings

First, then, it is important to explore whether radicalisation has been acknowledged as an issue for the faith sector in the context of schooling, where the Prevent Duty applies to all

[797] Independent Inquiry Child Sexual Abuse, 'Supplementary schooling, out-of-school settings and unregistered schools' in 'Child protection in religious organisations and settings' (2021) xi-xiv.

registered schools.[798] Despite this, the recent IICSA inquiry has claimed that abuse that takes place in supplementary and unregistered schools is a matter of child protection.[799]

Briefly, and for the purposes of providing context, in England the religious beliefs of a child are to be taken into consideration within any school setting.[800] For example, in England if a parent or guardian requests that their child 'be wholly or partly excused' from receiving Religious Education, then the child must be excused,[801] and a child may also be withdrawn from acts of religious worship.[802] Again in England,[803] schools may have a 'religious character' meaning that although children from outside the faith are able to attend, these schools are permitted to discriminate on grounds of religion in the event that the school is over-subscribed.[804] Voluntary schools that have a religious character are often supported by a charitable foundation which is often a religious organisation, and Religious Education in voluntary schools (with religious character) must be in accordance with either the trust deed or the tenets of the religion the school follows.[805] Independent faith schools must be registered and are subject to inspection,[806] but are privately funded: 'Independent schools can be designated as having a religious character in the same way as a foundation or voluntary school'.[807] These schools do not have to follow the National Curriculum, and they do not have to follow requirements for Religious Education and worship.[808] However, all independent schools must meet the Independent School Standards which provide requirements as to the quality of education and 'the spiritual, moral, social and cultural

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[798] As we saw in Chapter One, the field of Law and Religion has written extensively on the practice and freedom of religion in schools but has largely neglected the prominence of radicalisation in out-of-school settings.
[799] Independent Inquiry Child Sexual Abuse, 'Child protection in religious organisations and settings' (2021).
[800] The law on religious worship in maintained schools is that it is compulsory for schools to hold a daily act of collective worship (School Standards and Framework Act 1998, s 70).
[801] A pupil may also be withdrawn to receive religious education elsewhere if the pupil 'cannot with reasonable convenience' be sent to a school where religious education of that kind is provided.
[802] School Standards and Framework Act 1998, s 71 and 71A.
[803] Education is a devolved matter in Wales, Scotland and Northern Ireland.
[804] School Standards and Framework Act 1998, s 69(4); see also: School Standards and Framework Act 1998, s 84.
[805] Ibid, Schedule. 19[4]; see also: M Hill, R Sandberg, N Doe, *Religion and Law in the United Kingdom* (Kluwer Law International 2014, 2ndedn), p. 186: ''In relation to worship, no distinction is made between foundation, voluntary aided and voluntary controlled schools with a religious character'.
[806] Education Act 2002, ss 162A, 162B.
[807] M Hill, R Sandberg, N Doe, *Religion and Law in the United Kingdom* (2nd edn, Kluwer Law International 2014) 188.
[808] A Bradney, *Law and Faith in a Sceptical Age* (Routledge-Cavendish 2009) 131-132.

development of pupils'.[809] These statutory standards go further than the common law in equipping a child for life.[810]

This all applies to *registered* schools; unregistered schools, on the other hand, are a growing concern. In Wales, the recent Curriculum and Assessment (Wales) Act 2021 has given more autonomy to schools – especially those with religious character. However, as Sandberg explains: 'although the new Welsh legal framework represents a considerable advance, the Welsh Government has not been bold enough with respect of the position of local authorities and schools with religious character'.[811] Although Sandberg does not comment on extremism in this context, he does criticise the English approach 'which clings to the outmoded label of RE and is even more unclear about the inclusion of non-religious beliefs'.[812]

Moreover, the Education and Skills Act 2008 states that 'a person must not conduct an independent institution unless it is registered';[813] any person who does so 'is guilty of an offence' under the Act.[814] Across England and Wales, there are estimated to be around 250,000 children who are 'receiving education in supplementary schools with a faith focus or that are organised by a religious organisation'.[815] There is no clear statutory guidance on what a 'school' is; the law on universities, as we shall see, is much clearer. However, many of these out-of-setting schools are run by religious organisations, and there has been growing concern that child welfare is not sufficiently regulated within them.[816] These concerns have related to both sexual abuse and radicalisation.[817]

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[809] M Hill, R Sandberg, N Doe, *Religion and Law in the United Kingdom* (2nd edn, Kluwer Law International 2014) 189.
[810] *R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust, The Times* (12 April 1985).
[811] R Sandberg, *Religion in Schools: Learning Lessons from Wales* (Anthem Press 2022) 108.
[812] Ibid.
[813] Education and Skills Act 2008, s 96(1).
[814] Ibid, s 96(2).
[815] Independent Inquiry Child Sexual Abuse, 'Supplementary schooling, out-of-school settings and unregistered schools' in 'Child protection in religious organisations and settings' (2021) 74 [2-3]: 'Ofsted identified that there were a significant number of religious organisations and settings operating a comprehensive programme of after-school or weekend tuition. Many of these supplementary schools serve one ethnic community'; see also: The Children's Commissioner 'Skipping School: Invisible Children. How children disappear from England's schools' (2019).
[816] Independent Inquiry Child Sexual Abuse, 'Child protection in religious organisations and settings' Investigation Report September 2021, F1: Supplementary schooling, out-of-school settings and unregistered schools, p. 76-79.
[817] Ibid, 83-84 [41]: 'Additionally, the focus of the proposals was on the removal of what it determined to be "undesirable teaching", which involved what it said was the undermining of fundamental British values or the promotion of extremist views. This was defined as "vocal or active opposition to our fundamental values", including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs. As Ofsted, the Department for Education and some local authorities identified, some religious organisations perceived this to be a threat to their teaching and religious beliefs. The focus on counter-

For a while, Ofsted has had grave concerns about child protection within these institutions. Indeed, the aforementioned IICSA inquiry found that Ofsted has 'serious concerns' about children who are put in harm's way while attending these out-of-school settings.[818] Moreover, Ofsted is limited in its ability regulate and inspect such settings: 'Ofsted's remit in inspecting such settings extends only to establishing whether an unregistered school is being "conducted"', and not as to the effectiveness of safeguarding within that school.[819] Indeed, as to the inspection of a school by Ofsted, it has been recognised that 'aside from the obvious desire to safeguard pupils from radicalisation, a failure to pro-actively manage these issues could lead to an unfavourable outcome following inspection. This could be very damaging for a school's reputation'.[820] This, again, illustrates how faith communities are unsupported by the Government in relation to the Prevent Duty.

In 2015, the Department for Education issued a call for evidence for the inspection of out-of-school settings in England. This was in response to specific concerns about radicalisation within Muslim *madrassas* and some classes that were run by ultra-Orthodox Jews relating to health and safety, and corporal punishment.[821] As part of its call for evidence – and as later commented on by the ICCSA inquiry – the Department for Education requested opinions on introducing: a requirement to register these unregistered schools; a power to inspect such schools; and a power to impose sanctions where child protection and welfare was found to fall short within them.[822] Importantly, there was also a call to end 'undesirable teaching' which promoted extremism.[823]

extremism and implying that all such settings would need to respect "fundamental British values" on registration hindered the progress of potentially valuable measures for the protection of children from sexual abuse and other forms of physical abuse'

[818] Ibid, 76 [12].

[819] Ibid, [12-13].

[820] Winckworth Sherwood, 'A legal and PR response to the Prevent Duty: Preventing extremism in schools: the legal duties and implications' (January 2016) 1.2.

[821] Department for Education, 'Out-of-school education settings: call for evidence, Government consultation' (2015)

[822] Ibid; see also: Independent Inquiry Child Sexual Abuse, 'Supplementary schooling, out-of-school settings and unregistered schools' in 'Child protection in religious organisations and settings' (2021) 83, [40-41]: 'As part of its call for evidence, the Department for Education sought views on proposals for a regulatory system for out-of-school settings, the key features of which would include: a requirement on settings that fell within scope to register, providing basic information so that there is transparency about where settings are operating; a power for a body to inspect settings to ensure that children are being properly safeguarded; and a power to impose sanctions where settings are failing to safeguard and promote the welfare of children, which could include barring individuals from working with children and the closure of premises.'.

[823] Ibid.

Of the responses, around half were from faith groups, and three-quarters of the responses were against the proposals.[824] Many of the concerns were focussed on the potential impact of these new rules on the right to exercise religious freedom.[825] For example, in response, Frank Cranmer, secretary of the Churches' Legislation Advisory Service, noted that: 'the broad aim of keeping children safe generally from the risk of harm, including emotional harm, and promoting their welfare, some of the proposals… were fairly vague'; and so 'we suggested that the proposal, though understandable, has not been fully thought through and seems disproportionate to the mischief it is seeking to cure'.[826] Moreover, later, the Minister for Education explained that inspections were not a particularly suitable means of regulating religion in these settings:

> 'We are not infringing people's freedom to follow particular faiths or hold particular beliefs. In fact, the mutual respect and tolerance of those with different faiths and beliefs is one of our core British values, alongside democracy, rule of law and individual liberty, and nothing in the proposals infringes on that'.[827]

However, Ofsted has described the consultation as a missed opportunity, and the IICSA inquiry has found that:

> 'Despite the strong negative reaction to focus on radicalisation and extremism, the evidence also suggests that there was broad support overall [from faith communities] for the general policy aim to safeguard children and enable action to be taken when there were concerns for welfare and safety'.[828]

Again, this underscores the ways in which faith communities hope to be supported by the Government in tackling extremism.

Ultimately, the existence of these settings – or 'ungoverned spaces' – means that vulnerable children who are under the care of faith leaders could be preyed upon by radicalisers and extremist organisations while attending activities associated with their place of worship or faith community. Although the Department for Education issued specific guidance relating to

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[824] Independent Inquiry Child Sexual Abuse, 'Supplementary schooling, out-of-school settings and unregistered schools' in 'Child protection in religious organisations and settings' (2021) 84 [42].
[825] Ibid.
[826] F Cranmer, 'Regulating out-of-school education', *Law & Religion Blog UK*, 20 January 2016. Available online at: <https://lawandreligionuk.com/2016/01/20/regulating-out-of-school-education/> Last accessed: 20 January 2023.
[827] Westminster Hall, Minister for Education Nick Gibb, 20 January 2016.
[828] Independent Inquiry Child Sexual Abuse, 'Supplementary schooling, out-of-school settings and unregistered schools' in 'Child protection in religious organisations and settings' (2021) 84, [45].

keeping children safe,[829] there is still no freestanding legal obligation to prevent radicalisation in these out-of-school settings. Indeed, the ICCSA inquiry found that 'many religious organisations recognise a need for common standards, advice and guidance about child protection', and recognises the need for government issued guidance on the subject.[830]

It is of course true that faith leaders, and teachers within these settings, are obliged to contact the police if they have a terrorism or extremism related concern – just as any member of the public is encouraged to – but there is no statutory procedure in place for them to undertake training, investigate radicalisation concerns and make referrals where necessary. This creates challenges which are not only related to unreported cases of radicalisation, but with inconsistency as to how radicalisation is handled by faith communities. This reflects the extent to which faith communities are unsupported in tackling radicalisation.

The following sub-sections, then, will explore this further; beginning with an evaluation of a few case studies where the Prevent Duty is indirectly implemented through specified authorities that have faith elements: first, places of worship such as mosques and churches; second, the Charity Commission; third, chaplaincy services at universities in Wales. These sub-sections will be guided by three main questions: first, whether the examples illustrate that the faith sector is already tackling radicalisation alone, without government support and guidance; second, what the implications of this may be; and, third, whether the government should more fully support faith communities in tackling radicalisation.

5.2.3 Preventing radicalisation within places of worship

As a direct consequence of the 7/7 2005 London bombings, the UK Government sought to address places of worship where extremism was flourishing.[831] This led to a consultation paper which proposed several new powers which sought to prohibit extremism in these institutions.[832] For example, it was proposed that trustees or the registered owners of places of worship would be required, by a court of law, 'to take steps to stop certain extremist behaviour occurring in a place of worship'.[833] This proposed new power was referred to as 'a

[829] Department for Education, 'Keeping children safe during community activities, after-school clubs and tuition: non-statutory guidance for providers running out-of-school settings' (2020).

[830] Independent Inquiry Child Sexual Abuse, 'Supplementary schooling, out-of-school settings and unregistered schools' in 'Child protection in religious organisations and settings' (2021) 85 [51]: 'the government has no current proposals to introduce such measures on a compulsory basis'.

[831] Then-Prime Minister The Rt Hon Tony Blair sought to create 'hard' law sanctions which would provide the power to 'order the closure of a place of worship which is used as a centre for fomenting extremism' – see: Tony Blair, August 2005 Monthly Press Conference, 5 August 2005.

[832] Home Office, 'Preventing Extremism Together: Places of Worship' (2005).

[833] Ibid, [17].

requirement order' and 'extremist behaviour' was defined by reference to 'that which the police reasonable [sic] believe amounts to support for a proscribed organisation under section 12 of the Terrorism Act 2000, or encouragement as proposed by the Terrorism Bill'.[834] If those in 'control' of a place of worship – that is, the trustees or registered owners – failed to take these steps, they would be found guilty of an offence.[835] It may be considered that this proposed offence would have created a duty to prevent radicalisation in places of worship. However, the offence never came into fruition; as Edge sums up: 'the radical nature of the proposed new power was identified as hostile by the majority of [the consultation] respondents'.[836]

Based on the above reasoning, it is clear that the faith sector had real potential to be included in the list of specified authorities under the Counter-Terrorism and Security Act 2015. However, this has not been contemplated nor actioned by the Government, and so is merely a suggestion. The key issue is that the Faith sector is not legally obligated to prevent violent extremism and terrorism but this does not mean radicalisation does not take place within faith communities. A few places of worship do seek to indirectly deal with the Prevent Duty through their safeguarding polices, however, and this will be briefly explored throughout the rest of this sub-section.

Churches affiliated with the Church of England must abide by safeguarding laws, and these laws cover matters that fall outside the scope of terrorism. In following these laws, the Church, alongside the Methodist Church in England, promote a Safer Church policy, informed by the Joint Safeguarding Statement.[837] In Wales, churches affiliated with the Church in Wales must pledge to a similar 'Safe Church'.[838] This pledge does not explicitly mention radicalisation nor extremism, but does deal widely with safeguarding: a 'safe church' is expected to take 'reasonable steps to create and maintain an open and transparent organisational culture that reflects the importance of safeguarding children and adults at risk'.[839] These 'risks' include 'coercion, intimidation or oppression, physical, sexual,

[834] Ibid.
[835] Ibid, [20].
[836] P W Edge, 'Hard Law and Soft Power: Counter-Terrorism, the Power of Sacred Places, and the Establishment of an Anglican Islam' (2010) 12 *Rutgers Journal of Law and Religion* 2, 359-381, 370.
[837] Church of England, Methodist Church, 'Safeguarding Records: Joint Practice Guidance for the Church of England and the Methodist Church' (2015); see also: The Church of England, 'Promoting a Safer Church' (undated).
[838] The Church in Wales, 'The Church in Wales Provincial Safeguarding Policy' (2020).
[839] Ibid, 2-3: the Safe Church pledge also includes taking 'reasonable steps' to: 'ensure that all who work for the Church, whether ordained or lay and whether in a paid or unpaid capacity, act responsibly and with integrity; ensuring that their position of trust is upheld and that no advantage is taken of those in their care; ensure that all

emotional or financial abuse or neglect'.[840] Moreover, the Roman Catholic Bishops' Conference of England and Wales has recently established the Catholic Safeguarding Standards Agency (CSSA) following the IICSA inquiry, previously introduced.[841] The Conference has also shown support for a new 2021 report published by the Commission for Countering Extremism.[842] Cardinal Vincent Nichols said of the report, which drew attention to gaps in legislation allowing extremists to operate: 'extremism is a danger and so we need to work together to ensure there is unambiguous legislation that not only prevents and penalises those spreading it, but equally protects those who experience it'.[843] It is encouraging that the Catholic church has acknowledged extremism as a danger; however, it is clear that more work is required before churches across all denominations acknowledge extremism as an issue in their own context. As for mosques, the Muslim Council of Britain has received some government support on the matter of radicalisation, as has the affiliated Muslim Council of Wales, but this will be dealt with separately in section 5.2.6 of this chapter.

Also important is the extent to which places of worship engage with the Prevent Duty, which – as to be expected – is very little due to there being no legal requirement for them to do so.[844] However, data gathered in 2021 for the purposes of this thesis found that across 40 mosques in Wales, only 3 (1.2%) made reference to a safeguarding policy on their website. Not a single mosque had a publicly available Prevent policy or protocol in place. By way of

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who work for the Church are suitable for their roles with children and adults at risk by the careful selection and training of those with any responsibility within the church, in line with safer recruitment principles; ensure that all public worship, events and activities are organised and delivered safely to a high standard; and with the particular needs of children and adults at risk in mind; ensure that all pastoral care is delivered safely; promote safer practice in all work undertaken with children and adults at risk; take seriously and respond appropriately to every concern, disclosure or allegation which suggests that a child or adult at risk may have been harmed or could be harmed, including by involving the statutory authorities. ensure that all complaints are handled promptly and robustly in accordance with the law and in line with best practice; ensure that those who have suffered abuse or harm are safely supported within our Church communities and that we learn lessons from the past to strengthen safeguarding processes; ensure that off enders' rights to worship are observed within the context of robust and proportionate safeguarding agreements; challenge any abuse of power, especially by anyone in a position of trust; keep under review our policy, operational procedures and practice guidance'.

[840] Ibid, 2.

[841] See: 'Catholic Council for the IICSA – Recommendations Action Plan'. Available online at: <https://www.cbcew.org.uk/wp-content/uploads/sites/3/2021/05/IICSA-Recommendations-Response-300421.pdf> Last accessed: 5 June 2022.

[842] Commission for Countering Extremism, 'Operating with impunity. Hateful extremism: The need for a legal framework' (2021). The Commission for Countering Extremism is an impartial commission who provide the UK Government with advice and scrutiny relating to counter-extremism efforts in the United Kingdom.

[843] Catholic Church England and Wales, 'Cardinal: Unambiguous legislation needed to combat hateful extremism' 24 February 2021. Available online at: <https://www.cbcew.org.uk/cardinal-unambiguous-legislation-needed-to-combat-hateful-extremism/> Last accessed: 2 July 2022.

[844] As we saw in Chapter One, to date, this has not been studied by the field of Law and Religion; the research has predominantly focussed on the effect of counter-terrorism measures on religious freedom.

comparison, out of 252 parishes in Wales, 11 referenced a safeguarding document on their website (27.7%) but none mentioned the Prevent Duty. As a direct comparison – and also acknowledging that terrorism motivated by Christianity has not yet been recognised by the Government as an imminent threat – it is inferred that the Church in Wales is not particularly concerned with preventing extremism or terrorism among those associated with it.[845]

However, extremism motivated by Christianity is a growing concern.[846] For example, in 2021, the Reverend Dr Randall was referred to the Prevent programme after preaching homophobia as part of a sermon delivered as a chaplain to students at a school in England.[847] It was advised by the police that Randall was not vulnerable to radicalisation following assessment. Moreover, in March of 2023, a Christian lecturer at Cliff College was dismissed from his role following a homophobic social media post on Twitter.[848] The lecturer was threatened with a possible Prevent referral, but no further action appears to have been taken as of May 2023. It is perhaps worth questioning, then, why churches do not deal with extremism in their own contexts, and whether the UK Government could support them to challenge it.

Therefore, although none of these institutions deal with or acknowledge radicalisation directly, they do manage the safeguarding of children and vulnerable adults across England and Wales. It may be inferred, then, that the safeguarding policies used by churches in

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[845] The methodology behind the data gathered looked at the websites of churches and mosques in Wales, searching for their publicly available Prevent policies or protocols (including any document or webpage that referenced Prevent in any way), and their safeguarding policies or protocols. Each church and mosque was contacted wherever possible (some did not have any contact details available) to request their Prevent policies, but none responded. Further research would improve this limited data, for example, by submitting Freedom of Information requests to all churches and mosques without a publicly available Prevent policy or protocol.

[846] Terrorism motivated by Christianity has been acknowledged in the literature: J Jones, *Blood that Cries out From the Earth: The Psychology of Religious Terrorism* (Oxford University Press 2008) 27: 'Their religion requires of them that all aspects of life—from laws governing capital crimes to women's clothing and children's discipline—be subject to religious control. And the prominent issues in this divine mandate are also similar across traditions: the "proper" roles of men and women, the regulation of sex, ending abortion, and prohibition homosexuality. These laws are not just for their personal lives but for whole societies, for their God-given mission demands that they bring all of society under theocratic control. This understanding of the divine mandate is shared by Christian Reconstructionists, Muslim jihadists, ultra-orthodox Jews, and groups like Aum Shinrikyo and the Hindu nationalist party as well'.

[847] C Simpson, 'Chaplain flagged to Prevent for school sermon on LGBT policy victim of "Church of Postmodernism" *The Telegraph* 9 May 2021; see also: Employment Tribunals Case No. 2600288/292 where the Rev. Dr. Randall brought a discrimination case against the school on grounds of religion and belief and failed. Available online at: <https://assets.publishing.service.gov.uk/media/63fc8d90e90e0740d3cd6eb8/Mr_B_Randall_v_Trent_College_Limited___others_2600288_2020_Judgment.pdf> Last Accessed 2 May 2023.

[848] L Clarence-Smith, 'Christian lecturer sacked over "homosexuality is invading the church" *tweet' The Telegraph* 18 March 2023. The tweet read: 'Homosexuality is invading the Church. Evangelicals no longer see the severity of this b/c [sic] they're busing apologizing for their apparently barbaric homophobia, whether or not its [sic] true. This *is* a "Gospel issue", by the way. If sin is no longer sin, we no longer need a saviour'.

England and Wales are an appropriate means of dealing with abuse and neglect in the private faith setting. Arguably, radicalisation and extremism could neatly fit into these existing safeguarding policies, and so it might be suggested that places of worship are capable and comfortable dealing with radicalisation as part of this. However, this is an oversimplification – radicalisation and extremism are not explicitly mentioned in any of the policies, so it would be more appropriate to suggest that the UK Government improves the support available for faith communities in tackling radicalisation. More worrying still is that very few mosques in Wales had a publicly available safeguarding policy.

Separate to places of worship, but also not under a legal responsibility to prevent terrorism under the Counter-Terrorism and Security Act 2015, are religious charities who are governed by the Charity Commission. The Charity Commission is also not listed as a specified authority under the Act, but the UK Government has explained that charities – particularly religious charities – are vulnerable to abuse and exploitation from terrorist organisations. It is for this reason that the charity sector has been offered guidance on terrorism by the Government, but not on interrupting the radicalisation process itself. Therefore, as will be explored in the following sub-section, the Charity sector is yet another area where faith-based terrorism and extremism are prominent but where there is insufficient guidance to support challenging it.[849]

5.2.4 The Charity Commission, radicalisation and extremism

To identify as a charity, an organisation must be defined as 'charitable' under the Charities Act 2011,[850] and must operate for the purposes of 'public benefit'.[851] The Charity Commission operates across England and Wales to identify, regulate and advise charities,[852]

[849] For discussion as to how terrorist organisations abuse the charity sector, see: P W Edge, 'Hard Law and Soft Power: Counter-Terrorism, the Power of Sacred Places, and the Establishment of an Anglican Islam' (2010) 12 *Rutgers Journal of Law and Religion* 2, 359-381; see also: C Robson, N Ryder 'How and to what extent has public-private financial information sharing improved UK's counter terrorist financing reporting regime' in D Jasinski, A Phillips, E Johnson (eds) *Organised Crime, Financial Crime and Criminal Justice Theoretical Concepts and Challenges* (Routledge 2023) 83-103.

[850] Charities Act 2011, s 1(1)-(2): '(1) For the purposes of the law of England and Wales, "charity" means an institution which – (a) is established for charitable purposes only, and (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities. (2) The definition of "charity" in subsection (1) does not apply for the purposes of an enactment if a different definition of that term applies for those purposes by virtue of that or any other enactment'.

[851] Charities Act 2011, s. 4: '(1) In this Act "the public benefit requirement" means the requirement in section 2(1)(b) that a purpose falling within section 3(1) must be for the public benefit if it is to be a charitable purpose. (2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 3(1), it is not to be presumed that a purpose of a particular description is for the public benefit. (3) In this Chapter any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales. (4) Subsection (3) is subject to subsection (2)'.

[852] On the Charity Commission, see: Charities Act 2011, ss. 13-16.

and there are currently around 34,000 charities on the Charity Commission's register with aims that include advancing religion for public benefit. The Charity Commission and their regulated charities are not listed as specified authorities under the Counter-Terrorism and Security Act 2015; however, all charities must abide by UK law. Therefore, the Charity Commission has been described as 'an important structure for control of the majority of mosques in the United Kingdom' by Edge.[853] In 2010, Edge provided an important account of the role of the Charity Commission in light of existing UK counter-terrorism laws;[854] this took place before the Charity Commission updated its counter-terrorism strategy. As we shall see, Edge's account reflects the same concerns faced by the Charity Commission today.

The Charity Commission's counter-terrorism strategy is primarily concerned with the diversion of charitable funds for terrorist purposes.[855] Therefore, although not listed as a specified authority, the Charity Commission deals directly with terrorism and extremism-related activity. In 2015, the Charity Commission for England and Wales revised their counter-terrorism strategy, first published in 2008.[856] This revision was prompted by a 2007 Home Office Review of the Charity Commission and its potential – and unintentional – involvement with terrorism. The review found that there were some instances of abuse of funds for terrorist purposes, but that it was difficult to know the true extent of the abuse.[857]

Some of the trustees of charities who are regulated by the Commission are subject to the Prevent Duty – particularly those involved with educational charities. There is, therefore, often an overlap between the general obligations of charities and the need to combat radicalisation under the Prevent Duty. Due to this, the Charity Commission has provided specific guidance directed towards their charities to support them in protecting themselves

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[853] P W Edge, 'Hard Law and Soft Power: Counter-Terrorism, the Power of Sacred Places, and the Establishment of an Anglican Islam' (2010) 12 *Rutgers Journal of Law and Religion* 2, 359-381, 365..
[854] Ibid.
[855] Charity Commission, 'Policy paper: Counter-terrorism strategy' (2015) 5 [3.2]: 'The true scale of charitable funds being diverted for terrorist purposes, charity links with terrorist activities and other abuse is not known but, as the Home Office Review acknowledged, "actual instances of abuse have proven very rare". The commission's own experience indicates that the number of cases in which there is evidence to prove charities have been involved in supporting terrorist activity whether directly, indirectly, deliberately or unwittingly is very small in comparison to the size of the sector. However, such abuse is completely unacceptable, and the impact of even one proven case involving a charity is potentially significant for public trust and confidence in that charity and the sector in general'.
[856] Ibid; the Charity Commission is established by law as the regulator for over 164,000 registered charities and 100,000 unregistered charities across England and Wales.
[857] HM Treasury, 'Review of safeguards to protect the charitable sector (England and Wales) from terrorist abuse' (2007) 6.

against abuse for extremist purposes.[858] The guidance suggests that charities are aware of the risks involved with hosting and holding events, using speakers at their events or distributing literature to further their charitable purposes.[859] Therefore, although charities are not listed as specified authorities, they are required to discharge many of the duties required of a specified authority – in this sense, religious charities, such as places of worship, may be subject to the Prevent Duty indirectly via the charity regime.

The guidance also offers some advice on how to distinguish between permissible radical views and harmful extremist ideology: 'some views may not be the norm or traditional. They may even offend, shock or disturb others. That does not mean they cannot be promoted or supported by a charity', they state.[860] The guidance notes that 'expressing or acting on certain views, such as inciting religious hatred, may be a criminal offence and/or in breach of human rights and equality laws'.[861] If a charity were to '[provide] a platform [for the] expression or promotion' of such views, it is unlikely the Charity Commission will support – or continue to support – that charity.[862] It is also unlikely that such a charity promoting a harmful ideology would comply with the public benefit requirement not to cause undue detriment or harm.[863]

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[858] See: Charity Commission for England and Wales, 'Chapter 5: Protecting charities from abuse for extremist purposes' (2022).
[859] Ibid, [1]; see also: [6.1-6.2]: 'Abuse can occur in many ways, such as: through the use of the charity's premises; by speakers at the charity's events; through the use of the charity's communications network, including social media, to promote extremist literature. This abuse may be carried out by a person or organisation, either connected to a charity or outside of it. Trustees should be aware that abuse can occur in ways which aren't always immediately obvious or apparent. It is therefore important that trustees maintain good lines of communication, accountability and oversight where they are not directly in charge of all aspects of the management and administration of a charity. Some examples include: the charity organises activities that support views which could be considered harmful or unlawful; an individual within a charity allows its premises to be used by someone else to promote terrorist activity or to express, without challenge, extremist ideology; a charity invites speakers, or uses volunteers, who the trustees know are likely to promote extremist ideology to influence or direct the charity's work; trustees, staff or other charity representatives promote extremist ideology or make inappropriate extremist comments in their personal capacity; people with extremist views use legitimate and acceptable contact with the charity to endorse these views, or to give them status or credibility; a charity uses or distributes literature which contains extremist views and makes this available to the charity's beneficiaries; a charity works with, or funds, a partner that promotes or fails to condemn extremist views or terrorist activity (whether or not it may be a charity) and so brings the charity into disrepute; other groups and bodies use charity premises to hold an event at which extremist views are expressed or promoted and/or to collect funds in support of extremist or terrorist purposes; a charity supports extremists, for example by providing charitable funds or other assistance only to people who hold or have expressed extremist views; an event unconnected to the charity is a platform for extremist views or invites a speaker known to have made inappropriate extremist comments and the charity's name is associated with the event because the organisers are donating the income to the charity and advertising this to attract attendees; the communications network of a charity is exploited so that those intent on promoting and developing extremist views in order to encourage terrorism can contact each other – this may happen without the knowledge of the charity or its trustees'.
[860] Ibid, [5.1].
[861] Ibid.
[862] Ibid.
[863] Ibid; see also: The Charity Commission, 'Public benefit: an overview' 16 September 2013. Public benefit is a legal requirement for charities – the Commission regulates this requirement: 'Public benefit is about knowing:

As for child protection, however, the previously mentioned IICSA inquiry commented on the Charity Commission's role in its regulation:

> 'Registration with the Charity Commission does not amount to quality assurance of its conduct. It also does not mean that a charity's safeguarding policies and procedures are appropriate, as there is no requirement to provide information about child protection policies and practices or a regular audit of them'.[864]

Therefore, although not all religious charities are under a legal obligation to prevent terrorism, some are indirectly, such as those with educational purposes. Further, charities must abide by the law – they are not to promote extremist or harmful views for two reasons. First, they will not be supported by the Commission; second, they will fall short of their public benefit requirement. It appears, however, that the Charity Commission lacks the power to make any real difference to how charities conduct themselves in the face of extremism. Therefore, improved government guidance in this area is necessary if faith communities are to be fully supported by the Government. Although there has been recently published work by Robson and Ryder which looks at the abuse of the charitable sector for terrorist funding,[865] researchers have not treated extremism in the charitable sector in much detail. Indeed, the most recent review of the statutory Prevent Duty has found that the UK Government is failing to address charities that enable extremism.[866] The Government must begin work to fully support charities in defying extremism, and fully regulate those charities who are wilfully enabling extremism. This underscores the extent to which faith communities are largely unsupported in tackling extremism.

University chaplaincies,[867] on the other hand, are considered by many to be at the heart of university work involving the well-being of students. As part of the university, the chaplaincy

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what the charity is set up to achieve - this is known as the charity's 'purpose'; how the charity's purpose is beneficial - this is the 'benefit aspect' of public benefit; how the charity's purpose benefits the public or a sufficient section of the public - this is the 'public aspect' of public benefit; how the trustees will carry out the charity's purpose for the public benefit - this is what is known as 'furthering' the charity's purpose for the public benefit'.

[864] Independent Inquiry Child Sexual Abuse, 'Supplementary schooling, out-of-school settings and unregistered schools' in 'Child protection in religious organisations and settings' (2021) 92 [19].

[865] C Robson, N Ryder 'How and to what extent has public-private financial information sharing improved UK's counter terrorist financing reporting regime' in D Jasinski, A Phillips, E Johnson (eds) *Organised Crime, Financial Crime and Criminal Justice Theoretical Concepts and Challenges* (Routledge 2023) 83-103.

[866] W Shawcross, 'Independent Review of Prevent' (2023) 146 [6.287]: 'Going beyond proscription, the government should pay greater attention to the pernicious impact of Hamas's support network in the UK. These companies and charities operate legally. This highlights the importance of arm's length bodies such as the Charity Commission in helping formulate the most effective response'.

[867] On chaplaincies and religion in the context of prisoners, see: K Hunt, 'Grief, Chaplaincy and the Non-Religious Prisoner' in S Read, S Santatzoglou, A Wrigley (eds) *Loss, Dying and Bereavement in the Criminal*

is expected to discharge the Prevent Duty effectively, and there has been extensive study of the operation of the Prevent Duty in UK universities, in particular its impact on the Muslim community, but this will not be dealt with in the following sub-section.[868] All universities (or Relevant Higher Education Bodies – RHEBs – as they will now be referred to) are required, by law, to 'carry out a risk assessment for their institution which assesses where and how their students might be at risk of being drawn into terrorism'.[869] They must mitigate this risk through developing a 'Prevent action plan'.[870] The following sub-section will evaluate data gathered from all RHEBs in Wales as to their publicly available Prevent policies; their wider safeguarding policies, on the basis that the Prevent programme is commonly treated as a safeguarding matter; and their chaplaincy policies, on the basis that chaplaincy is a faith-led element of the institution.[871] The sub-section will explore whether chaplaincy services are

Justice System (1st edn, Routledge 2018); K Hunt, 'Non-religious prisoners' unequal access to pastoral care' (2022) 12 *International Journal of Law in Context* 1, 116-131.

[868] Universities have been concerned about what the Prevent Duty may mean for their institutions, including how they should go about balancing the Prevent Duty with their other legal responsibilities such as the obligation to uphold the freedom of speech and abide by the Public Sector Equality Duty (PSED). On this, see C McGlynn, S McDaid, *Radicalisation and Counter-Radicalisation in Higher Education* (Emerald Group Publishing 2018). Relevant case law on the PSED illustrates that the courts have taken a stringent approach to enforcing the duty against public bodies: *R (Hajrula and another) v London City Councils* [2011] EWHC 151 (QB); *R (Greenwich Community Law Centre) v Greenwich London Borough Council* [2012] EWCA Civ 496: having 'due regard' to the PSED did not mean that the court should question whether the decision-making process of a public authority had given suitable consideration to equality. Since, many cases have seen the claimant fail – see, most notably: *R (on the application of T) v Sheffield City Council* [2013] EWCH 2953 (QB); see, for further discussion: Equality and Human Rights Commission, 'Delivering the Prevent Duty in a proportionate and fair way: A guide for higher education providers in Wales on how to use equality and human rights law in the context of Prevent' (undated). On the balancing of the Prevent Duty with the requirement to uphold the Article 10 of the ECHR (on the freedom of expression); see, for example: M McGovern, 'The university, Prevent and cultures of compliance' (2016) 35 *Critical Studies in Innovation* 1, 49-62 who describes the Prevent Duty as (at 50): '[initiating] a culture of control and compliance, for students and staff, in what is able to be said, taught and researched'; see also: S Lenos, J Krasenberg, 'Free speech, extremism and the prevention of radicalisation in higher education' (RAN Centre of Excellence), 8-9 February 2018 on the regulation of external speakers and events (in light of the risk of extremist speakers) at 5 suggesting that a safe climate of academic freedom can be achieved through the use of counter speeches and through an attempt to appeal to 'non-polarised' staff and students. Case law has also witnessed the interaction of Article 10 and the Prevent Duty. For example, *Butt v Secretary of State for the Home Department* [2019] EWCA Civ. 256 saw paragraph 11 of the aforementioned Higher Education Prevent Duty Guidance came under fire (the paragraph referred to the 'need to balance [the] legal duties in terms of both ensuring freedom of speech and academic speech [whilst] also protecting student and staff welfare'). In *Butt,* paragraph 11 was found to be unlawful on grounds of its 'unconditional phrasing' (see [177] of the judgment).

[869] Home Office, 'Prevent duty guidance: for higher education institutions in England and Wales' (2021) [3-4].

[870] Ibid, [21].

[871] Data was gathered in 2021; RHEBs are under a statutory duty to comply with the statutory Prevent Duty and are listed as specified authorities under the Counter-Terrorism and Security Act 2015, Schedule 6. Institutions qualify as RHEBs are those defined as 'qualifying institutions' by s 1 of the Education Act 2004: those institutions 'whose entitlements to grant awards [are] conferred or confirmed by [either]: an Act of Parliament; a Royal Assent'; or they are granted the power to award degrees under s 76 of the Further Education Act 1992. It also includes those given the authorisation to grant degrees and the variation (or revocation) of other authorisations to grant degrees under ss 42 and 45 of the Higher Education and Research Act 2017, respectively. RHEBs consist of higher education providers that are registered with the Office for Students (OfS) but some that

well-equipped to deal with the prevention of radicalisation without further government support.

5.2.5 University Chaplaincy in Wales and the prevention of terrorism

Institution-wide, the RHEBs in Wales were found to have wide discretion as to how the Prevent Duty operated at the institutions, but none have yet been called out for non-compliance by the Higher Education Council for Wales (HECFW) on these grounds. Some RHEBs took a more broad-brush approach,[872] whereas others documented their Prevent responsibilities in detail.[873] Some RHEBs simply opted to reference their safeguarding policies as a substitute for a substantive Prevent policy.[874] It is presumed that this decision was taken to expand safeguarding responsibilities, and not because a Prevent policy was not considered a priority for these institutions. In any event, HECFW has not stated that these RHEBs are in violation of their Prevent responsibilities by not having a dedicated policy that deals with radicalisation.

Moving on to chaplaincy and faith-based support at the RHEBs in Wales, it is a statutory requirement that all RHEBs provide 'sufficient chaplaincy and pastoral support available to all students'.[875] Chaplains consist of individuals who have been appointed by the Church to

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are not registered are also included. RHEBs are guided in their duty by Home Office issued 'Prevent duty guidance for higher education institutions in England and Wales (2021).

[872] See, for example the 2016 Prevent policy of the University of Wales Trinity Saint David which has since been replaced. The 2016 version of the policy repeated statements from the Higher Education Prevent Duty Guidance. For example: 'In complying with the duty, Universities should, as a starting point, demonstrate an understanding of the risk of radicalisation in their institution. The risk will vary greatly and can change rapidly, but no area, institution or body is risk free'. No reference was made to the specific risk faced by the university (University of Wales Trinity Saint David, 'Prevent Guidance Note: SQ5: Prevent Duty Aims and Objectives (Updated 16 June 2016). Updated, the undated and updated policy states: University of Wales Trinity Saint David, 'PREVENT Duty Policy' (undated), paras. 5.2.1-5.2.5: 'The University maintains an Institutional PREVENT risk assessment and associated action plan in compliance with the published guidance for Higher Education institutions. This assessment assesses where and how our students and staff might be at risk of being drawn into terrorism and includes consideration of both violent and non-violent extremism. The risk assessment includes reference to the institutional policies regarding the University's campus locations and physical management of the estate, staff and student welfare, and safety and diversity. Also included in the risk assessment are policies and procedures for events held by staff, students or visitors, and relationships with external bodies and community groups who use premises, or work in partnership with the institution. Identified risks are captured in the University's PREVENT action Plan, which details the University's approach to managing and reducing these risks. The PREVENT action plan is reviewed periodically by the University Council and presented annually by the University to HEFCW for review'. See also the 2019 Prevent policy of Cardiff Metropolitan University which has since been replaced by a far more extensive policy in 2020. This replacement took place due to 'organisational change and changes to the terror threat level'. See, for 2020 policy: Cardiff Metropolitan University, 'Prevent Policy' October 2020; see, for 2019 policy: Cardiff Metropolitan University, 'Prevent Policy' November 28 2019.

[873] See, for example, Cardiff Universities Prevent policy at: Cardiff University, 'Prevent Policy' (undated).

[874] Both Swansea University and Wrexham Glyndwr University opt for this approach.

[875] Home Office, 'Prevent duty guidance: for higher education institutions in England and Wales' (2021) [25]: 'RHEBs have a clear role to play in the welfare of their students and we would expect there to be sufficient chaplaincy and pastoral support available for all students'.

work with the wider public sector – for example, in schools, colleges and universities, prisons, the armed forces, and hospitals. The UK Government stipulates that it is a requirement for 'the institution [to have] clear and widely available policies for the use of prayer rooms and other faith-related activities',[876] including the management of prayer and faith facilities and 'for dealing with any issues arising from the use of the facilities'.[877] Whether these 'issues' relate to extremism and terrorism has not been commented on by the Government. Although there is separate and more extensive guidance applying to chaplaincy and universities in England,[878] none is directed towards Welsh RHEBs.

In studying the chaplaincy policies of Welsh RHEBs, it was found that the University of South Wales states in their policy that 'the Chaplaincy will offer support to the individual through the referral process and the Channel programme';[879] they will 'coordinate a holistic support network for the student'.[880] The Chaplaincy, they note, 'will offer a comfortable and safe environment within which students and apprentices going through the Channel programme may be supported'.[881] Cardiff Metropolitan University states that pastoral care is available to students through the 'Chaplaincy, Student Services and personal tutors',[882] and it is ensured that 'appropriate provision is made for those of any faith (or those without faith) to access appropriate facilities for pastoral care and for religious purposes'.[883] There is no direct reference to radicalisation or the Prevent Duty; however, a Prayer Room Protocol is mentioned.[884]

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[876] Ibid, [26].
[877] Ibid.
[878] Department for Education, 'implementing the Prevent Duty in higher education (HE): chaplains' (2021): the guidance details what Prevent compliance can look like in chaplaincy at universities at 3: 'What all HE providers share is a requirement by the Prevent duty guidance that their students are provided with sufficient pastoral and chaplaincy support. As part of this requirement, institutions are required to have clear and widely available policies on the use of prayer rooms and other faith-related facilities: such policies should include arrangement for managing these facilities such as through an oversight committee, and for dealing with issues that may arise through use of those facilities. Chaplains' responsibilities vary widely in relation to Prevent. Some have a key role in implementing the duty, some may be part of Prevent steering or working groups, whereas some may occupy neither of these roles. HE providers and chaplains must find a solution that respects the independence of the role of chaplain, whilst also ensuring a coherent approach to protecting students from extremism. Chaplains are also well-placed through their ongoing relationships with students to identify and discuss changes in behaviour or outlook and provide advice and support where necessary. HE providers may therefore wish to consider whether chaplains are appropriate staff to be trained in an understanding of factors that make people support terrorist ideologies or engage in terrorist-related activity, so they can be helped to recognise vulnerability and what action to take in these instances as recommended in the Prevent guidance'.
[879] University of South Wales, 'Prevent Protocol' (Revised Dec 2021) [10.1.3].
[880] Ibid.
[881] Ibid, [10.1.4].
[882] Cardiff Metropolitan University, 'Prevent Policy' (21 October 2021) [9.1].
[883] Ibid.
[884] Ibid.

The University of Wales Trinity Saint David states that the university 'recognises the responsibilities outlined in the Prevent Duty' and therefore has a Chaplaincy and Prayer Rooms Code of Practice.[885] Each campus in Wales has a Church in Wales Pastor taking the lead,[886] and links have been developed with the Muslim Council of Wales 'to provide connectivity, support and guidance for our Islamic students'.[887] Cardiff University also offers 'multi-faith Chaplains' who seek to provide an 'appropriate multi-faith approach, and work with a range of faith groups who are required to operate in compliance with [the] Equality and Diversity Policy'.[888] Cardiff University's Prevent policy states that for students who have been 'identified as being at risk in any way', action will be taken 'to ensure the individual can access support'.[889] Students are identified as being at risk when they exhibit behaviour that indicates they have 'been drawn into expressing views that relate to harming themselves or

[885] Ibid, [5.6.1]; see also: University of Wales Trinity Saint David, 'PREVENT Duty: Chaplaincy and Prayer Room Code of Practice' (undated) which makes reference to extremism throughout. The policy outlines, from [5.3.1-5.3.10]: 'This Code of Practice will apply to any rooms and areas on all UWTSD Campuses and University controlled buildings, used for faith-related activities, regardless of the faith or religion being practised. UWTSD accepts that there are a number of well-established premises on both the Carmarthen and Lampeter campuses, where University students, staff and the local community regularly worship. These premises are: University Chapel, Old College, Carmarthen Campus University Chapel of St David, Lampeter Campus Mosque, College Street, Lampeter Although these premises form part of the University estate, they are independent entities and are considered to be outside the scope of the purposes of this procedure, however the University Chaplains and the Management Committee of the Mosque have been consulted and have agreed to cooperate with the University in the implementation of this guidance. All staff, students and other users, including those invited to lead prayers or to speak as part of any religious service, should be acquainted with the University's procedures, together with the Code of Practice relating to External Speakers, Freedom of Speech and Inclusivity requirements and Health and Safety legislation and should be aware that the use of University facilities signifies their agreement to comply with these procedures and requirements. The invitation of people to lead prayers or to address meetings in the prayer rooms must at all times be by consultation and agreement with the appropriate University authority (Lead Officer for Prevent) and in conjunction with the University's Code of Practice relating to External Speakers and procedures in relation to Freedom of Speech and Inclusivity. It is desirable, that with the exception of prayer books and scriptures, all posters reading materials and announcements that are displayed in the prayer rooms should be in English or Welsh. Exceptions will be made for work which has an available translation. All prayer rooms and rooms used for faith-related activities will be regularly checked. Any posters, notices or any other form of displayed material which may be considered offensive or inflammatory will be removed. Prayer rooms and quiet rooms should only be used for the purposes defined. All other activities whether social or recreational, must be held at other agreed bookable rooms in the University. The rooms must be kept clean and tidy, and special care taken with a view to health and safety: e.g. avoidance of trailing cables and other hazards. All entrances and exits must be kept clear of obstruction and all rubbish regularly and properly disposed of. Any damage to the facilities or their contents, and any queries regarding the implementation of any aspects of the Policy should be directed to the Lead Officer for the University's operational Prevent response. If as a result of this protocol, any member of staff, student or other room user feels aggrieved by this Code of Practice, then they can appeal to Sarah Clark, the Secretary to the University. The Appeal must be submitted in writing within 5 working days of the grievance occurring'.
[886] Ibid, [5.6.3].
[887] Ibid, [5.6.4]; see also [5.6.5-5.6.6]: 'Students at the Birmingham Learning Centres, which is non-residential, have access to faith related support at mosques local to the learning centres, in addition to accessing faith related support at their local places of worship. Students at UWTSD's London Learning Centres are non-residential and have access to faith related support at their local places of worship'.
[888] Ibid.
[889] Ibid.

others, are contradictory to the University's Equality and Diversity Policy, or constitute harassment'.[890] Action may also be taken against the student 'in accordance with the University Student Disciplinary or Fitness to Practice procedures'.[891] The University states that although it is a 'secular organisation', it continues to seek 'to ensure an inclusive approach to students and staff of all faiths and none'.[892] In accordance with this, Cardiff University provides rooms 'across the University that provide space for prayer and reflection'.[893] These rooms are operated in accordance to the University's Religion and Belief Policy which is not available to the public.

A 2019 report by Aune and others studying chaplaincy on university campuses in the UK has commented on the controversial effect that the Prevent Duty has had on universities in general: 'academics and students alike have cited infringements on religious freedom, demonisation of Muslims, and a movement towards a surveillance culture on campus that is out of keeping with the tradition of free and frank intellectual debate many still see as integral to the life of a healthy university'.[894] The report also observed the response of chaplains to the Prevent Duty being placed on a statutory footing in 2015, stating that some chaplains felt very negatively about the duty due to the concerns listed above.[895] Others, however, were either indifferent towards Prevent or felt 'quite positive' about the training they had undertaken; for one chaplain, the training helped to identify a female student who was being groomed by a sexual predator.[896] It is interesting that the Prevent Duty training was utilised in this way, however, as we will see in Chapter Six, the Government has made it very clear that Prevent is not a safeguarding measure. This paints a rather confusing picture about how chaplains in RHEBs view the Prevent Duty; some consider it a threat, but others consider it a helpful tool for safeguarding. Again, this highlights the inconsistent approach of the Government in supporting faith communities in the context of the Prevent Duty.

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[890] Ibid.
[891] Ibid.
[892] Ibid.
[893] Ibid.
[894] M Aune, M Guest, J Law, 'Chaplains on Campus: Understanding Chaplaincy in UK Universities' (Research Centre of Trust, Peace and Social Relations, Coventry University, Canterbury Christ Church University, Durham University 2019) 94.
[895] Ibid.
[896] Ibid: 'Some had seen material benefits arising from it, like the Sikh chaplain at the post-1992 university, who explained how the safeguarding measures put in place as part of the Prevent Duty had helped identify a case of a female student who was being groomed by a sexual predator. At the same institution, the Anglican lead chaplain had secured funding for the Muslim chaplain using Prevent as part of the justification, acknowledging that it had been strategically beneficial to be able to cite Prevent in securing the services of an excellent chaplain with strong links to the local community'.

The report indicates, however, that chaplains are supported by the Government in their discharging of the Prevent Duty. However, it is implied that the training undertaken by chaplains is the general training undertaken by all university staff, not training that has been tailored to the chaplaincy itself. This indicates that there is still insufficient support for the Faith sector in discharging the Prevent Duty. It is not enough to presume that a chaplain is educated on the radicalisation process. As we saw in section 5.2.3 above, there is an overwhelming lack of recognition for the Prevent Duty in places of worship, unless via the Charity Commission (section 5.2.4). As a role focused on faith and well-being, the UK Government should prioritise faith-informed guidance for chaplains. Indeed, this also applies to each of the subjects of the previous sub-sections – to places of worship, the Charity sector and chaplaincies at universities. Although the Government has provided support to parts of the faith community, the support appears arbitrary and it is evident that there is a requirement for further support from the Government. This will be continue to be addressed below.

5.2.6 Government support for faith communities

To begin this sub-section, it is important to revisit the early versions of the Prevent Strategy. As was argued in Chapter Two, the Prevent *Duty* has been very much associated with religion from the outset. As discussed, the first ever draft of the Prevent Strategy (created in 2003 but not publicly released until 2016) made direct reference to Islam and 'preventing the radicalisation of Muslim youth in the UK'.[897] By the time the strategy was published in 2006, the message was clear – Prevent was a programme focused on policing the Muslim community in Britain. Since, numerous Government-funded programmes and initiatives have supported communities – not specifically religious communities – in the implementation of the Prevent Duty.[898] Previously, there has been support for the prevention of violent extremism more generally. Some of these initiatives will be discussed in this sub-section to provide an overview of what the Government has done – and plans to do – to directly support faith communities in preventing violent extremism and radicalisation.

First, alongside the Prevent Strategy, 2006 also saw the arrival of the Preventing Violent Extremism (PVE) programme. [899] Distinct from the Prevent Strategy, the objective of the

[897] 'Whitehall releases 2003 Counter Terrorism Strategy' *Scotland Against Criminalising Communities* 13 December 2016. Available online at: <https://www.sacc.org.uk/press/2016/whitehall-releases-2003-counter-terrorism-strategy> Last Accessed 12 May 2022.
[898] See, for detailed discussion: P W Edge, 'Hard Law and Soft Power: Counter-Terrorism, the Power of Sacred Places, and the Establishment of an Anglican Islam' (2010) 12 *Rutgers Journal of Law and Religion* 2, 359-381.
[899] Communities and Local Government, 'Preventing violent extremism – winning hearts and minds' (2007).

PVE programme was to promote shared values and 'broaden the provision of citizenship education in supplementary schools and *madrassas'*.[900] The role of the Prevent Strategy – before it become the statutory Prevent Duty – was to 'deter those who facilitate terrorism', those who 'encourage' others to become involved in terrorism, and to '[change] the environment in which the extremists and those radicalising can operate'.[901] The PVE programme echoed the message of the Prevent Strategy, stating the fight against terrorism was 'not about a clash of civilisations or a struggle between Islam and "the West" [but about] standing up to a small fringe of terrorists and their extreme supporters'.[902]

The implementation of the PVE programme coincided with the introduction of the Preventing Violent Extremism Pathfinder Fund (PVEPF) which was directed towards priority local authorities whose geographical locations were considered most at risk from terrorist activity.[903] These included the cities of Birmingham, Leicester and Tower Hamlets in London.[904] Around this time, various studies were completed in relation to the Pathfinder's success, and the relationship between faith and community cohesion more generally. For example, O'Toole's study found that across the three areas, there was 'considerable variation in the ways in which Prevent was conceptualised, received and implemented'.[905] For instance, in Leicester, Prevent was re-named the 'Mainstreaming Moderation' community cohesion agenda and focussed on all forms of extremism;[906] however, in Birmingham, Prevent was met with instant suspicion.[907] The Pathfinder was primarily focussed on the

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[900] Ibid, 5. The programme notes: 'there could be significant benefits if even a small proportion of [the time children spend at madrassahs] were used to help provide children with a deeper understanding of citizenship and the interrelationship between their faith and the communities in which they live'.
[901] HM Government, 'Countering International Terrorism: The United Kingdom's Strategy' (2006) 2.
[902] Communities and Local Government, 'Preventing violent extremism – winning hearts and minds' (2007) 21.
[903] See, for fuller discussion: P Thomas, Research Report: '"Preventing Violent Extremism" Pathfinder: Issues and Learning from the First Year' (University of Huddersfield 2008) 3-4: 'A key response has been the PVE Pathfinder Fund to support activities at a local level, targeted at all Local Authorities with significant Muslim communities in 4 their areas'; see also: T O'Toole *et al*, 'Governing through Prevent? Regulation and Contested Practice in State-Muslim Engagement' (2016) 50 *Sociology* 1, 160-177.
[904] Communities and Local Government Committee, 'Preventing Violent Extremism: Sixth Report of Session 2009-10' (2010) 51 [134-137]; see also: T O'Toole *et al*, 'Governing through Prevent? Regulation and Contested Practice in State-Muslim Engagement' (2016) 50 *Sociology* 1, 160-177, 167.
[905] Ibid..
[906] Ibid, 170: 'In Leicester, when Prevent was launched in 2007, the local council refused to accept the terminology of Prevent, rebranding it 'Mainstreaming Moderation'. Largely because it is host to a substantial Gujarati population with significant numbers of Hindus, Sikhs and Muslims, local governance in Leicester has since the 1990s had a strong multi-faith ethos, which Prevent's exclusive focus on Muslims placed at risk'.
[907] Ibid, 172. This was partly the fault of a coinciding project known as 'Project Champion' that caused a great deal of suspicion throughout the Muslim community for any kind of suspected surveillance. Project Champion involved 200-plus CCTV cameras placed in predominantly Muslim areas in the name of counter-terrorism; see: P Lewis, 'Surveillance cameras in Birmingham track Muslims' every move', *The Guardian*, 4 June 2010; P Lewis, 'Birmingham stops camera surveillance in Muslim areas' *The Guardian*, 17 June 2010.

Muslim community, and in its implementation, was 'blurring [the lines] between Prevent and Community Cohesion policies'.[908] Therefore, the Prevent programme was becoming somewhat fixated on the idea of engaging and working with the Muslim community on a cohesion basis.[909] Dinham and Lowndes explain that faith communities are often perceived as delivery mechanisms for community cohesion and Government agenda.[910] For example, O'Toole found that in Leicester, Prevent was co-ordinated by 'a local Church-led multi-faith centre, St Philips Centre, in partnership with the city's Muslim umbrella body, the Federation of Muslim Organisations'.[911]

In Wales, the Welsh Government published guidance on developing community cohesion in 2011, with a revised version being published in 2016.[912] Both versions of the guidance are directed towards the Education sector in Wales and are focussed on developing 'respect and resilience' in the face of violent extremism.[913] Yet again, the guidance focusses on community cohesion. In the 2011 version of the guidance, the Welsh Government defined community cohesion in a 'broad sense' in relation to the things effecting community cohesion at the time.[914] Since, the revised version states that closely aligning Prevent work

[908] Ibid, 167.
[909] Ibid: 'As one senior adviser to the DCLG [Department of Local Government], Maqsood Ahmed, explained to us: 'I was involved in the Prevent and when I say Prevent, it was less to do with the counter-terrorism, more to do with how do we establish connection with the Muslim community; how do we capacity build in the community', and in ways which went beyond 'the "usual suspects" who are always on the Government table''.
[910] A Dinham, V Lowndes, 'Religion, Resources, and Representation: Three Narratives of Faith Engagement in British Urban Governance' (2008) 43 *Urban Affairs Review* 6, 817-845, 829: 'The policy narratives see faith communities as "repositories" of resources for addressing issues of public significance, including urban governance in general and the more specific issues of community cohesion and the prevention of religious extremism. Faith group resources may take the form of human capital (e.g., staff, volunteers, and members), social capital (e.g., networks of trust and reciprocity), physical capital (e.g., community buildings and venues), and financial capital (e.g., collections, subscriptions, and donations)'; 830: 'The policy narrative is instrumentalist in its regard for faith communities as "useful" because of what they can "produce" in terms of social "goods." The policy narrative understands faith communities as a general resource for adding value in a secular context. The aim of faith engagement is to improve the quality of urban governance; the "faithfulness" of faith communities is of secondary and limited (or even no) significance'; see also: Home Office, 'Working together: Co-operation between government and faith communities' (2004).
[911] Ibid, 170; see also: St Philip's Centre, 'Leicester Prevent: A Resource for Leicester, Leicestershire and Rutland': <https://www.stphilipscentre.co.uk/community/prevent/> Last Accessed: 3 May 2023.
[912] Welsh Government, 'Respect and resilience: Developing community cohesion' (2011); Welsh Government, 'Respect and resilience: Developing community cohesion' (2016).
[913] Ibid; Welsh Government, 'Respect and resilience: Developing community cohesion' (2016) 3: 'This revised Respect and resilience guidance document aims to provide information for all schools, including the signposting to external resources, advice and support via established referral processes, regarding the causes of violent extremism and preventative measures that can be taken'.
[914] Welsh Government, 'Respect and resilience: Developing community cohesion' (2011) 4: 'The most significant terrorist threat to the UK is currently from Al Qa'ida, and in Wales we must recognise the impact of other racist and fascist organisations. There is evidence that vulnerable young people are being recruited to the Welsh Defence League and other extremist groups. Schools should be aware of and have an understanding of community tensions. It is important that a school develops links with their Community Safety Partnerships and neighbourhood policing teams'.

with that of community cohesion 'is a necessary but not sufficient condition for the welfare of learners' and that 'there is now greater emphasis on ensuring that there is clear and close focus on safeguarding in learning communities'.[915] This is most likely referring to the UK Government's decision to separate community cohesion from counter-terrorism around this time.[916]

The 2016 guidance makes minimal references to faith and religion, unlike its predecessor – which states that for teachers, having 'an awareness of variation in cultural beliefs that exist between different denominations within faiths' is essential,[917] and referred to 'Faith Guides', websites that '[contain] advice' about different faiths.[918] In the 2016 version of the guidance, however, there is much less focus on faith and religion, with most references referring to upholding the British values of the Prevent Duty,[919] promoting tolerance of different faiths,[920] the impact that faith can have on children – in the context of 'female genital mutilation, forced marriages and modern slavery' but not religious extremism –[921] and the wider geo-political context: staff in schools must have an 'awareness of the community they serve' and this involves the potential impact of this on an individual's religion.[922]

Also in Wales – and on community cohesion – the Muslim Council of Wales has implemented several support programmes. For example, in 2012, the Advisory Directorate for Youth, Women and Imam's Active Development (ADFWIAD – which translates to

[915] Ibid.
[916] HM Government, 'Prevent Strategy' (2011) 60 [9.32]: 'During the consultation to this review, we found that the attraction of community cohesion work appears to have sometimes steered people towards Channel who may have been perceived as potentially vulnerable in some broader sense, rather than specifically at risk of being drawn into terrorism. We have also noted the extent to which the nature of intervention capability available locally has determined the kinds of cases that are being dealt with through the programme. These trends need to be corrected'.
[917] Welsh Government, 'Respect and resilience: Developing community cohesion' (2011) 36.
[918] Ibid. For more on 'Faith Guides', see: Faith Guides website <https://content.scriptureunion.org.uk/what-we-dorevealing-jesus-mission-framework/faith-guides> Last Accessed 24 April 2022: 'Children and young people benefit hugely from having someone to walk alongside them as they journey to faith, and our research and experience demonstrate the importance of consistent, positive role models on that journey. That's why we're intentional about mobilising a network of passionate volunteers – commissioned by their local church and supported by Scripture Union – who'll act as Faith Guides for the 95'.
[919] Welsh Government, 'Respect and resilience: Developing community cohesion' (2016), 13, 20.
[920] Ibid, 2.
[921] Ibid, 5.
[922] Ibid, 11: 'Within schools, it is prudent to ensure that staff have an awareness of the community they serve and the potential impact of geo-political issues, in order to understand the potential impact on individuals and groups of learners. This might be because of a family, religious, cultural, ethnic or linguistic connection, or because of a special interest in such issues. It is, of course, impossible to provide a comprehensive review of the world's conflict zones and regions of instability. Incidents can happen unexpectedly and apparently stable regions can suddenly see violent disorder. It is important therefore, that schools have clear channels of communication to external agencies to ensure that advice and support are available, and that regular updates are provided'.

'revival' in English) was initiated. The programme formed part of the Welsh Government's community cohesion strategy for Wales which sought to 'complement the Welsh Government's Prevent Strategy' at the time.[923] The Welsh Government has since reported on this work,[924] stating that there was some uncertainty about the programme and 'mixed evidence about the extent to which the programme has had a positive impact on participants'.[925] To this end, the Welsh Government recommended – in relation to the Muslim Council of Wales' Prevent work – that management and coordination required improvement, as did support from the Welsh Government themselves:

> 'In future the Welsh Government should commission programmes of this nature through an open tendering process that builds in clear outcomes [and] objectives… This will increase the quality of proposals submitted to run this kind of programme'.[926]

Importantly, the Welsh Government recommended that *all* natures of terrorist threat are considered in future, not simply Al Qa'ida inspired terrorism: 'This might include projects that bring together people of different faiths to explore how they can work together'.[927]

Since, there has been some attempt by the Government to address these ungoverned spaces and support faith communities in challenging extremism. In 2015, a Bill was proposed that would tackle non-violent extremism.[928] Importantly, the Bill sought to include so-called

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[923] Welsh Government, 'Evaluation of the Muslim Council of Wales' Prevent work' (2012) 6. At the time, the community cohesion strategy for Wales was the 'Getting on Together – Community Cohesion Strategy for Wales'.
[924] See, for detailed report: Welsh Government, 'Evaluation of the Muslim Council of Wales' Prevent Work' (2012).
[925] Ibid, 45.
[926] Ibid, 47; see also, at 49: ''The WG should consider future projects which seek to tackle all forms of extremism and not just Al Qaeda inspired extremism. This might include projects that bring together people of different faiths to explore how they can work together to tackle some of the causes of both Al Qaeda inspired extremism and far right extremism, such as breaking down ethnic and religious based prejudice'.
[927] See, for detailed report: Welsh Government, 'Evaluation of the Muslim Council of Wales' Prevent Work' (2012) 49.
[928] Briefing Paper 7238 23 June 2017, 4: 'In May 2015, the newly formed Conservative Government announced proposals to introduce a new Extremism Bill aimed at addressing non-violent forms of extremism. Measures would have included new civil orders to ban extremist groups, restrict the behaviour of extremist individuals, and to close down premises used for extremist purposes. The Bill would also have provided Ofcom with powers to censor extremist content, and enable employers to conduct checks on employees for involvement in extremism'; see also. 21 [4.1]; see also: Press Release, 'Counter-Extremism Bill – National Security Council meeting' 13 May 2015: <https://www.gov.uk/government/news/counter-extremism-bill-national-security-council-meeting> Last Accessed: 14 June 2022: 'The new legislation is expected to include: introducing Banning Orders for extremist organisations who seek to undermine democracy or use hate speech in public places, but fall short of proscription; new Extremism Disruption Orders to restrict people who seek to radicalise young people; powers to close premises where extremists seek to influence others; strengthening the powers of the Charity Commission to root out charities who misappropriate funds towards extremism and terrorism;

‘Extremism Disruption Orders’ which would ‘restrict people who seek to radicalise young people’.[929] However, due to the controversial nature of targeting non-violent extremism, the Bill was unsuccessful.

Following this, the proposed Counter-Extremism and Safeguarding Bill was designed to include provisions on restricting extremist activity. The Bill was expected to include provisions to ‘safeguard’ children against extremist adults ‘by taking powers to intervene in intensive unregulated settings which teach hate and drive communities apart’;[930] granting government powers ‘to intervene where councils fail to tackle extremism’ and to consider the need ‘for further reform’ in this area.[931] Intending to include ‘a power to intervene in unregulated education settings’,[932] the Bill was set to establish a link between the prevention of extremism and safeguarding in ‘hard’ law, but did not make it onto a statutory footing.

It is evident, therefore, that the UK Government has no intention of including the faith sector in the list of specified authorities under the 2015 Act. However, this means that faith communities are left largely unsupported in their work to tackle radicalisation. This is despite some facets of faith communities being obligated to prevent radicalisation in another capacity; for example, as we have seen, chaplaincy services, schools and umbrella faith organisations. Ultimately, there remain hidden pockets of institutions where there is no legal requirement to prevent radicalisation, not even as part of existing safeguarding procedures. In

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further immigration restrictions on extremists; a strengthened role for Ofcom to take action against channels which broadcast extremist content’.

[929] Press Release, ‘Counter-Extremism Bill – National Security Council meeting’ 13 May 2015. Available online at: <https://www.gov.uk/government/news/counter-extremism-bill-national-security-council-meeting> Last accessed: 14 June 2022.

[930] The Queen’s Speech 2016. Available online at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/524040/Queen_s_Speech_2016_background_notes_.pdf> Last accessed: 3 May 2022, at 49-51: ‘The main elements of the clauses are: The introduction of a new civil order regime to restrict extremist activity, following consultation. Safeguarding children from extremist adults, by taking powers to intervene in intensive unregulated education settings which teach hate and drive communities apart and through stronger powers for the Disclosure and Barring Service. We will also close loopholes so that Ofcom can continue to protect consumers who watch internet-streamed television content from outside the EU on Freeview. We will consult on powers to enable government to intervene where councils fail to tackle extremism. The Government will consider the need for further legislative measures following Louise Casey’s review into integration in those communities most separated from the mainstream’.

[931] Ibid. This final point was planned to follow the Louise Casey review into opportunity and integration: L Casey DBE CB, ‘The Casey Review: A review into opportunity and integration’ (2016) 19 [2.2]: ‘Despite the growing diversity of our nation and the general sense that people from different backgrounds got on well together, community cohesion did not feel universally strong across the country. Numerous reports on community cohesion and integration had been produced in the preceding fifteen years but the recommendations they had made were difficult to see in action. Opinion polls revealed growing concern about race relations, and extremism – often conflated with terrorism – was attracting increasing attention’.

[932] Ibid.

light of the conclusions drawn in Chapter Four and throughout this section, it is instead suggested that the focus of the Government, when countering radicalisation and extremism, should not be on integration, community cohesion and the Muslim community. Instead, creating faith-specific guidance on religious radicalisation and extremism, and using the voices of faith leaders, religious scholars and faith communities to do so, would better equip the sector to identify and intervene in the religious radicalisation process. It would be of great benefit for the Government to not only make use of the extensive work which studies the distinction between Islam and radical Islam, as was discussed in Chapter Four, but also to open a dialogue with faith communities who, every day, interact with religious individuals who are not extremists.

It is undeniable, however, that radicalisation must be combatted from all angles, including by faith communities. The following sections will begin to explore alternative ways that radicalisation could be framed within faith communities, suggesting that this is important for two reasons. First, the most significant threat facing the UK is from Islamist terrorism; second, due to the religious nature of this terrorist threat, faith communities are on the frontline of the fight against terrorism. Faith communities – particularly places of worship – interact with religious individuals just as much, if not more, than the other listed specified authorities. It is important, therefore, that they make up a substantial element of the work to tackle religiously motivated terrorism. The following section will outline alternative means through which radicalisation can be challenged by faith communities, particularly in the context of child welfare.

5.3 Radicalisation and child welfare in faith communities

All places of worship are required, by law,[933] to abide by safeguarding measures in England and Wales. However, there are no laws under in the United Kingdom which are strictly dedicated to child abuse. Instead, the law deals with safeguarding, the protection of child welfare and, as we shall see in Chapter Six, the well-being of children. It is a statutory offence, however, to be 'cruel' to a child under the Children and Young Persons Act 1933 and, more recently, the Serious Crime Act 2015.[934] Both Acts deal broadly with the

[933] For example, in England, this is governed primarily by the Children Acts of 1989 and 2004, and the Children and Social Work Act 2017; in Wales, this is governed by the Social Services and Well-being (Wales) Act 2014. Child safeguarding will be revisited in Chapter Six of this thesis.
[934] Children and Young Persons Act 1933, s 1; Serious Crime Act 2015, s 66 which updates the law on child cruelty to include that the offence will apply regardless of whether the abuse of the child was physical or psychological.

protection of children in all contexts. Under the 1933 Act, cruelty towards children includes wilful assault, ill-treatment, neglect, abandonment, and exposing a child under the age of 16 to unnecessary suffering or injury – both physically and mentally.[935] The 2015 Act supplements the previous Act; section 66 deals with providing clarity as to the 1933 Act, covering psychological suffering and injury, establishing that non-physical ill-treatment is included, and that outdated language is eradicated from the previous Act. The Act also amends liability for neglect in certain circumstances. These statutes operate alongside the criminal offences which deal, at least implicitly, with the act of radicalising another individual as discussed in Chapters Two and Three of this thesis.

At the time of writing, there is still no legal requirement for practitioners to report children who they believe are being abused or neglected. However, there are, for example, in the Church of England, recent amendments to the Canons and to the disciplinary regime in light of concerns about child welfare.[936] Statutory guidance on child abuse designed for practitioners who work with children clearly states that anyone with a concern about abuse or neglect 'should' refer the child to the local authority immediately.[937] In 2016, the Government asked for views on the introduction of mandatory reporting for child abuse and neglect, and the introduction of a duty to take action on such matters. In response to the consultation, the Government decided in 2018 not to do either because there was insufficient evidence that a duty would improve the lives of children.[938] Instead, the Government suggested:

> 'What would ultimately be most effective is improved information sharing, supported by better multi-agency working, better assessments, better decision making and better working with children at all stages of their engagement with the safeguarding

[935] Ibid.

[936] There have been recent amendments to the Canons and the disciplinary regime in the Church of England, however.

[937] HM Government, 'Working Together to Safeguard Children. A guide to inter-agency working to safeguard and promote the welfare of children (2018) 17 [17]: 'Anyone who has concerns about a child's welfare should make a referral to local authority children's social care and should do so immediately if there is a concern that the child is suffering significant harm or is likely to do so. Practitioners who make a referral should always follow up their concerns if they are not satisfied with the response'.

[938] Ibid, 6 [24-25]: 'What the consultation has shown us, together with serious case reviews and Ofsted inspections, is that professional experience and other evidence generally does not find reporting to be a key issue in cases where a child is failed. Whether a child is already known to social care or not, translating practitioners' knowledge of a child's ongoing needs into appropriate support can be the difference between life and death. Such evidence suggested that issues around information sharing, professional practice and decision making are more likely to be at the crux of incidents where children do not receive the protection they need'.

system'.[939]

More recently, the long-awaited government response to the ICCSA inquiry was published in May 2023,[940] and although the Government has now expressed an intention to make reporting mandatory, it does not appear that this will happen any time soon.[941]

Importantly, and as we have seen in the previous chapters, if it is decided that a child is vulnerable to radicalisation, their freedom is limited; they may be subject to the processes envisaged by the Channel programme. However, for children who are preyed upon and radicalised, the Channel programme may be the safest place. Despite this, and as we shall see in Chapter Six, many children who are radicalised are subjected to sexual and physical abuse alongside it. Indeed, the Secretary of State for Foreign and Commonwealth Affairs has called for the law to treat radicalisation 'as a form of child abuse', arguing that 'we need to be less phobic of intrusion into the ways of minority groups and less nervous of passing judgment on other cultures'.[942] The evaluation in the following sub-sections is based on this premise – that radicalisation could indeed be viewed as a form of child abuse in the context of faith.[943] The sub-sections, therefore, will explore two forms of child abuse where radicalisation may fit: faith-based or spiritual abuse, and forced religious conversion.

5.3.1 Spiritual abuse

The United Nations Convention on the Rights of the Child includes, under Article 19, that every child has protection against abuse.[944] Although this will be revisited in Chapter Six, it is important to note that under Article 19 of the Convention, children must be protected against *all* forms of abuse.[945] This should include 'effective procedures for the establishment

[939] Ibid.
[940] See: HM Government, 'Government Response to the Final Report of the Independent Inquiry into Child Sexual Abuse' (2023).
[941] Ibid, 34 [100-102]: 'We accept the need to ensure compliance with the Victims Code. The Criminal Justice Joint Inspectorates have included an inspection on the 'experiences of victims of child sexual abuse of the criminal justice system' in their 2023-25 inspection programme, with Code compliance proposed to feature. We will also consider this recommendation through the Victims and Prisoners Bill, with complementary measures to improve victims' experiences of the criminal justice system'.
[942] B Johnson, 'The children taught at home about murder and bombings', *The Telegraph,* 2 March 2014.
[943] As noted, the radicalisation of adults will not be discussed as part of this thesis. This is because, as stated in the introduction, children are most commonly referred to the Prevent programme.
[944] UN Convention on the Rights of the Child (entry into force on 2 September 1990), Article 19. See also: Article 39: 'States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child'.
[945] Ibid: '1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment,

of social programmes to provide necessary support for the child and for those who have care for the child',[946] which should involve measures related to: 'identification, reporting, referral, investigation, treatment and follow-up'.[947]

In the case of spiritual and faith-based abuse, the UK Government has explicitly stated that 'child safeguarding procedures must always be followed'.[948] This means that faith-based abuse is recognised as a safeguarding issue in the UK. Despite this, the term has been difficult to define. In the early 2000s, spiritual abuse was most commonly associated with child abuse linked to 'possession' or 'witchcraft' within Christianity; parents and communities would believe a child was possessed by an evil spirit.[949] Spiritual abuse in the Church – or 'SA' as it is commonly referred to in the literature – has been recognised as an issue facing mostly Christianity since the 1990s;[950] however, more recently, child protection cases relating to religion have risen.[951] Research now suggests that spiritual or faith-based abuse is to be understood in broader terms – there is no one, clear-cut definition, and it is not limited to possession, witchcraft or Christianity.

Spiritual abuse has recently been defined by Oakley and Kinmond as:

> 'Coercion and control of one individual by another in a spiritual context. The target experiences spiritual abuse as a deeply emotional personal attack. This abuse may include: - manipulation and exploitation, enforced accountability, censorship of decision making, requirements for secrecy and silence, pressure to conform, misuse of

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maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'. And, under Article 39, support for recovery from said abuse.

[946] Ibid.

[947] Ibid, '2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement';

[948] The National Working Group on Child Abuse Linked to Faith or Belief, 'National action plan to tackle child abuse linked to faith or belief' (2012) 33.

[949] E Stobart, 'Child Abuse Linked to Accusations of "Possession" and "Witchcraft" (Department for Education and Skills 2006) 5; see also: J G Oliva, 'Exorcism and children: balancing protection and autonomy in the legal framework' (2022) 18 *Law in Context* 55-68; see also: H Hall, 'Exorcism, Religious Freedom and Consent: The Devil in the Detail' (2016) 80 *The Journal of Criminal Law* 4, 241-253.

[950] See: D Johnson, J VanVonderen, *The Subtle Power of Spiritual Abuse* (Repackaged edn, Bethany House Publishers 2005). Johnson and VanVonderen define 'spiritual abuse' as: 'the mistreatment of a person who is in need of help, support or greater spiritual empowerment, with the result of weakening, undermining or decreasing that person's spiritual empowerment'; see also, for wider discussion of witchcraft and spiritual possession in other religions – such as Islam, Buddhism, Haitian Voodoo, Wicca and various other traditions: S Briggs *et al*, 'Safeguarding Children's Rights: exploring issues of witchcraft and spirit possession in London's African communities' (University of East London, The Tavistock and Portman NHS Foundation Trust, Centre for Social Work Research, Trust for London 2011).

[951] E Eichler, 'Child abuse linked to faith rises by a third council chiefs warn' (2019).

> scripture or the pulpit to control behaviour, requirement of obedience to the abuser, the suggestion that the abuser has a "divine" position, [and] isolation from others, especially those external to the abusive context'.[952]

This form of abuse has also been addressed in the last ten years in UK Government policy: in 2012, the National Working Group on Child Abuse Linked to Faith or Belief published, in partnership with the UK Government, a national action plan 'to tackle child abuse linked to faith or belief'.[953]

Indeed, spiritual abuse has been described by the Church of England in a broad sense as a 'form of emotional and psychological abuse relevant for faith contexts';[954] the Church considers spiritual abuse as 'particularly relevant to safeguarding in a Church/ faith context'.[955] It may be simpler, then, to recognise spiritual abuse as involving witchcraft, possession and abuse based on the presumption that a child has been interfered with by a spirit. However, faith-based abuse should be understood in a much wider sense to include *any*

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[952] L Oakley, K Kinmond, *Breaking the Silence on Spiritual Abuse* (Palgrave McMillian 2013).

[953] See: The National Working Group on Child Abuse Linked to Faith or Belief, 'National action plan to tackle child abuse linked to faith or belief' (2012) 2, [2]: 'This action plan is intended to help raise awareness of the issue of child abuse linked to faith or belief and to encourage practical steps to be taken to prevent such abuse. It has been developed through partnership on the National Working Group between central government and local statutory partners, faith leaders, voluntary sector organisations and the Metropolitan Police'; see also: L Oakley, *et al,* 'An exploration of Knowledge about Child Abuse Linked to Faith or Belief' National Working group on Child Abuse Linked to Faith or Belief (2016).

[954] The Church of England, 'Safeguarding Children, Young People and Vulnerable Adults' (Church of England, Last Updated 20 Dec 2021) 42, 44: 'Spiritual abuse is a form of emotional and psychological abuse. It is characterised by a systematic pattern of coercive and controlling behaviour in a religious context. Spiritual abuse can have a deeply damaging impact on those who experience it and can be experienced in a variety of different relationships. This abuse may include: Manipulation and exploitation. Enforced accountability Requirements for secrecy and silence. Coercion to conform, for example, seeking to enforce rather than encourage behavioural changes; failing to allow an individual autonomy to make their own choices. Exercising control through using sacred texts or teaching to coerce Behaviour. Requirement of obedience to the Abuser. The suggestion that the abuser has a 'divine' position. Isolation as a means of punishment. Superiority and elitism. Spiritual abuse may occur on its own, or alongside other forms of abuse, such as physical or sexual abuse. It may be used to 'legitimise' or facilitate other forms of abuse. Use of scripture to justify abusive Behaviour: Use of scripture to manipulate or force a person into acts they would not wish to consent to. Prophetic ministry is an important part of the work of the Church, and this is affirmed. However, a warning sign of spiritual abuse can be exercising control through invoking fear of spiritual consequences for disobedience. To be clear the issue is not the discussion of spiritual consequences as provided in the. Bible, but the exercise of control over another person through instrumentalising their fear. Exercising control through the suggestion that obedience to the abuser is equivalent to obedience to God. Emotional manipulation in the guise of righteousness. Being manipulated or feeling pressured into service or conformity. Feeling unable to say no to increasing demands for time, service and obedience. Pressure to conform to expectations and believe exactly the same as others in the church'; see also: L Oakley, *et al*, 'Spiritual Abuse in Christian faith settings: Definition, policy and practice' (2018) 20 *Journal of Adult Protection* 3-4, 144-154: a study which surveyed Christians, Church attendees and members of Christian organisations in 2017 and found that a clear definition of spiritual abuse is a requirement.

[955] The Church of England, 'Safeguarding Children, Young People and Vulnerable Adults' (Church of England, Last Updated 20 Dec 2021) 4.

kind of abuse that is justified on the basis of faith. This would include exposing children to extremist material in the context of faith and coercing or forcing them to follow a religion in an extreme manner. As a reminder, the government-issued definition of 'radicalisation' is: 'the process by which a person comes to support terrorism or extremist ideologies associated with terrorist groups'.[956] The definition of radicalisation is overwhelmingly neutral, and does not distinguish between children and adults. There is, importantly, no mention of abuse or faith in this definition.

Faith-based abuse has been recognised by the wider literature as a new form of child abuse. In 2018, Briggs and Whittaker linked safeguarding against spiritual abuse to media representations of Islam and radicalisation, stating that practitioners may find themselves 'influenced by media coverage of religion, which has tended to focus on problematising religious belief, including concerns about radicalisation'.[957] They explain that, in discovering 'new aspects of child abuse', there is also the predictable 'desire to find ways of easily identifying cases, through recognised signs and symptoms'.[958] However, Briggs and Whittaker suggest that relying on these signs and symptoms alone 'would be unhelpful' for risk assessments.[959] The unpredictability of relying on these signs and symptoms of abuse, they argue, would mean that identifying the abuse through a different means – holistic in nature – should be the priority: 'there is not, as yet, sufficient systematic research to make such an approach robust, and some potentially identifying signs can be ambiguous'.[960] The UK Government has previously shown support for such an approach in its National Action Plan.[961]

The UK Government, in its National Action Plan, refers to its 2007 guidance on safeguarding children from abuse linked to spirit possession.[962] This is the only government-issued guidance on the topic, and is unfortunately limited to spirit possession. It is recommended, therefore, that the Government update the 2012 National Action Plan to tackle child abuse linked to faith or belief more widely, and distribute appropriate and timely safeguarding

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[956] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (2021) F.
[957] S Briggs, A Whittaker, 'Protecting Children from Faith-Based Abuse through Accusations of Witchcraft and Spirit Possession: Understanding Contexts and Informing Practice' (2018) 48 *British Journal of Social Work*, 2157-2175.
[958] Ibid, 2169.
[959] Ibid.
[960] Ibid.
[961] The National Working Group on Child Abuse Linked to Faith or Belief, 'National action plan to tackle child abuse linked to faith or belief' (2012); see also: Department for Education and Skills 'Safeguarding Children from Abuse Linked to a Belief in Spirit Possession' (2007)
[962] Ibid.

guidance on the matter. This is because, as we have seen in previous chapters, Islamist radicalisers prey on and manipulate their victim's faith, and it is this that distinguishes religious radicalisation from other forms of radicalisation. Religious terrorism, therefore, is distinct from other forms of terrorism, such as political terrorism.

Identifying and treating religious radicalisation as a form of spiritual abuse would have two positive consequences for faith communities. First, viewing religious radicalisation in this way would create an obligation for faith communities to begin dealing with religious radicalisation as a safeguarding concern within their institutions. As a form of child abuse, faith communities would be legally required to protect children as a matter of safeguarding. Second, as radicalisation is an imminent and growing concern for the UK, framing it as a form of faith-based abuse would provide practitioners with a new perspective and distinguish between children who are manipulated and coerced into supporting extremism, and adults who knowingly engage with extremist ideology and terrorism.

Significantly, the religious radicalisation of children involves a child being coerced or forced to adopt either a new religion where they were previously without faith, or a more extreme version of the religion they already follow. Although different forms of radicalisation – such as political, racial or ideological radicalisation – also involve the individual subscribing to a new and more extreme version of a worldview, religious radicalisation must be distinguished because it involves conversion to an extreme religious belief. The following sub-section, then, will explore forced religious conversion in the context of radicalisation.

5.3.2 Conversion and radicalisation

In light of the discussion above, it is entirely possible – and even plausible – to frame radicalisation as a form of indoctrination or religious conversion. Of course, Strasbourg states that a state must not indoctrinate its citizens,[963] but the law has very little to say on one individual forcing another to convert to a specific faith. As we shall see in Chapter Six, although parents and guardians have the right to guide a child in their religious belief, it is ultimately the child's decision if the child is considered to be Gillick competent. Radicalisation should, based on the conclusions drawn in the previous section, be understood as religious conversion on the basis that it is a form of faith-based abuse. However, before

[963] *Papageorgiou and Others v Greece* App nos 4762/18 and 6140/18 (ECtHR, 31 October 2019).

religious conversion can be applied specifically to radicalisation, it is necessary to explain what religious conversion means in a more general sense.

Religious conversion, historically, has a long and diverse history that spans across all of the world religions.[964] Recently, as discussed in the previous chapters, there has been moral panic concerning conversion to Islam. The European Commission, in partnership with the Radicalisation Awareness Network,[965] has commented on this:

> 'Treating converts as a monolithic group of potential terrorists creates misconceptions because each convert follows a personal path towards Islam and has in common with the others only the religious interest and the cultural background of origin. The majority of converts will never approach radicalisation nor be involved in terrorist acts. For these reasons, conversion to Islam must not be considered a default security issue'.[966]

When speaking of conversion in a more negative sense, usually with reference to the behaviour of cults, the word is often used interchangeably with 'indoctrination' or 'brainwashing' by the scholarly community.[967] It appears there is a distinction to be made, then, between wilful and forced religious conversion: forced religious conversion is recognised as a force for evil.[968] This distinction is not simple to draw, however, and the European Commission has commented on this, too. They explain that for religious converts who have been radicalised, there are some commonalities: first, converts who are radicalised are 'often very young',[969] meaning that this is a problem specifically relating to children;

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964 For fuller discussion, see: M Baer, 'History and Religious Conversion' in L Rambo and C Farhardian (eds) *The Oxford Handbook of Religious Conversion* (Oxford University Press 2014) 25-47, 36: 'Changes in individuals' or groups' religious beliefs and practices, over time, occur through processes of acculturation, adhesion or hybridity, syncretism, and transformation. All four processes are illustrated by a particular group of Jewish converts to Islam and their descendants in the Ottoman Empire and Turkey'.

965 The Radicalisation Awareness Network (RAN) are a trans-European network of practitioners who work with individuals who are vulnerable to radicalisation or who have been radicalised. The RAN organises Working Groups and produces publications on radicalisation. See, for more: <https://home-affairs.ec.europa.eu/networks/radicalisation-awareness-network-ran/about-ran_en> Last accessed: 2 May 2023.

966 Radicalisation Awareness Network, 'Islamist extremist converts: Challenges and recommendations of rehabilitation work' European Commission (2021) 4.

967 See, for example: D Anthony, T Robbins, 'Conversion and "Brainwashing" in New Religious Movements' in J Lewis (eds) *The Oxford Handbook of New Religious Movements* (Oxford University Press 2004), 243-297.

968 D Kling, 'Conversion to Christianity' in L Rambo, C Farhadian (eds) *The Oxford Handbook of Religious Conversion* (Oxford University Press 2014) 598-631, 619: 'Conversion that is forced upon another person or, more often, peoples, either through psychological pressure, financial coercion, or physical intimidation (and there are some scholars who argue that any form of proselytizing is "forced"), has a long history in Christianity and persists not only in Christianity but in many of the world's great religions'.

969 Radicalisation Awareness Network, 'Islamist extremist converts: Challenges and recommendations of rehabilitation work' European Commission (2021) 7.

second, many of the radicalised converts identify as female,[970] meaning that this problem is gendered; and, third, a great deal of radicalised converts have never experienced 'moderate' – or 'mainstream' – Islam.[971] This final point indicates that many radicalised children are either brought up in extremist homes or are converted to Islam from another belief or non-belief. Coinciding with this, the European Commission has identified that many of these children come from troubled families, and they are isolated from society and from the rest of the Muslim community.[972] A great deal of the children have also been subjected to discrimination.[973]

The scholarly community acknowledges that when an individual converts to support an extremist cult or organisation, the process of conversion often involves 'the emergence of a false self which cultic conditioning and mind control is said to superimpose on the authentic, developmental self of the convert'.[974] This means that the individual loses their true self, including their true beliefs and their worldviews. For the individual themselves, the motivation behind the conversion often involves a desire for social acceptance and an inability to uphold personal boundaries, as seen, for example, in the experiments of psychologist Asch on conformity and social pressure.[975] Asch's experiments illustrate perfectly how an individual can surrender to group pressure from strangers. Lewis explains that in most cases, the so-called 'social forces' that influence individuals to conform have relatively 'benign' effects,[976] but it is unwise to underestimate the power of these forces.[977] Lewis links this to religion: 'if [the] social forces influencing people to conform can have this high success rate with a group of strangers, imagine how such forces must be amplified within a group of friends – or, to take the case at hand, within a close-knit religious fellowship'.[978] However, there are 'situations in which the very same forces can be put to

[970] Ibid, 9-10:
[971] Ibid, 11-12.
[972] Ibid, 8, 13-15.
[973] Ibid, 8.
[974] D Anthony, T Robbins, 'Conversion and "Brainwashing" in New Religious Movements' in J Lewis (eds) *The Oxford Handbook of New Religious Movements* (Oxford University Press 2004), 243-297, 245; for a fuller discussion of conversion to cults more generally, see: J Lewis, 'Brainwashing and "Cultic Mind Control"' J Lewis (eds) *The Oxford Handbook of New Religious Movements II* (2nd edn, Oxford University Press 2016) 174-185. There is discussion of the Church of Scientology (179), the 'Moonies' and Hare Krishna movement (182) but no discussion of Islam. In particular on religious groups, see 182-183.
[975] See, for example, the Asch experiments of 1956: S Asch, 'Studies of Independence and Conformity: A Minority Against of One Against a Unanimous Majority' 70 P*sychological Monographs* 9, 1-70.
[976] J Lewis, 'Brainwashing and "Cultic Mind Control"' in J Lewis (eds) *The Oxford Handbook of New Religious Movements II* (2nd edn, Oxford University Press 2016) 174-185, 182.
[977] Ibid.
[978] Ibid: 'It should not be too difficult to perceive a desire to conform, in combination with the ongoing conversation that gives a belief system much of its plausibility, influences group members to become convinced

socially undesirable ends', he explains, referring to the 1978 Jonestown massacre and the Heaven's Gate suicides in 1997.[979] Therefore, religious conversion can indeed be a force for evil.

The social forces that draw an individual towards conversion are very similar to the social forces that indicate an individual is more susceptible to radicalisation. This has been addressed by Elzen who has drawn comparison between the radicalisation models discussed in the previous chapter and Lofland and Stark's 1965 seven-step religious conversion model.[980] Lofland and Stark, for the purposes of their model, studied the Unification Church; in doing so, they developed their model to describe the steps which must be completed for successful religious conversion to the Church.[981] Elzen explains that although the model developed by Lofland and Stark lacks 'the presence of violence at the end of the process', it was never suggested by the scholars that 'their model could not be applicable to conversion to a violent cult'.[982] For individuals who are converting to Islam, 'the junction between ordinary conversion and radicalisation' is met somewhere in the process; it is up to them to choose which direction they take, Elzen argues.[983] However, Elzen's comparison of the radicalisation models with the religious conversion model has omitted to address the

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of ideas that seem odd or nutty to outsiders. Clearly, it is unnecessary to posit a special form of social influence conforming to the popular notion of "cultic brainwashing" in order to explain such behaviour'.

[979] Ibid, 183. For information, the Jonestown Massacre involved cult leader the Reverand Jim Jones instigated mass suicide by inducing over 900 members of his movement to consume poison. As for the Heaven's Gate suicides, cult leaders Marshall Herff Applewhite and Bonnie Lou Nettles caused members to take their own lives *en masse.* See, for detailed reflection on Heaven's Gate: R Balch, D Taylor, 'Making Sense of the Heaven's Gate Suicides' in D Bromley, G Melton (eds) *Cults, Religion and Violence* (Cambridge University Press 2002) 209-228.

[980] For the conversion model, see: J Lofland, R Stark, 'Becoming a World-Saver: A Theory of Conversion to a Deviant Perspective' (1965) 30 *American Sociological Review*, 862-875; see also: J Elzen, 'Radicalisation: A Subtype of Religious Conversion?' (2018) 12 *Perspectives on Terrorism* 1, 69-80.

[981] J Lofland, R Stark, 'Becoming a World-Saver: A Theory of Conversion to a Deviant Perspective' (1965) 30 *American Sociological Review*, 862-875.

[982] J Elzen, 'Radicalisation: A Subtype of Religious Conversion?' (2018) 12 *Perspectives on Terrorism* 1, 69-80, at 72: 'As one can see, not all steps in the radicalisation models fit the conversion model one-on-one. However, after studying the radicalisation models in more depth, one notices that many of the steps in the conversion model are incorporated in the radicalisation models but are not always explicitly mentioned as these are considered to be logical steps; for example, steps like a 'problem-solving perspective' and 'seekership' are not always overtly mentioned. Yet, it is automatically assumed that radicalisation is a result of a problem-solving perspective to deal with the previously mentioned tension that stands at the basis of the process. The same can be said for 'seekership'. Regarding Islamic terrorists, the adoption of a world-affirming worldview or the aspiration to become a political figure is not observed in terrorist behaviour. Instead, they often turn into devout fundamentalist Muslims that are under the impression that Islamic world domination will be the healing system for all evil in this world. Radicalisation of Islamic terrorists always incorporates steps of a 'problem-solving perspective' and 'seekership'. Nevertheless, the most remarkable difference between the model of Lofland and Stark and radicalisation models is the presence of violence at the end of the process. We should keep in mind that the conversion model was based on a non-violent millenarian cult; its activities did not contain a violent component. However, Lofland and Stark never suggested that their model could not be applicable to conversion to a violent cult'.

[983] Ibid, 79.

radicalisation of children. Therefore, the study has failed to address whether children are more susceptible to religious conversion than adults, and what measures are put in place to protect children who are forced to convert without consent.

Ultimately, however, it may be argued that exposing children to extremism is a form of child abuse; more specifically, it is a form of faith-based child abuse. This is because, based on the broad definitions of faith-based abuse explored in the previous sub-section, exposing a child to extremist material or extremism in general is harmful to that child's welfare, and potentially traumatising for them.[984] Indeed, radicalisation and faith-based abuse are detected in similar ways – through identifying warning signs. In similar vein, forcing a child to convert to an extreme form of a religion is abusive to their religious autonomy. It is difficult, based on the existing literature and limited government guidance, to identify which of these categories of faith-based child abuse fully incorporate the radicalisation of children. Moreover, radicalisation and extremism-based abuse have not been recognised by the UK Government as falling into either category. Based on these findings, Chapter Six will explore radicalisation, extremism and child welfare in more detail.

5.4 Conclusion

This chapter has argued that although the faith sector has not been listed as a specified authority under the Counter-Terrorism and Security Act 2015, faith communities are also not supported to tackle radicalisation through alternative means. Through looking at whether radicalisation is an important aspect of the work of faith communities – for example, in schools, in places of worship, in religious charities, and in university chaplaincies in Wales – the chapter evaluated the extent to which the UK Government supports faith communities in their work to tackle radicalisation. The chapter suggested that faith communities remain largely unsupported. For this reason, the chapter argued that viewing radicalisation through an alternative lens may be beneficial in the context of faith settings. For example, the chapter applied the concept of spiritual abuse to the concept of forced religious conversion, and suggested that radicalisation can be viewed as a form of faith-based – or spiritual abuse – in the context of children.

However, as we shall see in the following chapter, the UK Government are very reluctant to view radicalisation as a safeguarding issue across England and Wales. However, due to the

[984] M Verdegaal, 'Vulnerable children who are brought up in an extremist environment' (Radicalisation Awareness Network) 21-22 June, Stockholm (SE).

existence of quasi-specified authorities – that is, faith elements of specified authorities who have not been provided with faith-specific guidance on radicalisation and extremism – there is a significant gap in the law. As stated, although some of these individuals are trained to identify signs of radicalisation in a broad sense, many are not. There is also no statutory guidance that explicitly indicates the Prevent Duty should be treated as an extension of existing safeguarding duties.

Therefore, if radicalisation is not within the remit of safeguarding for faith communities and has not yet been classified as a form of faith-based abuse, a fuller analysis of religious radicalisation, extremism and child welfare is necessary. Indeed, if the Government has no intention of including faith leaders and their communities as specified authorities, but radicalisation is not yet recognised as neither a safeguarding nor child welfare issue, these dangerous and ungoverned spaces will continue to exist.

Chapter Six:
The Prevent Duty and the Welfare of Children

6.1 Introduction

As the previous chapter addressed, the radicalisation of children through the abuse of their faith and religious belief systems – or the encouragement of children to *find* faith in an extremist ideology – is unquestionably harmful, both to the child and to wider society. Therefore, the previous chapter argued that there are clear similarities between the process of religious conversion and the radicalisation process. The chapter also suggested that faith communities are largely unsupported by the Government in their efforts to tackle radicalisation within faith settings. Moreover, the chapter found that – perhaps for this reason – many places of worship little effort to tackle radicalisation, and suggested that this is troublesome. The chapter argued, therefore, that the radicalisation of children should be understood as a form of faith-based child abuse, but that this has not yet been recognised by the law or to the extent that it deserves in the literature. The chapter proposed that radicalisation should be viewed in this way because, after experiencing religious radicalisation in particular, children are often left with life-altering trauma.[985]

This chapter will advance the conclusions drawn in Chapter Five by exploring whether radicalisation can as be viewed as a concern relating to child welfare. This approach would help to protect children who have been subjected to the radicalisation process or who been exposed to terrorism and extremism in their faith community. To this end, the chapter will address the sixth research question underpinning this thesis: **is it useful to reframe religious radicalisation as a matter of child welfare?** This chapter will also draw the work of Chapters Four, Five and Six together in answering the second main sub-research question

[985] M Verdegaal, 'Vulnerable children who are brought up in an extremist environment' (Radicalisation Awareness Network) 21-22 June, Stockholm (SE), 2: 'Children growing up in a family with extremist influences are particularly vulnerable to becoming radicalised themselves. Indoctrination, an extremist social network and a lack of alternative relationships make these children extremely susceptible. Additionally, children who have fled Daesh territories and other 'theatres of conflict' are likely have been exposed to violence and traumatic events, adding to the potential risk factors. Exposure to trauma can have significant implications on a child's development and overall functioning. It increases the risk of physical and mental illness in the future. As a result, these vulnerable children require long-term care and protection'; at 9: 'The link between trauma therapy and extremism is an important one to make. Whether bringing the child inside an extremist environment or taking them out, the child may be left with traumatic experiences. Traumatised children are more likely to misinterpret information and conversations and become hypersensitive. Parents or caretakers are important in teaching the child the right words to describe their feelings. When the parents are extremists and do not help their children or are the cause of these feelings, children may not know how to describe and express their feelings. This may result in the children feeling neglected and start to act out'.

underpinning this part of the thesis: **what are the implications of highlighting the religious dimension of the Prevent Duty for faith communities?**

First, the chapter will explain and explore how the UK Government manage the rights of the child across England and Wales. This initial section will evaluate the intersection between safeguarding children, protecting their rights and how this is balanced against counter-terrorism in the UK. The first sub-section, then, will explore the statutory child welfare and safeguarding obligations placed on local authorities across England and Wales, as well as how they are enforced. The sub-section will conclude with an exploration of potential crossovers between counter-terrorism enforcement and the protection of child welfare across England and Wales. The following sub-sections will explore: first, the rights of the child, including their religious rights, and, second, religious radicalisation in the family courts context. Briefly, and in this context, the sub-sections will evaluate the extent to which the law treats children and adults differently in cases concerned with radicalisation.

Second, the chapter will explore the extent to which radicalisation is viewed as a safeguarding mechanism by the UK Government and by practitioners. The section will also consider the extent to which radicalisation has been understood as a form of child abuse in the UK, by the law and in the literature. To conclude, the final section of this chapter will explore whether radicalisation can be understood as a form of child abuse; whether it is comparable to other forms of harm that children are subjected to. The chapter will explore radicalisation as a form of child criminal exploitation, child sexual exploitation and, finally, compare the risk assessment tools used to measure the risk of radicalisation with how risk of child sexual exploitation is identified and measured.

6.2 The rights of the child: England and Wales

Across England and Wales, the rights of children and young people are interrupted on a daily basis. Because of this, there are various rules and regulations that protect the civil, social, economic and cultural rights of children. In Wales, for example, the Rights of Children and Young Persons (Wales) Measure 2011 places a statutory responsibility on the Welsh Government and Parliament to conform to the United Nations Convention on the Rights of the Child, as introduced in Chapter Five. It is stipulated by Articles 19 and 39 of the Convention that all children are entitled to live free from abuse, [986] and that all states must

[986] UN Convention on the Rights of the Child (20 November 1989) Article 19: ‘1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

support the recovery of any child who has suffered abuse.[987] The definition of abuse is broad and is used to describe any form of neglect, exploitation, or abuse, including 'torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts'.[988] Under the Convention, all states are required to 'take all appropriate measures to promote [the] physical and psychological recovery and social reintegration of [any] child victim'.[989] More specifically, children also have rights as to their personal beliefs and religion.

This section, therefore, will explore how the UK Government supports local authorities to protect the welfare of children across England and Wales. The following sub-sections will: first, explain and evaluate the extent to which children enjoy religious autonomy in the UK, building on the work completed in Chapter Five. Second, explore how the UK Government enforces the protection of children in a broad sense, comparing this with how radicalisation is dealt with. In particular, the sub-sections will consider the rights of the child and the remit of the right to freedom of religion for children, including when it is appropriate to lawfully interfere with the right, and whether forced religious conversion – or radicalisation – amounts to an unlawful interference of the rights of the child. Finally, the section will explain and explore how religious radicalisation is treated by the family courts. In doing so, the sub-section will evaluate UK case law and the treatment of radicalisation by the family courts soon after the Prevent Duty was placed on a statutory footing.

6.2.1 The rights of the child

The Children Acts of 1989 and 2004 impose a legal responsibility on local authorities in England and Wales to safeguard and promote the welfare of children. For example, section 17 of the Children Act 1989 sets out that children who are characterised as being 'in need'

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including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement'.

[987] Ibid, Article 39: 'States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child'.

[988] Ibid: 'States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child'.

[989] Ibid: 'States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child'.

must be safeguarded.[990] A child 'in need' is one who 'is unlikely to achieve or maintain, or to have the opportunity of achieving and maintaining, a reasonable standard of health or development without the provision for him of services by a local authority'.[991] Indeed, 'his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services';[992] or 'he is disabled'.[993] Section 47 of the Act places a separate responsibility on local authorities to investigate where they have either been informed or have a reasonable cause to suspect that 'a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm'.[994] In the instance that the local authority becomes aware of such, they must intervene by making 'such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare'.[995] A child in need under section 17, then, may be identified through the course of section 47 of the Act. Under the Act, 'harm' means 'ill-treatment or the impairment of health or development';[996] 'ill-treatment' is defined broadly, and includes 'sexual abuse and forms of ill-treatment which are not physical'.[997] *Significant* harm is a category of harm created by the Act; significance is measured by 'comparing a child's health and development with what might reasonably be expected of a similar child'.[998] Importantly, even if a child does not experience the harm first-hand, they may still be considered to have experienced harm.[999] For example, the child may live in a home where domestic violence or verbal abuse is a common occurrence. In the context of religious terrorism, a child may be subjected to extremism in the family home; this may be traumatic for them and negatively impact their development.[1000] The Act does not deal with this specifically, however; instead,

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[990] Children Act 1989, s 17(1): 'It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) – (a) to safeguard and promote the welfare of children within their area who are in need; and (b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs'.
[991] Ibid, (10)(a).
[992] Ibid, (10)(b).
[993] Ibid, (10)(c).
[994] Ibid, s 47(1): 'Where a local authority – (a) are informed that a child who lives, or is found, in their area – (i) is the subject of an emergency protection order; or (ii) is in police protection; (b) have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm, the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare'.
[995] Ibid.
[996] Ibid, 31(9).
[997] Ibid.
[998] Ibid, s 31.
[999] Adoption and Children Act 2002, s 120.
[1000] See, for a discussion of trauma informed care in response to children growing up in homes where extremism is present: M Verdegaal, 'Vulnerable children who are brought up in an extremist environment' (Radicalisation Awareness Network) 21-22 June, Stockholm (SE).

as we have seen, children who are considered to be at risk of radicalisation – or who have grown up in homes where radicalisation is prominent – are referred to the Channel programme for support. This indicates that the UK Government does not view radicalisation as a matter of child welfare.

Children, as stated, have a limited right to the freedom of religion, and it is often difficult to know where the line should be drawn between the child exercising that right, and parental influence over the child. Historically, the common law stated that unless there were exceptional circumstances,[1001] a child must be brought up with the religion of their father.[1002] However, the Guardianship of Infants Act 1925 abolished this,[1003] and 'English law now not only recognises the equality of parental responsibility but also continues to recognise that it may have a religious dimension'.[1004] The case law reflects this; in *Re J*, for example, it was stated that 'a person with parental responsibility has the right to determine a child's religious education, though there is no duty to give the child a religious upbringing'.[1005] This responsibility continues until the child is able to sufficiently understand the decision,[1006] 'and is also protected by numerous human rights safeguards'.[1007] Therefore, if a parent wishes for a child to follow a certain religion, the child may rebel against this, and the United Nations Convention on the Rights of the Child has commented explicitly on this, stipulating that parents and guardians of children are granted permission and discretion in how they choose to direct their child in exercising Article 14. However, this must be in line with the 'evolving capacities of the child'.[1008] Brems explains that the parental right is to be understood as an 'accessory to the child's right, rather than an autonomous right on equal footing'.[1009] Thus,

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[1001] *Ward v Laverty* [1925] AC 101 [108].
[1002] For detailed discussion, see: C Hamilton, *Family, Law and Religion* (Sweet & Maxwell 1885) and P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002) 277-308; see also: *Hawksworth v Hawksworth* (1871) LR Ch. App 539; J A Robilliard, *Religion and the Law* (Manchester University Press 1984) 183-185.
[1003] Guardianship of Infants Act 1925, s 1.
[1004] M Hill, R Sandberg, N Doe, C Grout *Religion and Law in the United Kingdom: Great Britain* (2nd edn, Wolters Kluwer 2021) [559]. For a European comparative perspective, see: N Doe, *Law and Religion in Europe* (Oxford University Press 2011) 226-235.
[1005] *Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision)* [1999] 2 FLR 678 [685]. For discussion, see: A McFarlane, '"Am I Bothered?": The Relevance of Religious Courts to a Civil Judge' (2011) 41 *Family Law* 946.
[1006] On 'gillick competence', see: *Gillick v West Norfolk and Wishbech Area Health Authority* [1986] AC 112; *AB v CD and Others* [2021] EWCH 741 (Fam).
[1007] M Hill, R Sandberg, N Doe, C Grout *Religion and Law in the United Kingdom: Great Britain* (2nd edn, Wolters Kluwer 2021) [559]; see also: R Ahdar, I Leigh, *Religious Freedom in the Liberal State* (Oxford University Press 2005) 195.
[1008] UN Convention on the Rights of the Child (20 November 1989), Article 14.
[1009] E Brems, *A Commentary on the United Nations Convention on the Rights of the Child, Article 14: The Right to Freedom of Thought, Conscience and Religion* (Brill 2006) 25; see also: R Ruggiero, 'Article 14: The Right to Freedom of Thought, Conscience, and Religion' in Z Vaghri, J Zermatten, G Lansdown, R Ruggiero

although parents and guardians are permitted to guide and influence a child's decisions about religion and belief, they must not force a child to follow or stop following a religion, and they should not force a child to convert to a religion against their will. It is therefore implied that parents have some obligation to steer a child away from extremist material. However, by way of contrast, it is clear that a parent or guardian – or anyone else who has access to the child, for that matter – has no right to radicalise a child.

As would be expected, the scope of Article 14 is subject to the same limitations as Article 9 of the European Convention on Human Rights; that is: 'freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others'.[1010] Further implications of Article 14 mean that state indoctrination of children is strictly not permitted,[1011] specifically within schooling and education. For example, children are able to refuse to participate in classes on religion or atheism of their own accord.[1012] It must not be ignored, however, the protecting the religious rights of the child directly interact with the need to prevent children from being drawn into terrorism. For this reason, the following sub-section will explore the rights of the child in the context of radicalisation.

6.2.2 Protecting the welfare of children

In England, the Care Act 2014 places a statutory responsibility on all local authorities to actively promote the 'individual well-being' of individuals.[1013] This includes adults, young people and children. Under the Act, 'well-being' means that that the following are required to be promoted by local authorities: the individual's 'personal dignity' (there is a requirement to treat the individual 'with respect');[1014] their 'physical and mental health and [their] emotional well-being';[1015] the individual's 'protection from abuse and neglect';[1016] their ability to have

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Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes (eds) (Springer 2022) 75-84, at 82: 'In these specific cases, the States Parties have the responsibility to ensure that the child is not compelled to receive religious or moral instruction inconsistent with their convictions and to protect the child from all forms of physical or mental violence, including those perpetrated by parents in providing directions under Article 14(2)'.

[1010] UN Convention on the Rights of the Child (20 November 1989) Article 14 (3).

[1011] See, for fuller discussion R Ruggiero, 'Article 14: The Right to Freedom of Thought, Conscience, and Religion' in Z Vaghri, J Zermatten, G Lansdown, R Ruggiero *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (eds) (Springer 2022) 75-84, at 81.

[1012] UN Committee on the Rights of the Child (2005) [44-45].

[1013] Care Act 2014, s 1(1): 'The general duty of a local authority, in exercising a function under this Part in the case of an individual, is to promote that individual's well-being'; the Act only applies to local authorities in England (see s. 1(4) of the Act).

[1014] Ibid, s 1(2)(a).

[1015] Ibid, s 1(2)(b).

[1016] Ibid, s 1(2)(c).

'control' over their 'day-to-day life' which includes 'over [their] care and support, or the way in which it is provided';[1017] the individual's ability to participate in 'work, education, training or recreation';[1018] their 'social and economic well-being';[1019] their 'domestic, family and personal relationships'; [1020] the 'suitability of their living accommodation'; [1021] and, finally, 'the individual's contribution to society'.[1022] There is no specific mention of the requirement to support an individual with their religion or faith, but this is likely covered implicitly by the Act, and applies to each of the well-being requirements listed. For example, an individual should be protected from abuse in the practice of their faith; they should also be able to exercise control over their daily life while exercising their belief. As we saw in Chapter Five, indoctrination by the state is not permitted under any circumstances.

The Care Act 2014 applies only to England.[1023] In Wales, the Social Services and Well-being (Wales) Act 2014 governs the well-being of children, young people and adults. The Act places a similar responsibility on local authorities in Wales as the Care Act does in England; however, the Act states that there is a responsibility to 'promote the well-being of people *who need care and support*' (emphasis added) instead of everybody. [1024] The Welsh Act was created in response to a Law Commission report which stated that 'the legislative framework for adult social care [in Wales was] a confusing patchwork of conflicting statutes',[1025] noting

[1017] Ibid, s 1(2)(d).
[1018] Ibid, s 1(2)(e).
[1019] Ibid, s 1(2)(f).
[1020] Ibid, s 1(2)(g).
[1021] Ibid, s 1(2)(h).
[1022] Ibid, s 1(2)(i).
[1023] Ibid, s 1(4).
[1024] Social Services and Well-Being (Wales) Act 2014, s 1(3): '(a) requires persons exercising functions under this Act to seek to promote the well-being of people who need care and support and carers who need support (section 5); (b) imposes overarching duties on persons exercising functions under this Act in relation to persons who need or may need care and support, carers who need or may need support, or persons in respect of whom functions are exercisable under Part 6, so as to give effect to certain key principles (section 6); (c) requires the Welsh Ministers to issue a statement specifying the well-being outcomes that are to be achieved for people who need care and support and carers who need support and to issue a code to help achieve those outcomes (sections 8 to 13); (d) requires local authorities to assess the needs in their areas for care and support, support for carers and preventative services (section 14); (e) requires local authorities to provide or arrange for the provision of preventative services (section 15); (f) requires the promotion by local authorities of social enterprises, co-operatives, user led services and the third sector in the provision in their areas of care and support and support for carers (section 16); (g) requires the provision by local authorities of a service providing information and advice relating to care and support and support for carers and assistance in accessing it (section 17); (h) requires local authorities to establish and maintain registers of sight-impaired, hearing-impaired and other disabled people (section 18)'.
[1025] Law Commission *Adult Social Care Law Com No 326, HC 941* (Stationery Office 2011) 8 [3.2]: 'The legislative framework for adult social care is a confusing patchwork of conflicting statutes, built up over the past 60 years. There is no single modern statute to which local authorities, service users, carers and others can look to understand whether services can or should be provided. The consultation paper proposed that the best way to achieve a simple and consistent legal framework would be to introduce a unified adult social care statute. This would mean that the existing provisions under which adult social care is provided would be consolidated and

specifically that there was inconsistent overlap between adult and children's social care legislation, and that the transition from child to adult social care services was wholly inadequate.[1026] The Act, therefore, represented an attempt to create a more conclusive statute dealing with social care in Wales.[1027]

In terms of tackling the religious radicalisation of children, we have seen in the previous chapters how this is dealt with across the UK generally – through extensive counter-terrorism legislation and guidance but, primarily, through the discharge of the Prevent Duty by specified authorities across England and Wales. However, what has not yet been touched upon is that some elements of counter-terrorism are devolved to Wales,[1028] and it is worth considering how this collaboration between Wales and centralised Parliament operates for the purposes of protecting children from terrorism.

Although, on a statutory basis, counter-terrorism is governed in Wales by the Counter-Terrorism and Security Act 2015, [1029] the primary body overseeing the implementation of the Prevent Duty in Wales is the All Wales Prevent Board which is a division of the CONTEST and Extremism Board for Wales (CEBW).[1030] According to the UK Government, this collaboration between local and centralised authorities is intended to promote the fulfilment of the objectives of the UK's overall counter-terrorism strategy.[1031] The CEBW, then, is 'wholly owned and operated by the Welsh Government' with an aim 'to provide strategic

reformed into a single piece of legislation. This includes the relevant provisions in the National Assistance Act 1948, the Chronically Sick and Disabled Persons Act 1970, the NHS and Community Care Act 1990 and carers' legislation'.

[1026] Ibid, 158-162 [11.44-11.60]: 'Some children, for example disabled children, will need continuing services into adulthood. In order to provide a framework to ensure an effective transition from children's to adults' services, the consultation paper proposed that local authorities should be given a power to assess and provide services to young people aged 16 and 17 under the adult social care statute. In addition, young people aged 16 and 17 (and their parents on their behalf) would be given a right to request that they be assessed under the adult social care statute rather than the Children Act and the local authority would then be required to give written reasons if it decides not to carry out the assessment. Finally, we proposed new duties to co-operate, which would apply when a young person is moving from children's to adults' services'.

[1027] Social Services and Well-being (Wales) Act 2014, Introductory Text.

[1028] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 84 [335].

[1029] Counter-Terrorism and Security Act 2015, s 26.

[1030] See: 'Counter Terrorism and Prevent' Welsh Local Government Association (WLGA) (undated). Available online at: <https://www.wlga.wales/counter-terrorism-and-prevent> Last accessed: 2 April 2023: 'While much of the Counter Terrorism policy agenda is non-devolved, there is an impact on devolved policy areas and functions, particularly in relation to Local Authorities and Community Safety Partnerships. Consequently, in March 2008 the CONTEST Board (for) Wales was established to take forward the work'; see also: S Peters, 'CABINET – INFORMATION REPORT: UK CONTEST Strategy' (2018). Available online at: <https://democracy.merthyr.gov.uk/documents/s41154/Committee%20Report.pdf> Last accessed: 2 April 2023.

[1031] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism' (2018) 84.

leadership on CONTEST in Wales'.[1032] It is co-chaired by the Welsh Government and the Wales Extremism and Counter-Terrorism Unit, who meet twice a year along with the Regional CONTEST Board Chairs and numerous Home Office officials to discuss counter-terrorism strategy in Wales.[1033] Designed to 'consider the implementation of the Prevent Duty in Wales',[1034] the duties of the Board are two-fold: it is designed to, first, support specified authorities in Wales and, second, support individuals in Wales who are considered to be at risk of being radicalised.[1035] The CEBW, in their duties, are supported by the Welsh Government, and are not described a safeguarding body. Instead, the CEBW seek to 'provide an ambitious programme of counter-terrorism training' which is designed to 'mitigate the risk against impacts of a terrorist incident should it occur in Wales'.[1036]

However, as we have seen throughout the chapters of this thesis, the UK Government uses language associated with risk and vulnerability throughout the Prevent Duty Guidance which is directed towards both England and Wales. It is also important to note that the UK Government has described the Prevent Duty – and related Channel Duty – in three distinct but conflicting ways: first, suggesting that the Prevent and Channel duties are to be treated as *extensions* of safeguarding measures; second, that the duties are to be discharged as *part* of safeguarding measures; and, third, that they are to be treated as *entirely separate* from safeguarding across England and Wales. This has led to great confusion as to whether the Prevent programme (which includes, by extension, the Channel programme) is or is not a safeguarding measure. As we will see, the courts have indisputably and consistently treated the radicalisation of children as a matter of child welfare and, by extension, as safeguarding. However, safeguarding is treated differently across England and Wales as a result of devolution. In England, Local Safeguarding Children Boards under the Children Act 2004 were replaced by the Children and Social Work Act 2017 with other provisions to safeguarding children referred to as local safeguarding arrangements.[1037] These local safeguarding arrangements involve a multi-agency approach to safeguarding but have been

[1032] See: 'Counter Terrorism and Prevent' Welsh Local Government Association (WLGA) (undated). Available online at: <https://www.wlga.wales/counter-terrorism-and-prevent> Last accessed: 2 April 2023.
[1033] Ibid.
[1034] R Kilpatrick (Director for Local Government), Letter: 'Community Safety in Wales' 27 February 2018.
[1035] Ibid.
[1036] Ibid.
[1037] See: Children and Social Work Act 2017, s 30: 'Abolition of Local Safeguarding Children Boards'; Children Act 2004, ss 13-16 (now omitted).

criticised for having issues of police representation, insufficient governmental support and problems with funding.[1038]

In Wales, the Social Services and Well-being (Wales) 2014 Act stipulates that, in promoting the well-being of people who need care and support (both adults and children),[1039] the local authority must ensure that there is a Local Safeguarding Children Board in place.[1040] Therefore, in Wales, safeguarding boards do continue to operate, but they are not localised; safeguarding Boards in Wales are *regional* and often straddle multiple local authorities as opposed to one.[1041] There is also a National Independent Safeguarding Board which is responsible for providing 'support and advice to Safeguarding Boards with a view to ensuring that they are effective'; reporting 'on the adequacy and effectiveness of arrangements to safeguard children and adults in Wales'; and making 'recommendations to the Welsh Ministers as to how those arrangements could be improved'.[1042] The local authority is also tasked to ensure that Child Practice Reviews take place where necessary, and that inspections are carried out regularly as to the efficacy of children's services.[1043] Importantly, radicalisation is not stated to be one of their duties; however, the Boards are expected to liaise with relevant partners,[1044] and this may include correspondence and cooperation with Channel panels, for example, and signposting children who present with a terrorist vulnerability for

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[1038] -- 'Wood Report: Sector expert review of new multi-agency safeguarding arrangements' (2021). For example, at 23 [57-58]: 'Where a statutory safeguarding partner delegates their responsibility to a deputy there is often not a sufficiently clear process for how their deputy is held to account or how the partner ensures they are in a position to support or challenge the deputy. There is room to question whether delegation is taking place and monitored in a way that is reflective of statutory guidance. It would empower safeguarding partners if it were recorded formally in their meetings that they are acting with the explicit authority of the statutory safeguarding partner to deliver on the three tasks set out in *Working Together.* Two examples illustrate the difficulty encountered when delegation is not well organised. The first one is on funding. A number of deputy safeguarding partners have expressed concern that funding for the arrangements is not being shared in line with guidelines in *Working Together*. In some cases, one organisation has unilaterally reduced their financial contribution. The matter has not been resolved because the individual deputy partners cannot agree. In these cases, the matter has not been escalated to the formal statutory partner and a stalemate exists.' (emphasis in original).

[1039] Social Services and Well-Being (Wales) Act 2014, s 1(3).

[1040] Children's Act 2004, ss 13-16; ss 16A-16D; ss 20-24.

[1041] See: Social Services and Well-being (Wales) Act 2014, ss 134-142.

[1042] Ibid, s 132(1)-(3): 'The National Board – (a) must make an annual report to the Welsh Ministers, (b) must make such other reports to the Welsh Ministers as they require, and (c) may make such other reports as it thinks fit'; for regulations about the National Board, see s 133(1)-(3) of the Act: '(1) Regulations may make further provision about the National Board. (2) Regulations under this section may, for example, provide for – (a) the constitution and membership of the National Board (including provision about terms of appointment, disqualification, resignation, suspension or removal of members); (b) the remuneration and allowances to be paid to members; (c) the proceedings of the National Board; (d) the National Board to consult with those who may be affected by arrangements to safeguard adults and children in Wales; (e) the form, content and timing of the National Board's reports; (f) the publication of the National Board's reports. (3) Regulations under this section may not provide for a Minister of the Crown to be a member of'.

[1043] Children's Act 2004, ss 13-16; ss 16A-16D; ss 20-24.

[1044] Ibid, s 28.

support. This means that the Boards likely deal with children who have been referred to Prevent for a concern about their welfare under the definitions explored above.

In response to the Boards dealing with radicalisation, the UK Government has recently created guidance directed towards introducing the Prevent Duty for those with a safeguarding responsibility – but this only applies to organisations in England. This further cements that the UK Government does not view radicalisation as a safeguarding concern, but does recognise that certain bodies – such as education providers – have both safeguarding and Prevent Duty responsibilities that they must balance, and that there is some intersection between the two. However, in the guidance, the Government explicitly refer to the Prevent Duty as involving 'safeguarding children, young people and adult learners who are vulnerable to radicalisation'.[1045] The Government's reasoning for introducing this guidance is unclear for two reasons.

First, sector specific guidance on the Prevent Duty directed towards the education sector already exists for schools and childcare providers,[1046] for further education institutions,[1047] and for higher education institutions.[1048] The additional guidance seems an unnecessary contribution. Second, as we have seen, the most recent independent review of the Prevent Duty has made it clear that the Government's view is that radicalisation should not, going forward, be treated as a safeguarding concern:

> 'Whilst safeguarding rightly sits as an element of Prevent work, the programme's core focus must shift to protecting the public from those inclined to pose a security threat. Prevent must not overlook the reality that most would-be terrorists pose a threat on account of their own agency and ideological fervour'. [1049]

In recent years, and especially in the years directly preceding the placing of the Prevent Duty on a statutory footing, there was a flurry of cases on religious radicalisation in the family courts.[1050] These cases have concerned the interaction of family law, the welfare of children

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[1045] Department for Education, 'The Prevent duty: an introduction for those with safeguarding responsibilities' (2022).
[1046] Department for Education, 'The Prevent duty: Departmental advice for schools and childcare providers' (2015).
[1047] Home Office, 'Prevent duty guidance: for further education institutions in England and Wales' (2021).
[1048] Ibid.
[1049] W Shawcross CVO, 'Independent Review of Prevent' (2023) 6 [1.4].
[1050] See also: S Langlaude, *The Right of the Child to Religious Freedom in International Law* (Martinus Nijhoff Publishers 2007).

and terrorism. This interaction has already received much academic commentary,[1051] but some of these cases will be explored in the following sub-section.

6.2.3 Religious radicalisation and children: the family courts

Baroness Hale has provided an excellent overview of the radicalisation case law and its potential impact on freedom to exercise religion.[1052] Therefore, a few of these cases will be put forward for discussion here; namely, those that were decided in the years of 2015-2016. As stated, this followed the UK Government placing the Prevent Duty on a statutory footing. The sub-section, therefore, will illustrate the impact that the Prevent Duty Guidance – and its initial and indirect framing of radicalisation as a safeguarding and child protection measure – has had on the treatment of radicalisation by the courts. The sub-section also seeks to explore whether viewing radicalisation as an issue of child welfare is of benefit, particularly in cases concerning religious radicalisation.

Due to the sheer volume of cases that were seen in the family courts between 2015-16, cases on radicalisation have in fact received special judicial guidance as to how they should be treated.[1053] The guidance is focussed primarily on procedural rules, as to be expected. For example, it is stated by the President of the Family Division that given the 'complexities of these cases', all cases concerning radicalisation must 'be heard by High Court Judges of the Family Division' only. [1054] Importantly, the President of the Family Division describes radicalisation as a form of 'grooming'.[1055] This is worth acknowledging here, but will be revisited later on in this chapter (see section 6.4); this is not the first time that radicalisation has been described as such, but is in direct conflict with the Government's intentions to not treat radicalisation as a safeguarding issue.

Returning to the case law, most recognised, perhaps, was the case of *B*, where a seventeen-year-old child was radicalised within her family home from which she was promptly

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[1051] See, for example: D Woodward-Carlton, 'Radicalisation and the Family Courts' (2019) *Family Law,* 752-761; F Ahdash, 'The Interaction Between Family Law and Counter-Terrorism: A Critical Examination of the Radicalisation Cases in the Family Courts' (2018) 30 Child and Family Law Quarterly 389-414.

[1052] B Hale, 'Freedom of religion and freedom from religion' (2017) 19 Ecclesiastical Law Journal 3–13

[1053] See: President of the Family Division, 'Radicalisation Cases in the Family Courts: Guidance issued by Sir James Munby President of the Family Division' 8 October 2015. Available online at: <https://www.judiciary.uk/wp-content/uploads/2015/10/pfd-guidance-radicalisation-cases.pdf> Last accessed: 3 May 2020.

[1054] Ibid, [4].

[1055] Ibid, [1]: 'Recent months have seen increasing numbers of children cases coming before the Family Division and the Family Court where there are allegations or suspicions: that children, with their parents or on their own, are planning or attempting or being groomed with a view to travel to parts of Syria controlled by the so-called Islamic State; that children have been or are at risk of being radicalised; or that children have been or at are at risk of being involved in terrorist activities either in this country or abroad'.

removed.[1056] The child's father held extremist views which had, in turn, influenced the child;[1057] the mother was found to be complicit in this.[1058] Despite this, the child – *B* – was returned home to her mother and father. It was decided that because her siblings had not been radicalised and did not hold extremist views, her beliefs would be adequately challenged.[1059] In the case, Lord Justice Hayden drew comparison with sexual abuse, a quote which is worth presenting *in extenso*:

> 'If it were a sexual risk that were here being contemplated, I do not believe that any professional would advocate such a placement for a moment. The violation contemplated here is not to the body but is to the mind. It is every bit as insidious, and I do not say that lightly. It involves harm of similar magnitude and complexion'.[1060]

On this, Lady Hale has commented that the comparison of radicalisation to sexual abuse is 'a clear indication that the family court is prepared to regard the inculcation of extremist beliefs as producing the sort of significant harm which justifies removing a child from home'.[1061] It

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[1056] *London Borough of Tower Hamlets v B* [2016] EWHC 1707 (Fam), [2016] 2 FLR 887.

[1057] Ibid [32]: 'B's sense of grievance has plainly been shared by the parents, most conspicuously by the father, who has been indignant at my having traduced him, as he perceives it, in the earlier judgment. Quite why they contest the legitimacy of the Local Authority's concerns is not easy to follow. Their daughter was prevented from escaping to Syria and was subsequently removed from their household to protect her from the poisonous images which have been described as 'saturating' the family's laptops, smart phones, hard drives and USB sticks. That is an apt description'.

[1058] Ibid, [57]: 'The mother was either complicit in the radicalisation of the children or, alternatively, was, or should have been, aware of the continued radicalisation of the family but failed to protect the children from their father's radicalised beliefs'.

[1059] Ibid, [138-140]: 'The Local Authority is not content with the superficial concession that B might casually or half-heartedly have shared her enthusiasm for Isis with her sister, H. There is a factual dispute between H and Brian Sharpe as to what was said in the course of their meeting in March 2016. Mr Sharpe was clear in his evidence that H revealed that B had tried to convince her to travel to Syria in the course of 2015. As I have already commented whilst I found Mr Sharpe to be somewhat ponderous at times and lacking a pragmatic social work instinct, I was left in no doubt as to his honesty and integrity. Where his evidence conflicts with H I unreservedly prefer his. Moreover, there is corroborative material within the Prevent notes supportive of Mr Sharpe's recollection. Those notes reveal that B gave H videos to watch concerning Isis activity; she also gave her a USB stick containing extremist material and made a number of attempts to convince H to join Isis and leave for Syria. Mr Sharpe's record that H, in effect, played along with B to humour her, unifies these strands of evidence and provides a cogent history. As I have said already, the usual forensic indicators of a witness's reliability have constantly to be re-evaluated in this family but I ultimately feel comfortable that Mr Sharpe's assessment of H is an accurate one. Ironically, whilst his integrity appears to be challenged, he is in fact providing real assistance to H, presenting her as resistant to B's extremist overtures. I formed a similar impression, having listened to her evidence. Like her brothers and like them through her interest in sports, she engages with the world in a healthy and energetic way. This has provided her, so far, with an immunisation to the radical agenda of her sister. Similarly, it seems to me, it takes her away from her mother's zealous Islamic beliefs. Nor is she exercised by her father's humanitarian interests and so not as likely to be exposed to the death related images that he shares with B. I find the father though curious about radical Islam is not, himself, motivated by an extremist agenda and as such he is not driven to proselytise. Accordingly, I think it unlikely that H would be shown the kind of images that B is shown by her father, at least not to anywhere near the same degree'.

[1060] Ibid, [29].

[1061] B Hale, 'Freedom of religion and freedom from religion' (2017) 19 *Ecclesiastical Law Journal* 3–13, 10.

also indicates that the law is capable of treating radicalisation as a form of harm that a child may be subjected to, and may even amount to a safeguarding concern. For this reason, the intersection of radicalisation and child sexual abuse is notable and will be revisited later in this chapter (section 6.4.2).

The previously mentioned judicial guidance makes references to several other cases – all of which will be explored here – but including the earlier case of *Re M*, where a mother and father had separated, and the mother had then raised concerns that the father had been radicalising the children.[1062] The mother had suggested that his care of them should be supervised.[1063] Most notable to this case, the definition of religious radicalisation was discussed and described as a 'vague and non-specific word which different people may use to mean different things'.[1064] Mr Justice Holman also commented that there must be a distinction drawn between permissible radical belief and harmful radicalisation that interrupts the welfare of children.[1065] It may be inferred, then, that the statutory Prevent Duty should not be used to interfere with the right to freedom of thought, conscience or religion in this context:

> 'If and insofar as what is meant in this case by "radicalising" means no more than a set of Muslim beliefs and practices is being strongly instilled in these children, that cannot be regarded as in any way objectionable or inappropriate'.[1066]

Following the case of *B* was the case of *M* where a mother and father had attempted to travel with their children to Syria but were intercepted at the border in Turkey.[1067] The four children were made wards of the court but were returned to the UK. Importantly, the case of *B* was cited: it was discussed that child welfare should not be obscured by issues of counter-terrorism and national security:

> 'All involved must recognise that in this particular process it is the interest of the individual child that is paramount. This cannot be surpassed by wider considerations of counter terrorism policy or operations, but it must be recognised that the decision

[1062] *Re M (Children)* [2014] EWHC 667 (Fam).
[1063] Ibid.
[1064] Ibid, [23].
[1065] Ibid.
[1066] Ibid.
[1067] *Tower Hamlets v M and Others* [2015] EWHC 869 (Fam).

the court is being asked to take can only be arrived at against an informed understanding of that wider canvas'.[1068]

It is worth noting that this decision is starkly different from the recent case of *Begum*; although Shamima Begum was radicalised at the age of fifteen – and managed to successfully leave the country to join the Islamic State (IS) – she was deprived of her citizenship on her attempt to return to the UK as an adult. A distinction, then, must be drawn: children, as in the case of *M,* who are accompanied and guided by adults known to them, and returned shortly after (still as children) are not considered a risk to national security. However, children who are radicalised by individuals outside the family home, who successfully leave the UK and successfully join proscribed organisations and return, later, as adults *are* considered a risk to national security. In the case of *Begum*, the child left alone and sought to return as an adult, years later. It must be recognised that in both instances, the children committed terrorist offences, but in only one instance was the individual held accountable, despite being radicalised as a child.

The other cases on religious extremism that were discussion in the judicial guidance were: *Re Y,*[1069] where a 16-year-old was considered as being at risk of leaving the UK to travel to Syria, and was as such made a ward of the court. His family were extremists, and the child was considered to be vulnerable on the basis of his mental health and isolation – much of his family were in Syria. Second was the case of *Re Z,*[1070] where a child attempted to travel to Syria and was prevented by the police and made a ward of the state because she was considered not only at risk of extremism, but of child sexual exploitation in the form of forced marriage. Finally, in the cases of *Re X and Y,*[1071] two families were involved in the radicalisation of children – one family successfully left the country with their children; one did not. The children were placed in foster care initially, but the children eventually were returned to their family homes on the basis that they were suffering too greatly due to separation from their parents.

Some scholars, such as Reece, have argued that many of these cases involve a degree of so-called 'parental deviance';[1072] that is, 'making an accusation of radicalisation in a strategic

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[1068] Ibid, [37].
[1069] *Re Y (A Minor: Wardship)* [2015] EWHC 2098 (Fam).
[1070] *Re Z (Children)* [2015] EWHC 2350.
[1071] *Re X (Children); Re Y (Children)* [2015] EWHC 2265 (Fam); *Re X (Children); Re Y (Children) (No 2)* [2015] EWHC 2491.
[1072] H Reece, 'Was There, Is There and Should There be a Presumption Against Deviant Parents?' [2017] 9 *Child and Family Law Quarterly*, 10-14.

way [will cause] an otherwise unremarkable private family law case a higher profile and a higher sense of urgency'.[1073] This is an oversimplification and reveals a misunderstanding of the serious trauma that living in a home where extremism is prevalent can cause a child. It would be more appropriate to understand the concept of parental deviance as corresponding with Article 14 of the United Nation's Convention on the Rights of the Child and the parental responsibility to not force the child to follow a religion. In some of these cases, where the radicalisation takes place within the family home, a parent is deviant in their intention to coerce and manipulate the faith of the child. One thing that many of these cases have in common is that the radicalisation has taken place within the family home. This, regardless of the facts of the case, means that the case is a family law case and has every right to be treated as such. The sense of urgency that Reece describes is, in practice, not often attributed to incidents of radicalisation.

As stated, children who are brought up around extremism – or who are forced to consume extremist materials – are often incredibly traumatised. More appalling still, children who are subjected to radicalisation are often also subjected to other forms of harm at the same time, such as sexual or physical abuse. It is evident, from this sub-section, that the courts view radicalisation in this way: as a harm that children are subjected to, and as a matter of child welfare. The UK Government, however, is reluctant to view radicalisation as safeguarding. The following section will explore this further, explaining why radicalisation can – and should – be viewed as an attack on the welfare of the child.

6.3 Radicalisation as an attack on child welfare

As we have seen in previous chapters, and as has been touched upon in this chapter, the UK Government is reluctant to recognise radicalisation as a form of child abuse, and for the Prevent Duty to be described as a safeguarding measure. For example, as we saw in Chapter Five, the Government has yet to recognise exposure to extremism as a form of faith-based abuse. This has limited how organisations and sectors who are not specified authorities are able to deal with radicalisation in their institutions. However, many organisations and practitioners who work with children, such as social workers, have not only recognised radicalisation as a safeguarding issue relating to child welfare, but are actively encouraging others to do the same. The following sub-sections will explore this, evaluating whether this

[1073] F Ahdash, 'The Interaction Between Family Law and Counter-Terrorism: A Critical Examination of the Radicalisation Cases in the Family Courts' (2018) 30 Child and Family Law Quarterly 389-414; E P Benedek, D H Schetky, 'Allegations of sexual abuse in child custody and visitation disputes' in E P Benedek and D H Schetky (eds) *Emerging Issues in Child Psychiatry and the Law* (Brunner/Mazel 1985).

approach is appropriate, or whether it further confuses how the prevention of terrorism is understood in the UK. As an underlying theme, the section will look at child welfare in the context of faith communities.

6.3.1 Combatting radicalisation as child safeguarding

Numerous children's organisations in the UK treat religious radicalisation as a safeguarding issue. For example, and perhaps most notably, the National Society for the Prevention of Cruelty to Children (NSPCC) suggests that radicalisation should be viewed as a safeguarding matter simply because it is a form of child abuse. The NSPCC, on its website, states that although the UK Government has 'given some types of organisations [namely, specified authorities] a duty to identify vulnerable children and young people and prevent them from being drawn into terrorism', it should be the responsibility of any individual who works with children to protect them from extremism.[1074] It is worth noting, here, that the NSPCC use the word 'protect' which, as we have seen, is not in line with the language used in Government guidance and commentary on radicalisation. In similar vein, the Safeguarding Network suggests that 'keeping children safe from harm includes keeping them safe from extreme ideologies and behaviours'.[1075] It is evident that child protection organisations believe that the Prevent Duty extends beyond the specified authorities listed under the Counter-Terrorism and Security Act 2015.

There is likely something to be learned from this approach. Superficially, at least, it is positive that organisations that deal specifically with children are recognising radicalisation as a harm that children may be subjected to. However, the reason why many organisations treat radicalisation as a safeguarding concern remains unclear – there is no guidance from the Government which states that it should be treated as such. In fact, the Government have actively promoted the opposite. It appears that for these organisations, a relatively straightforward connection has been made between extremism, children and harm. For example, the NSPCC offers a helpline for adults to call and discuss their concerns if they feel a child may be at risk of radicalisation.[1076] It is however somewhat concerning that

[1074] NSPCC Learning, 'Radicalisation' (2021). Available online at: <https://learning.nspcc.org.uk/safeguarding-child-protection/radicalisation#:~:text=What per cent20to per cent20do per cent20if per cent20you,emergency per cent2C per cent20follow per cent20your per cent20organisation's per cent20procedures> Last accessed: 11 August 2022.

[1075] Safeguarding Network, 'Preventing radicalisation' (undated). Available online at: < https://safeguarding.network/content/safeguarding-resources/radicalisation/> Last accessed: 22 May 2022.

[1076] See, for example, the NSPCC website at: <https://www.nspcc.org.uk/keeping-children-safe/reporting-abuse/dedicated-helplines/protecting-children-from-radicalisation/> Last accessed: 22 April 2023: 'We provide help and support to adults worried about the radicalisation of a child. We'll listen to your concerns, help you recognise the warning signs and, where possible, highlight local support services that are available… Our

organisations who are not listed as specified authorities under the 2015 Act are actively implementing the Prevent Duty. It also raises the question of whether presenting the prevention of radicalisation as a counter-terrorism issue remains appropriate.

Extending the duty beyond the list of specified authorities towards organisations who are not fully equipped to be intervening in this area has the potential for numerous negative consequences. First, these organisations in particular are not equipped to deal with the reality of the radicalisation process within their organisations, and they are not supported by the Government to provide advice to others. Second, it is an unfair burden. These organisations are not listed under the 2015 Act and therefore are not supported in their implementation of the Prevent Duty in any way, least of all financially. The same can be said, of course, of the faith sector, as highlighted in Chapter Five.

Despite this, the NSPCC suggests that many organisations have adapted to deal with radicalisation due to their safeguarding training for other harms such as child grooming.[1077] This recognises and further cements the link between the radicalisation process and the process of child grooming, as noted by the President of the Family Division.[1078] Due to this, the NSPCC urges organisations to adopt the Prevent Duty even if they are not listed as specified authorities under the Act: organisations 'should still work to prevent radicalisation and extremism as part of overall safeguarding responsibilities'.[1079] This has two main consequences. First, the urging of non-specified authorities to adopt the Prevent Duty as part of their safeguarding undermines the purpose of both the specified authorities and the Prevent Duty itself. Barnardo's, for example, has created online resources for schools about radicalisation and extremism.[1080] This would not be so terrible if Barnardo's didn't explicitly

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helplines offer a safe, non-judgmental space where adults and children can talk to us confidentially. However, if a child was thought to be at significant risk of harm, we would alert the appropriate authorities, as we would in any case where a child's safety is in serious question'.

1077 NSPCC Learning, 'Radicalisation' (2021). Available online at: <https://learning.nspcc.org.uk/safeguarding-child-protection/radicalisation#:~:text=What per cent20to per cent20do per cent20if per cent20you,emergency per cent2C per cent20follow per cent20your per cent20organisation's per cent20procedures.> Last accessed: 11 August 2022.

1078 See: President of the Family Division, 'Radicalisation Cases in the Family Courts: Guidance issued by Sir James Munby President of the Family Division' 8 October 2015. Available online at: <https://www.judiciary.uk/wp-content/uploads/2015/10/pfd-guidance-radicalisation-cases.pdf> Last accessed: 3 May 2020, [1].

1079 NSPCC Learning, 'Radicalisation' (2021). Available online at: <https://learning.nspcc.org.uk/safeguarding-child-protection/radicalisation#:~:text=What per cent20to per cent20do per cent20if per cent20you,emergency per cent2C per cent20follow per cent20your per cent20organisation's per cent20procedures.> Last accessed: 11 August 2022.

1080 Barnardo's, 'Barnardo's launches resources to help schools tackle sexual harassment and abuse' (2022). Available online at: < https://www.barnardos.org.uk/news/barnardos-launches-resources-help-schools-tackle-sexual-harassment-and-abuse> Last accessed: 10 August 2022.

describe radicalisation as a 'safeguarding issue' akin to 'other forms of exploitation' for children.[1081] As stated, this is not the message that the UK Government are promoting in regards to radicalisation.[1082]

Second, encouraging organisations who are not listed as specified authorities to incorporate radicalisation into their safeguarding practice could have serious consequences for the faith sector. As we have seen, there is already the existence of Islamophobia and dangerous stereotypes associated with Islamist terrorism. Although, as identified through this work, the Prevent Duty and its representation of Islam is far from perfect, the Government does make some attempt to describe the threat from Islamist terrorism. Without this guidance and training, organisations should not attempt to tackle radicalisation alone – that is, without Government support in the form of training and sector specific guidance, where appropriate – even if they consider it a safeguarding concern that they feel prepared to deal with.

Therefore, although promoting radicalisation as a child welfare and safeguarding issue – and encouraging organisations to deal with it in this way – is undoubtedly well-intentioned, the Prevent Duty is not designed to be part of safeguarding practice in the UK. The Channel Duty, as was discussed in Chapter Two, is perhaps the only area of counter-terrorism that is synchronous with safeguarding – it is, however, distinct from the Prevent Duty. Instead, counter-terrorism law in the UK is designed to deal with protecting the general public from terrorism-related risks.

As William Shawcross, Independent Reviewer of Prevent, wrote in February 2023: 'Prevent must return to its overarching objective: to stop individuals from becoming terrorists or supporting terrorism… the programme's core focus must shift to protecting the public from those inclined to pose a security threat'.[1083] Although, of course, a main aspect of this work involves preventing individuals from being recruited into supporting terrorism, it is not the primary focus of the legislation. The legislation is focussed, instead, on preventing terrorist incidents. Put simply: the Prevent Duty is designed to protect the public from terrorist attacks

[1081] Barnardo's, 'Safeguarding & Protecting Children Policy and Procedure (Children's Services)' (2019) 30.
[1082] In the most recent review of the Prevent Duty, Independent Reviewer William Shawcross explained that radicalisation is not to be viewed as safeguarding. See: W Shawcross CVO, 'Independent Review of Prevent' (2023) 6 [1.4]: 'Whilst safeguarding rightly sits as an element of Prevent work, the programme's core focus must shift to protecting the public from those inclined to pose a security threat. Prevent must not overlook the reality that most would-be terrorists pose a threat on account of their own agency and ideological fervour. Prevent too often bestows a status of victimhood on all who come into contact with it, confusing practitioners and officials as to Prevent's fundamental purpose'.
[1083] Ibid.

by preventing potential terrorists from becoming actual terrorists. The Prevent Duty is not designed to prevent individuals from becoming terrorists to protect those individuals. Although it is acknowledged – widely – that the Prevent Duty does involve some degree of safeguarding, this is a secondary matter. The goal of the Prevent Duty is to disengage potential terrorists from the radicalisation process so that they do not go on to commit a terrorism related offence and pose a national security threat; the goal is to protect the wider public. This is why radicalisation, at present, cannot be understood as a matter of child welfare under the Prevent Duty.

6.3.2 Radicalisation as child abuse

In 2017, the UK Government described radicalisation as fundamentally 'different' in comparison to other forms of harm.[1084] This was in reference to the way in which the harm 'manifests'.[1085] It was also in relation to how difficult it is to determine whether a child is being radicalised: 'children who are at risk [of being radicalised] may be otherwise healthy, well-educated and well cared for';[1086] the child or young person many be at risk 'even if they do not have learning difficulties, mental illness or any other overt risk factors'.[1087] It may be inferred that the Department for Education are implying that other harms – such as child sexual exploitation – only happen to children who are unhealthy, uneducated and uncared for, as well as being simpler to detect. The Welsh Government, however, have explicitly stated that 'there is no single victim profile' for child sexual exploitation.[1088] The narrative that radicalisation only happens to 'healthy' – or otherwise mentally and physically well – children reinforces the dangerous classification of these children not as victims, but as wilful actors who pose a risk to others. Thus, the way that children who are radicalised are understood differs significantly from the way in which children who are subjected to other harms are understood.

[1084] Department for Education, 'Safeguarding and radicalisation' (2017) 15: 'However, this was combined with an acknowledgement that radicalisation is different in important ways, primarily in relation to how the 'harm' manifests. In particular, participants acknowledged that the kind of 'harm' presented by radicalisation is harder to diagnose and assess than other forms of harm. Children who are at risk may be otherwise healthy, well-educated and well cared for. The young person may be at risk of radicalisation even if they do not have learning difficulties, mental illness, or any other more overt risk factors. Equally, the risk of radicalisation may not necessarily come from within the family, and is therefore different to other forms of familial abuse'.
[1085] Ibid.
[1086] Ibid.
[1087] Ibid.
[1088] Welsh Government, 'Social Services and Well-being (Wales) Act 2014: Working Together to Safeguard People, Volume 7 – Safeguarding Children from Child Sexual Exploitation' (2021) 12.

However, yet more confusing is that recent Government reports have indicated that social workers and other practitioners who work with children view radicalisation as a safeguarding concern.[1089] This highlights an inconsistency: faith communities, who are not specified authorities, do not view radicalisation as a safeguarding concern; however, social workers, who usually are specified authorities, do. This is because many children experience radicalisation alongside other forms of abuse and exploitation, and so are simultaneously supported through both safeguarding measures and the Prevent programme. For example, particularly in incidences of religious radicalisation, boys are often encouraged to use violence against their own families,[1090] and girls are subjected to sexual exploitation alongside the extremist abuse.[1091] Girls are expected to marry (often while they are still underage), cook, clean and live to serve their husbands.[1092] Indeed, it has been identified that while all children are at risk of recruitment – and may become victims – 'the scale of recruitment of girls in the contemporary context of terrorism has become a matter of particular concern'.[1093] The religious radicalisers tailor propaganda to target young girls,

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[1089] Department for Education, 'Safeguarding and radicalisation: learning from children's social care' (2021) 9-11.

[1090] M Bloom, J Horgan, C Winter, 'Depictions of Children and Youth in the Islamic State's Martyrdom Propaganda, 2015-2016' (2016) 9 *Combatting Terrorism Centre at West Point* 2, 29-32: 'It is clear that the Islamic State leadership has a long-term vision for youth in its jihadist efforts. While today's child militants may well be tomorrow's adult terrorists, in all likelihood, the moral and ethical issues raised by battlefield engagement with the Islamic State's youth are likely to be at the forefront of the discourse on the international coalition's war against the group in years to come. Furthermore, as small numbers of children either escape or defect from the Islamic State and as more accounts emerge of children's experiences, there is an urgent need to plan and prepare for the rehabilitation and reintegration of former youth militants'.

[1091] United Nations Office on Drugs and Crime, 'Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System' (United Nations 2017) 14: 'Boko Haram has recruited and used boys and girls for active hostilities, according to testimonies received by the Office of the United Nations High Commissioner for Human Rights (OHCHR). Some boys were forced to attack their own families to demonstrate loyalty to Boko Haram, while girls were forced to marry, clean, cook and carry equipment and weapons'.

[1092] Ibid.

[1093] Ibid: 'There are a number of reasons why girls are favoured targets of recruitment. One reason is visibility: attacks by girls, especially young girls, have a greater propaganda value, as they tend to garner more media attention than attacks by their male counterparts. As terrorist groups' communication strategies show, the recruitment of girls contributes to the "normalization" of the groups, increases the groups' attractiveness for future recruits and demonstrates the groups' State-building capacity. Another reason is effectiveness, as girls do not conform to traditional security profiles and they tend to raise less suspicion and thus have an increased likelihood of successfully carrying out attacks or support roles. Moreover, different "push factors" and "pull factors" may apply to girls. Girls may be induced to "fall in love" with a member of a group through the social media; or they may seek an escape from structural violence or family pressure at home by getting married to a terrorist fighter. In addition to using the usual recruitment methods, organizations such as ISIL appear to be directing propaganda messages at women and girls, whom they address as "sisters of the Islamic State", writing manifestos and publications for them and promoting women's voices within recruitment strategies. There are also dedicated online chat boards and messages for and by women involved in recruitment processes'; see also, as cited: E Saltman and M Smith, *Till martyrdom do us part: gender and the ISIS phenomenon* (Institute for Strategic Dialogue 2011).

encouraging them as 'sisters of the Islamic state' and using women in recruitment.[1094] For women and girls in particular, then, radicalisation regimes and propaganda are personalised to encourage servitude, obedience and submission to men in a faith context: 'there is also evidence of both Christian and Islamist organisations trafficking girls and young women for early/forced marriage and offering them as a "reward" to male group members'.[1095] There is, therefore, a clear element of sexual exploitation involved in the radicalisation process. Indeed, as we saw in Chapter Four, many radicalised individuals leave the process before causing harm to others. This underlines the importance of developing an understanding – specifically in the context of religious radicalisation – of when an individual becomes a danger. The report notes that although, in comparison to other forms of abuse and neglect, supporting radicalised children 'may require slightly more of a focus on making time to understand and unpick [their] backgrounds, experiences and views',[1096] radicalisation should still be treated as a harm that happens to children, not one that children subject others to.

The academic literature on radicalisation reflects this. Dryden completed work which examined the relationship between radicalisation and child protection in the UK,[1097] but not in the context of faith communities. Dryden found that there was an 'under-acknowledgement of radicalisation as a current and pressing safeguarding and child protection issue'.[1098] A lack of practitioner understanding was found, and Dryden warns that this could lead to disaster.[1099]

[1094] E Saltman and M Smith, *Till martyrdom do us part: gender and the ISIS phenomenon* (Institute for Strategic Dialogue 2011) 55: 'There is great potential for strengthening and scaling up counternarrative initiatives online. Violent extremists in their many forms have made effective use of the Internet and social media to advance their aims via online engagement, propaganda and recruitment. Despite the variance in background profiles of Western women joining ISIS, there is a common trend; online interactions and information retrieval has been elemental in facilitating their departures and in providing a platform for them to propagandize and recruit other females upon arrival. Online marketisation tools already exist for companies like Coca-Cola and Nike that allow an organization to create criteria for targeted advertising based on user preferences, cookies and interactions within certain groups and forums. The same can be done with counter-narrative initiatives online. While more data and a well-defined methodology for the scaling up of this form of critical engagement is still needed, the Institute for Strategic Dialogue is piloting research and analysis within this space. This form of engagement is also based solely on user preferences triggering signs, rather than targeted messaging based on sociopolitical or ethno-religious profiling, which is largely analogous'.

[1095] S Dhaliwal, L Kelly, 'Literature Review: The Links Between Radicalisation and Violence Against Women and Girls' (London Metropolitan University: Child and Woman Abuse Studies Unit 2020) 25.

[1096] Department for Education, 'Safeguarding and radicalisation: learning from children's social care' (2021) 41.

[1097] M Dryden, 'Radicalisation: The Last Taboo in Safeguarding and Child Protection? Assessing Practitioner Preparedness in Preventing Radicalisation in Looked-After Children' (2017) 13 *Journal for Deradicalisation*, 101-136.

[1098] Ibid, 126: 'This research has highlighted the under-acknowledgement of radicalisation as a current and pressing safeguarding and child protection issue, with it being afforded much less emphasis and allocated much fewer resources than other issues such as Child Sexual Exploitation'.

[1099] Ibid: 'It is intended that local authorities will reflect upon this research and learn lessons from the Child Sexual Exploitation disasters in Rotherdam, Rochdale and other areas which stemmed largely from a lack of practitioner awareness and training, without having to suffer similar disasters relating to radicalisation before the necessary improvements are made'.

These findings, however, are not fully reflected by the previously mentioned 2021 Department for Education report on the subject, focussed on social workers who have lived experience of dealing with radicalisation – and a plethora of other harms. It appears, then, that the UK Government has not fulfilled its responsibility to support social workers and practitioners in dealing with radicalisation yet; however, the report does suggest some ways as to how this may be achieved.[1100]

Perhaps most importantly, the Department for Education stated explicitly that radicalisation 'requires a safeguarding response, and possibly intervention by children's social care'.[1101] Therefore, it is evident that social workers and professionals working with children and young people no longer consider radicalisation as a process that harms only society; instead, radicalisation is understood as a harm experienced by children and young people, like many other harms, and should be dealt with accordingly through safeguarding practice. Framing radicalisation as a safeguarding issue would also benefit faith communities who have no training as to challenging radicalisation in their institutions.

Based on the reasoning of the previous sub-sections, it is important for the Government to recognise the crossroads that the Prevent Duty sits at. It has been stated recently – and firmly – that the future of the Prevent Duty lies not in safeguarding, and it is clear that the Prevent Duty has never been a safeguarding mechanism and was not designed to protect child welfare. If Prevent were to take on the form of a safeguarding duty, this would involve an overhaul of the duty for the Government, or at least an attempt to incorporate it into existing safeguarding law and guidance. In achieving this, the UK Government would need to explicitly and decisively explain to specified authorities, to the academic community and to the general public that the Prevent Duty, as it currently exists, is solely a counter-terrorism mechanism. If this were to happen, work could begin to separate the Prevent Duty from safeguarding and child welfare entirely, and religious radicalisation could be incorporated into existing safeguarding guidance by acknowledging it as a form of faith-based abuse. This has not been recognised nor commented upon by the most recent review of the Prevent Duty, but the following section will explore this more thoroughly.

[1100] Department for Education, 'Safeguarding and radicalisation: learning from children's social care' (2021) 86-91.
[1101] Ibid, 9.

6.4 Radicalisation as child exploitation

As we have seen, the way in which radicalisation is viewed – and whether, indeed, it continues to be referred to as 'radicalisation' in the context of child welfare – remains to be decided. The following section will outline two ways in which child religious radicalisation may be viewed in the context of child welfare and outside of a strictly counter-terrorism context: first, as a form of exploitation; second, as a form of child abuse. The section will explore and evaluate whether radicalisation can, indeed, be viewed as a violation of the welfare of the child and, if so, what this may mean for the implementation Prevent Duty. Therefore, the section will evaluate the extent to which it would be helpful to view radicalisation as a matter of child welfare, both within and outside of faith communities.

6.4.1 Child criminal exploitation

The UK Government defines 'child criminal exploitation' as when an 'individual or group takes advantage of an imbalance of power to coerce, control, manipulate or deceive a child or young person under the age of 18'.[1102] Even if there has been no physical contact with the child – for example, the child may have been contacted through the internet) –[1103] the Government suggests that the victim may still have been criminally exploited.[1104] This form of exploitation can affect any child – male or female – under the age of 18, and can also affect vulnerable adults over the age of 18.[1105] Importantly, even if the activity appears consensual it can still amount to exploitation;[1106] for example, if the child explains that they wanted to engage in the criminal activity. However, there may also be use of 'force' or 'enticement-based methods [which are] often accompanied by violence or threats of violence'.[1107] The perpetrators who target and exploit the child may be individuals or groups, identify as male or female, and can sometimes be other young people.[1108] In relation to terrorism, children are often recruited by the same methods that adults are, and 'forced recruitment continues to be prevalent'.[1109] This usually involves the abduction of children or children who are purchased from traffickers.[1110] Despite this, some children 'may appear to

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[1102] Home Office, 'Criminal Exploitation of children and vulnerable adults: County Lines guidance' (2018).
[1103] Ibid. 'No physical contact' meaning the exploitation can also occur through the use of technology.
[1104] Ibid.
[1105] Ibid.
[1106] Ibid.
[1107] Ibid.
[1108] Ibid.
[1109] United Nations Office on Drugs and Crime, 'Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System' (United Nations 2017) 11.
[1110] Ibid, 12, 'Terrorist and violent extremist groups primarily engage in forced and often brutal recruitment of large numbers of children. Children may be kidnapped, abducted, coerced through threats or purchased from traffickers. Children living in poverty, without parental care, and street children are particularly vulnerable to forcible recruitment campaigns'.

"voluntarily" join terrorist and violent extremist groups', the United Nations write.[1111] However, most recruitment involves both forced and voluntary elements,[1112] and 'recruitment should never be regarded as truly voluntary'.[1113] This is because – as CONTEST, the Prevent Duty Guidance and the various terrorism scholars agree – recruitment to terrorism is based on a multitude of factors that work together in causing the child to join the group or organisation. These include survival, a need to escape poverty, personal insecurity, marginalisation or discrimination.[1114] The International Criminal Court has distinguished between voluntary and forced recruitment, stating that this is particularly important in cases involving children.[1115] Under international law, the recruitment of children to armed forces is illegal.[1116] For example, the United Nations Convention on the Rights of the Child – previously introduced – stipulates that a state must not recruit a child to the armed forces.[1117] Horrifically, however, a 2016 study has found that the Islamic State (IS) recruits and uses children in the same way that it recruits and uses adults. Children are not used as a last resort when the battle is waning; they are treated as equals.[1118]

[1111] Ibid, 11-12.
[1112] Ibid, 11; see also: Submission of the Observations of the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict pursuant to Rule 103 of the Rules of Procedure and Evidence, judicial document No. ICC-01/04-01/06-1229 (2008), Annex A [13].
[1113] Ibid.
[1114] Ibid.
[1115] Ibid; see also: *The Prosecutor v. Thomas Lubanga Dyilo*, judgment of 14 March 2012 at [612].
[1116] See, for further discussion: M A Drumbl *Reimagining Child Soldiers in International Law and Policy* (Oxford University Press 2012) 134-167 at 135: 'In armed conflict, international criminal law ascribes individual penal responsibility to adult conscriptors or enlisters when the implicated children are under the age of fifteen, regardless of the modality of recruitment. International criminal law also ascribes individual penal responsibility to adults who use children under the age of fifteen to participate actively in hostilities. These practices therefore have become illicit. Guilt can be assessed and punishment imposed by international criminal courts or tribunals'.
[1117] UN Convention on the Rights of the Child (20 November 1989) Article 38: '1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest. 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict'.
[1118] M Bloom, J Horgan, C Winter, 'Depictions of Children and Youth in the Islamic State's Martyrdom Propaganda, 2015-2016' (2016) 9 *Combatting Terrorism Centre at West Point* 2, 29-32, 31: 'It is equally striking that the Islamic State's children and youth operate in ways similar to the adults. Children are fighting alongside, rather than in lieu of, adult males and their respective patterns of involvement closely reflect one another. In other conflicts, the use of child soldiers may represent a strategy of last resort, as a way to "rapidly replace battlefield losses," or in specialized operations for which adults may be less effective. However, in the context of the Islamic State, children are used in much the same ways as their elders'.

There are two elements that set aside child criminal exploitation from other forms of abuse. First, child criminal exploitation is always typified by some form of power imbalance'.[1119] This may be: the child's age, 'gender, cognitive ability, physical strength, status, and access to economic or other resources'.[1120] Second, and more often than not, there is 'some form of exchange' that takes place between the exploited child and the perpetrator.[1121] For example, the Home Office use the example of carrying drugs in exchange for something offered to the child or young person.[1122] This may be tangible – 'money, drugs or clothes' – or intangible: 'status, protection, perceived friendship or affection'.[1123] The child wanting to prevent something negative happening also amounts to an exchange, according to the Home Office, meaning that the victim may engage in the activity to protect their family from harm.[1124] In the context of terrorism and extremism, the child may be offered safety, belonging or friendship in exchange for travelling to contact zones in Syria or helping to plan for – or committing – a terrorist incident.

Although the Home Office guidance provides valuable information on the warning signs that a child may be being criminally exploited, it does not explicitly mention terrorism or extremism, and does not refer specifically to faith contexts. The United Nations Office on Drugs and Crime published similar guidance in 2017, however, which does link terrorism with child criminal exploitation:

> 'Recruitment of children by terrorist and violent extremist groups is taking place in countries throughout the world, in situations of armed conflict and in the absence of armed conflict. Regardless of the conditions in which it takes place, the recruitment usually leads to exploitation and victimisation of children'.[1125]

[1119] Home Office, 'Criminal Exploitation of children and vulnerable adults: County Lines guidance' (2018).
[1120] Ibid.
[1121] Ibid.
[1122] Ibid.
[1123] Ibid.
[1124] Ibid.
[1125] United Nations Office on Drugs and Crime, 'Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System' (United Nations 2017) 10; see also at 1: 'In 2015 alone, the United Nations verified 274 cases of children having been recruited by Islamic State in Iraq and the Levant (ISIL) in the Syrian Arab Republic. The United Nations verified the existence of centres in rural Aleppo, Dayr al-Zawr and rural Raqqah that provided military training to at least 124 boys between 10 and 15 years of age. Verification of the use of children as foreign fighters has increased significantly, with 18 cases involving children as young as 7 years of age. The use of children as child executioners was reported and appeared in video footage. In Iraq, in two incidents in June and September 2015, more than 1,000 children were reportedly abducted by ISIL from Mosul district. While the lack of access to areas in conflict undercuts the possibility to gather precise data, it is known that recruited children were used to act as spies and scouts, to transport military supplies and equipment, to conduct patrols, to man checkpoints, to videotape attacks for

Thus, extremism-related exploitation could be categorised as a sub-category of child criminal exploitation in light of this; it may be helpful, then, to view radicalisation as a matter of child welfare in this context.

The Home Office guidance explains that all children are vulnerable to this form of exploitation, and very young children – some as young as 12 years old – 'are being exploited or moved by gangs' for criminal purposes.[1126] Children who are particularly at risk are those who have some previous experience of abuse or neglect.[1127] This includes children who do not have a safe or stable home environment, those who are experiencing social isolation, those with economic vulnerabilities or who are experiencing homelessness, those with links to gangs, those with a physical or learning disability, those who have mental health problems or are experiencing substance misuse, those who are in care, and those who have been excluded from attending an educational institution.[1128] The Government explain that, when attempting to identify whether a child is at risk of criminal exploitation, there are warning signs to be aware of. These include: the child being missing from school; them inexplicably acquiring a mobile phone, owning multiple phones or excessively using their phone; the child inexplicably acquiring money or clothes; having relationships with controlling or older individuals; leaving their home or care without explanation; presenting with unexplained injuries or engaging in self-injury; there being parental concern for the child; the child has begun carrying weapons; there has been a significant decline in the child's school performance; the child has started to associate with gangs; and they are becoming isolated.[1129] Importantly, there is no mention of faith settings; however, this is unsurprising: the guidance does not establish a direct link between radicalisation, faith and child criminal exploitation.

In the context of terrorism, this form of exploitation can involve girls and boys. However, as we have seen, young girls are often drawn into supporting extremism through gender-based propaganda and sexual exploitation. The sexual exploitation of children involves a process commonly referred to as grooming, and the UK Government has recognised that the process of radicalisation follows a similar pattern: 'there was recognition that radicalisation follows a

propaganda purposes and to plant explosive devices, as well as to actively engage in attacks or combat situations'; see, for sources cited: Report of the Secretary-General on children and armed conflict in Iraq (S/2015/852); Report of the Secretary-General on children and armed conflict in the Philippines (S/2017/294); Report of the Secretary-General on children and armed conflict in Nigeria (S/2017/304).

[1126] Home Office, 'Criminal Exploitation of children and vulnerable adults: County Lines guidance' (2018).

[1127] Ibid.

[1128] Ibid.

[1129] Ibid.

similar kind of grooming process and that it may involve a vulnerable young person having their views and opinions influenced by other people, as well as being encouraged to undertake harmful actions'.[1130] Therefore, not only does the radicalisation process often involve grooming for sexual exploitation, it also follows a similar process of manipulation and coercion, specifically in the recruitment of children.

6.4.2 Child sexual exploitation

Of course, both the sexual grooming of children and the radicalising of individuals are based on statutory offences. As we have seen, the encouragement of terrorism – alongside the other 'glorifying' offences – is an offence under the Terrorism Act 2000. This offence, as we saw in Chapters Two and Three, deals with radicalisation implicitly. For the grooming of children, the 'arranging or facilitating commission of a child sex offence' is a criminal offence under section 14 of the Sexual Offences Act 2003.[1131] This offence only applies to children who are under the age of sixteen,[1132] although sexual violence towards individuals who are over the age of sixteen is also covered by the Act.[1133] In the UK, the legal age of consent is 16 years old. However, children above the age of 14 can be found to consent in 'fact',[1134] meaning that the circumstances may find that the child did, in fact, consent to the sexual activity. These incidences usually arise where the perpetrator is also a child around the same age. For children under the age of 13, however, there is special provision. This is because children under the age of 13 cannot consent to sexual activity neither in law nor fact.[1135]

[1130] Department for Education, 'Safeguarding and radicalisation' (2017) 15.

[1131] It is important to note that there are numerous offences dealing with the sexual abuse of children. However, for the purposes of grooming s. 14 is most commonly relied on: Sexual Offences Act 2003, s 14: '(1) A person commits an offence if – (a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world, and (b) doing it will involve the commission of an offence under any of sections 5 to 13. (2) A person does not commit an offence under this section if – (a) he arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another person to do, and (b) any offence within subsection (1)(b) would be an offence against a child for whose protection he acts. (3) For the purposes of subsection (2), a person acts for the protection of a child if he acts for the purpose of – (a) protecting the child from sexually transmitted infection, (b) protecting the physical safety of the child, (c) preventing the child from becoming pregnant, or (d) promoting the child's emotional well-being by the giving of advice, and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1)(b) or the child's participation in it. (4) A person guilty of an offence under this section is liable to the penalty to which the person would be liable on conviction of the offence within subsection (1)(b)'.

[1132] Under the Act, 'consent' refers to a person who 'agrees by choice, and has the freedom and capacity to make that choice' (s 74).

[1133] See, for example: Sexual Offences Act 2003, ss 1-4.

[1134] See: Department for Education, 'Child sexual exploitation: Definition and a guide for practitioners, local leaders and decision makers working to protect children from child sexual exploitation' (2017); HM Government, 'Revised Prevent duty guidance: for England and Wales' (2021).

[1135] Sexual Offences Act 2003, ss 5-8.

We have already reviewed the Home Office issued guidance on the topic of child criminal exploitation; however, it is important to note that the Government has also issued separate and detailed guidance on both the topics of the sexual grooming, and as to assessing risk the of radicalisation, as we saw in Chapter Two. However, neither guidance make direct nor specific reference to each other. For example, the Department for Education guidance explains that child sexual exploitation can be linked to other types of crime, but makes no explicit reference to extremism, terrorism and radicalisation.[1136] This is interesting because, as we have seen, children are very commonly subjected to sexual violence and exploitation alongside being radicalised.

The Prevent Duty Guidance does not acknowledge how sexual violence and exploitation plays a significant role in the radicalisation of young girls, either. However, the list of factors proposed by the Government relating to factors that may make a child more vulnerable to radicalisation and to child sexual exploitation are very similar. For example, children who are more likely to be sexually exploited usually have a previous experience of neglect, physical and/or sexual abuse; they have an unsafe home environment; they have recently experienced loss; are socially isolated or are experiencing social difficulties; have an 'economic vulnerability'; are experiencing homelessness; have a physical or learning disability; or are in care.[1137] These factors sit alongside other factors which are more specifically related to sexual violence and exploitation, such as the child not having a 'safe environment to explore sexually', and their personal 'sexual identity'.[1138] The Home Office state, explicitly, that 'child sexual exploitation can also occur without any of these vulnerabilities being present', however.[1139]

There is far more focus on the perpetrator in the guidance on sexual exploitation, including a section describing how children are sexual exploited. For instance, there are various examples provided as to how an adult may force or coerce a child into being sexual exploited.[1140] As

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[1136] Department for Education, 'Child sexual exploitation: Definition and a guide for practitioners, local leaders and decision makers working to protect children from child sexual exploitation' (2017) 8: The list instead states that it may be linked to 'Child trafficking; Domestic abuse; Sexual violence in intimate relationships; Grooming (including online grooming); Abusive images of children and their distribution; Drugs-related offences; Gang-related activity; Immigration-related offences; and Domestic servitude'.
[1137] Ibid.
[1138] Ibid.
[1139] Ibid.
[1140] Ibid, 9-10: The examples given are: 'A 44 year old female posing as a 17 year old female online and persuading a 12 year old male to send her a sexual image, and then threatening to tell his parents if he doesn't continue to send more explicit images; A 14 year old male giving a 17 year old male oral sex because the older male has threatened to tell his parents he is gay if he refuses; A 14 year old female having sex with a 16 year old gang member and his two friends in return for the protection of the gang; A 13 year old female offering and

opposed to child sexual abuse, child sexual exploitation often involves – like child criminal exploitation – a form of 'exchange' between victim and perpetrator: 'one of the key factors found in most cases of child sexual exploitation is the presence of some form of exchange (sexual activity in return for something); for the victim and/or perpetrator or facilitator'.[1141] Like child criminal exploitation, the victim will be offered or given something they want or need – whether tangible or intangible – and this creates an unequal power dynamic. The difference, then, between child sexual exploitation and child sexual abuse is that for child sexual abuse there is not normally any gain for the perpetrator outside sexual gratification.[1142]

Outside of this, the process of grooming children for sexual exploitation is incredibly similar to the process of grooming children for terrorism. The 'push' and 'pull' factors are similar. Grooming is based on the perpetrator attempting to control the child by specifically targeting and gaining access to them, developing a relationship of trust with then, and seeking to desensitise them to sexual content and, eventually, touch. For radicalisation, the child will be sought out and targeted, a relationship of trust will be established, and the child will be desensitised to terrorist content and extremism-based violence. When sexual grooming is taking place, the child will become secretive, withdrawn and isolated; for extremist grooming, the child will do the same. As Dryden argues, 'the quest of a potential victim to fulfil unmet basic human needs does not discriminate between exploitation typology, whether sexual, gang related or extremism of Islam or right-wing derivations'.[1143] In both cases, the perpetrator identifies what the child is lacking and offers it to them: 'those grounds alone are likely to prove sufficiently [enticing]'.[1144]

In a broad sense, therefore, the radicalisation process may be viewed as a form of grooming. However, as we have seen, religious radicalisation is not often understood in this way. In fact, there is great resistance to view it in this way. Instead, it is considered a personal pilgrimage taken by the individual – whether child or adult – towards the end goal of

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giving an adult male taxi driver sexual intercourse in return for a taxi fare home; A 21 year old male persuading his 17 year old 'girlfriend' to have sex with his friends to pay off a drug debt; A mother letting other adults abuse her 8 year old child in return for money; A group of men bringing two 17 year old females to a hotel in another town and charging others to have sex with them; and Three 15 year old females being taken to a house party and given 'free' alcohol and drugs, then made to have sex with six adult males to pay for this'.

[1141] Ibid, 6.

[1142] Ibid: 'If sexual gratification, or exercise of power and control, is the only gain for the perpetrator (and there is no gain for the child/young person) this would not normally constitute child sexual exploitation, but should be responded to as a different form of child sexual abuse'.

[1143] M Dryden, 'Radicalisation: The Last Taboo in Safeguarding and Child Protection? Assessing Practitioner Preparedness in Preventing Radicalisation in Looked-After Children' (2017) 13 *Journal for Deradicalisation*, 101-136, 122.

[1144] Ibid.

committing an act of terrorism. Alternatively, when depicting the process of sexual grooming – for both sexual exploitation and sexual abuse – the law and guidance take a far more grave approach, focussing on the victim and their suffering, and explaining what the perpetrator may do to lure them in. The 'victim' of radicalisation is not referred to as such, and there is rarely any detailed discussion of the role of the radicaliser, as we saw in Chapter Four. In some ways, the victim of radicalisation is depicted, instead, as a potential or future terrorist.

However, the premise that victims of child sexual abuse and exploitation are viewed by the law and by practitioners solely as victims is not reflected in practice. The Independent Inquiry into Child Sexual Abuse (IICSA) found that many children were blamed for their sexual abuse. The practice of blaming victims for the sexual violence they have been subjected to is commonly referred to as 'victim-blaming' and is based on archaic rape myths – perceptions that the child 'should have known better', that they consented, or that they encouraged the perpetrator in some way, for example by being 'promiscuous'.[1145] In the context of religion, some children – particularly girls – are openly blamed for their abuse based on religious values. The IICSA inquiry also commented on this:

> 'Within some religious organisations and settings, victims are blamed for their abuse. This is particularly the case if they are women: community values may suggest that abuse must have taken place because of their own behaviour, attitudes or approaches'.[1146]

The inquiry found that, in religious settings, some victims were discouraged from reporting their abuse: 'When she disclosed her abuse to an imam, he discouraged her from reporting the abuse because of the dishonour and shame this would cause to her and to the community'.[1147] Within and outside faith communities, the inquiry found that the victim-blaming of children is common where the child is in their mid-teens and are dating a much older perpetrator.[1148]

[1145] Independent Inquiry Child Sexual Abuse, 'Part C: Barriers to reporting child sexual abuse in religious organisations: C.2: Victim-blaming, shame and honour'. Available online at: <https://www.iicsa.org.uk/reports-recommendations/publications/investigation/cp-religious-organisations-settings/part-c-barriers-reporting-child-sexual-abuse-religious-organisations/c2-victim-blaming-shame-and-honour.html> Last accessed: 21 May 2023.
[1146] Ibid.
[1147] Ibid: 'R-A4 also said that she was abused at a madrasah that was set up as a 'house mosque'. When she reported her abuse, she suffered harassment from others within her local community. She was called a "*dirty tart*" and a "*slag*".'.
[1148] Independent Inquiry Child Sexual Abuse, 'Part E: Recognising the child as the victim: E3: Blaming child victims' Available online at: <https://www.iicsa.org.uk/reports-recommendations/publications/investigation/cs-organised-networks/part-e-recognising-child-victim/e3-blaming-child-victims.html> Last accessed: 23 April 2023 [20.2]: 'There was an example of an inappropriate use of the word 'boyfriend' with reference to adult perpetrator'; see also, at [20.3]: 'In Warwickshire, a number of comments about a child being "*promiscuous*" were recorded during Operation Jive'.

This is similar to the facts of the recent Begum case;[1149] although Begum is now an adult, when she first left the UK to travel to Syria, she was married to a man who was described by the court as being somewhere between the ages of 20 and 25 when she was only 15-years old.[1150] This case demonstrates two things. First, the case of *Begum* demonstrates perfectly the interaction between child sexual exploitation and radicalisation in practice. However, the element of child sexual exploitation was a minor concern in this case; although it was acknowledged that Begum was trafficked out of the UK when she was 15 – for both radicalisation and sexual purposes – the court explained that as an adult, she now has full capacity, and is considered a national security threat. Second, the case illustrates how safeguarding and counter-terrorism are entirely separate. The Prevent programme was engaged for Begum – before she left the UK – and she was not considered a flight risk or at risk of radicalisation by the police. If this were a case concerning child sexual exploitation solely, the state would have failed Begum; she was trafficked out of the UK and subjected to sexual violence. However, because the case involves terrorism, and terrorism is not a safeguarding concern, Begum no longer carries British citizenship. The radicalised victim, therefore, regardless of whatever degree of harm they have been subjected to, takes on two identities. The first identity – and the one which carries the most weight, the case illustrates – is that of a potential terrorist; someone who may or may not pose a national security threat. Second, and least important, it seems, the radicalised child is a victim; someone who has been targeted, groomed and trafficked. Children who are religiously radicalised, then, are at least in part blamed for it. Although these children are coerced and manipulated on the basis of their faith to join extremist groups and organisations, they are considered to have at least some criminal responsibility unless they have been forcibly abducted.

6.4.3 Comparing radicalisation and child sexual grooming processes

Looking solely at what is written in statute and in guidance, it is difficult to see how the Prevent Duty interacts with safeguarding and child welfare at all. For the Channel Duty, however, it is more clear cut. As explained, the Prevent Duty – at its core – places a responsibility on specified authorities to protect the public from potential terrorist attacks. This is done through interrupting offenders before they are able to commit an act of terrorism. These offenders are usually charged with preparatory or 'glorifying' offences. In the case of

[1149] *Begum v The Secretary of State for the Home Department* [2021] UKSC 7.
[1150] *Begum v SSHD* [2020] EWCA Civ 918 [13]: 'It notes that she said that following her arrival in Raqqah she applied to marry an English-speaking fighter between 20 and 25 years old and shortly after married Yago Riedijk, a Dutch national'; see also: D Sandford, A Durbin, 'Shamima Begum trafficked by IS to Syria for sexual exploitation, tribunal hears' *BBC News* 21 November 2022.

children, however, the law is far more complicated. As we have seen, the courts treat children who have been exposed to terrorism and extremism at the hands of parents and guardians as victims who require protection and even wardship, in most cases. Children who act of their own accord, so to speak – that is, children who have been radicalised by someone outside the family home and who are supported in travelling to contact zones by that person or group – are not treated as victims.

Since its creation, there has been strong implications that the Government does not intend for the Prevent Duty to be treated as a safeguarding responsibility. This has never explicitly been communicated by the Government, although the most recent independent review of the Prevent Duty has indicated a need to step further away from safeguarding. Despite this, it is undeniable that radicalisation has many things in common with other forms of exploitation. Radicalisation has both the exchange element and the control element of child criminal exploitation. It also has the traumatic element of faith-based abuse, as we saw in Chapter Five. This final sub-section will further compare how the Government advises authorities to assess vulnerability to child sexual exploitation and to radicalisation. In Chapter Four, we looked at the tools used to measure the risk of radicalisation in children and adults. The tools are used primarily by the Channel panels, who use the Vulnerability Assessment Framework when presented with an individual at risk. There is no separate framework for children and for adults; instead, the framework is designed for all individuals of all ages who are considered at risk, or 'vulnerable' to, radicalisation.

The UK Government has not published any guidance that specifically deals with radicalisation in children. This is an oversight – it is evident from this chapter and the previous chapters that radicalisation presents differently in children, and that children are far more susceptible to it due to their age. That said, the dimensions of the Vulnerability Assessment Framework have already been explored in Chapter Four. Here, the framework will be compared with the Welsh Government's Safeguarding Children from Child Sexual Exploitation guidance. This will not only provide a comparison of how the different risk assessments operate – exploring the similarlities and differences between them – but will also provide insight as to the interaction between how radicalisation and broader child welfare issues interact.

As we have seen, the Channel Duty comprises of an *element* of safeguarding, but is categorised by the Government as neither a safeguarding nor child protection duty. The

reason for this is that there is 'no fixed profile of a terrorist'.[1151] However, as we have seen throughout this chapter, Government guidance also explicitly states that there is no fixed profile of an abused or exploited child, either. It is important to reiterate that Channel panels only deal with terrorism vulnerabilities – when an individual is deemed a terrorist *risk* (that is, that the individual may go on to actually commit a terrorist offence), they are considered beyond Channel support. These individuals will be referred on and managed by the police, instead.[1152] Ultimately, the Vulnerability Assessment Framework is used to determine whether the individual is a terrorism risk, has a terrorism vulnerability – and is therefore in need of Channel support – or has neither and is therefore signposted elsewhere. If the individual is identified as having a terrorism vulnerability, the Vulnerability Assessment Framework is also used to determine *how* radicalised an individual is.

As stated in Chapter Four, the three dimensions of the Vulnerability Assessment Framework are 'engagement' (referring to how engaged the individual is with a group, cause or ideology), 'intent' (referring to their intent to cause harm), and 'capability' (referring to whether the individual is indeed capable of causing harm to others). Each of these dimensions were described and examined in Chapter Four; in this sub-section, they will be revisited and directly compared to the Welsh Government's Safeguarding Children From Child Sexual Exploitation Guidance.[1153] The Welsh Government published the 2021 guidance with an aim to supplement practitioner understandings of assessing risk to sexual exploitation in Wales.[1154] It is immediately evident that there is significant variation in how this risk is assessed in comparison to how risk of radicalisation is assessed.

[1151] HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020) 6.
[1152] Ibid, [11]: 'Channel forms a key part of Prevent. The process adopts a multi-agency approach to identify and provide support to individuals who are at risk of being drawn into terrorism. There is no fixed profile of a terrorist, so there is no defined threshold to determine whether an individual is at risk of being drawn into terrorism. However, signs that extremist views are being adopted can be used to assess whether the offer of early support should be made. Unlike mainstream safeguarding for adults and children, there is no threshold to make a Prevent referral for an individual to access assessment and specialist support. There may be cases that require a safeguarding response in conjunction with Prevent'.
[1152] Ibid, [12]: 'The process for undertaking assessments of risk and vulnerability informs this determination and is kept under review. Should there be an escalation of risk, the police may remove a case from Channel if appropriate'.
[1153] For full guidance, see: Welsh Government 'Social Services and Well-being (Wales) Act 2014: Working Together to Safeguard People, Volume 7 – Safeguarding Children from Child Sexual Exploitation' (2021).
[1154] Welsh Government 'Social Services and Well-being (Wales) Act 2014: Working Together to Safeguard People, Volume 7 – Safeguarding Children from Child Sexual Exploitation' (2021) 2-3: The guidance is issued under s. 28 of the Children Act 2004 and s 139 of the Social Services and Well-being (Wales) Act 2014. It is directed at 'local authorities; the chief officer of police for a police area, any part of which falls within a Safeguarding Board area; Local Health Boards; NHS Trusts; the Secretary of State to the extent that the Secretary of State is discharging functions under sections 2 and 3 of the Offender Management Act 2007 in

First, the child sexual exploitation guidance provides no list of factors that may indicate a child is at heightened risk of being sexually exploited, whereas the radicalisation assessment framework is designed based on this principle. The Welsh Government explains, in its guidance, that there is 'no single victim profile, no single perpetrator factor and no single pattern of abuse' when it comes to sexual abuse and exploitation.[1155] The sexual exploitation guidance does note that it is recognised that some children who have suffered 'adverse childhood experiences' may be particularly vulnerable to sexual exploitation, but that this is non-conclusive: 'children who have not had adverse childhood experiences can also be sexually exploited'.[1156] When referring to adverse childhood experiences, the Welsh Government explain that this means children who have experienced verbal, mental, sexual or physical abuse; have been raised in a home where domestic violence, substance misuse or parental separation has occurred.

These adverse childhood experiences are not mentioned in the Vulnerability Assessment Framework. Instead, the framework focuses on the actions of the individual that may indicate *engagement* with terrorism rather than susceptibility or vulnerability to terrorism – for example, a desire for 'excitement or adventure' and a need to 'dominate and control others'.[1157] The only mention of adverse childhood experiences in terrorism prevention guidance across England and Wales is as part of the Department for Education's guidance on understanding radicalisation within the context of education.[1158] Despite the lack of acknowledgement of adverse childhood experiences as a factor that may make a child more susceptible to radicalisation, the tone of the Vulnerability Assessment Framework is undeniably similar; there is no one profile of a terrorist – or a radicalised individual – 'it should not be assumed that the characteristics set out below necessarily indicate that a person is either committed to terrorism or may become a terrorist'.[1159] Therefore, although it may appear that radicalisation and child sexual exploitation are understood similarly in guidance – it is identified that neither has a single profile nor cause – and the language used to describe both is inherently different. Outside the education-specific guidance on radicalisation, the

relation to Wales; any provider of probation services that is required by arrangements under section 3(2) of the Offender Management Act 2007 to act as a Safeguarding Board partner in relation to a Safeguarding Board area'.

[1155] Ibid, 12.

[1156] Ibid.

[1157] HM Government, 'Channel: Vulnerability assessment framework' (2012) 2.

[1158] Department for Education, 'Guidance: Understanding and identifying radicalisation risk in your education setting' (2022).

[1159] HM Government, 'Channel: Vulnerability assessment framework' (2012) 2.

framework to assess risk focuses far more heavily on the actions of the child to indicate they are a potential terrorist instead of the actions that may indicate they are being subjected to terrorism-related harm. This is a vulnerability assessment framework that does not assess vulnerability; instead, the framework assesses *engagement* and should be recognised as such.

Second, and leading on from this, it appears that the purpose of each document is inherently different: radicalisation is not viewed as a matter of safeguarding across England and Wales in the same way that child sexual exploitation is. The Welsh sexual exploitation guidance seeks to protect children; the radicalisation assessment framework seeks to intervene in criminal activity. Although the purpose of the Prevent Duty, and subsequent Channel Duty, is to identify and deal with those vulnerable to radicalisation, there is insufficient early intervention assessment available. The Vulnerability Assessment Framework operates to identify those who are already engaged in terrorism, not those who are at risk of becoming engaged with terrorism. There is no Government-issued guidance that deals with vulnerability to radicalisation outside the education sector. As we have seen, the Prevent Duty Guidance does not achieve this, either, and is concerned primarily with guiding specified authorities in the correct way to discharge their duty. Instead, specified authorities are referred to safeguarding guidance despite the Government explicitly stating that the Prevent Duty is not to be understood as safeguarding.

Third, there is a significant difference between how the sexual exploitation guidance and the radicalisation assessment framework deal with harm. The Welsh guidance refers to the perpetrator and their intention to cause harm to the victim. The radicalisation assessment framework makes no reference to the perpetrator, in this case, the radicaliser. The radicalisation journey is presented – and measured – in a way that implies the victim is acting of their own free will in all cases; children and adults are measured by the same guidance. Ultimately, the law does not present radicalised children as victims of abuse nor exploitation in the way it does other forms of harm such as child sexual exploitation. Until child victims of radicalisation are presented in this way, radicalisation cannot be treated as a safeguarding issue. The law and guidance, at present, does not fully protect children from the risk of radicalisation. Instead, it presents them as perpetrators with full autonomy. In this way, it may be useful to view radicalisation as a matter of child welfare.

6.5 Conclusion

This chapter has concluded the discussion for the second part of the main research question underpinning this research study: **what are the implications of highlighting the religious**

dimension of the Prevent Duty for faith communities? This second part of the question has been addressed throughout Chapters Four to Six, and the arguments made will be outlined here.

Chapter Four addressed the question of: **how is the Prevent Duty of importance to faith communities?** The chapter argued that although the faith sector is not listed as a specified authority, the Prevent Duty remains important for faith communities. The chapter suggested that the Government's definition of 'Islamist terrorism', proposed in guidance designed to support the discharge of the statutory Prevent Duty, is too narrow, and fails to sufficiently capture what it means to be a religious radical. The chapter also argued that this definition, along with the Government's depiction of the radicalisation process itself, fails to distinguish between mainstream and extreme Islam. This, the chapter suggested, has serious implications for faith communities. For example, the chapter suggested that the Government's current definition of Islamist terrorism actively contributes to the negative stereotyping of Islam, and the stigmatisation of mainstream Muslims. This, the thesis suggested, underscores the ways in which the Prevent Duty is important for faith communities across England and Wales.

Chapter Five looked at: **how is the Prevent Duty of importance to faith communities?** Building on the work of Chapter Four, Chapter Five argued that if not through the Prevent Duty, faith communities must be supported through alternative means to challenge radicalisation in their settings. The chapter suggested that because faith settings are not listed as specified authorities but have been referred to by the Government as 'ungoverned spaces' in the context of religious radicalisation and the Prevent Duty, they remain largely unsupported in tackling terrorism. Due to this, the chapter argued that it is important for faith communities to be supported through means outside the scope of the Prevent Duty. The chapter offered an alternative approach by suggesting that radicalisation may be framed as a form of faith-based or spiritual abuse in the context of the forced religious conversion of children.

Finally, Chapter Six addressed the research question, as outlined above: **is it useful to reframe religious radicalisation as a matter of child welfare?** The chapter argued that children should be protected against being radicalised as a matter of child welfare, particularly in the context of faith, and distinct from the Prevent Duty. The chapter suggested that the rights of children in England and Wales are viewed differently in the context of safeguarding and in the context of radicalisation: the Prevent Duty is not a safeguarding

measure, the chapter found. In light of this, the chapter highlighted the importance of viewing radicalisation as a form of child exploitation and abuse by shedding light on the traumatic effects that radicalisation can have on children, and comparing radicalisation with other forms of abuse and exploitation. The chapter suggested that protecting children from the harms of radicalisation is a separate issue to that tackled by the Prevent Duty, which is involved solely with counter-terrorism. Due to this, the chapter suggested that it may be useful to view radicalisation as a matter of child welfare.

Chapter Seven:
Conclusions: A Critical Legal Study of the Prevent Duty: The Religious Dimension

7.1 Introduction

This thesis has provided a critical, legal study of the statutory Prevent Duty by addressing its religious dimension, underpinned by the research question: **what is the effect of highlighting the religious dimension of the Prevent Duty upon Law and Religion as a field and the faith community?** This thesis has provided the first in-depth study of this topic as to the effect that the Prevent Duty has on Law and Religion as a field, and on faith communities more widely. Previously, a detailed discussion of the religious dimension of the Prevent Duty and its impact on these areas has been largely sidelined. Throughout the thesis, the main research question has been addressed in two parts: the first part of this thesis (Chapters One to Three) has addressed: 'why is the study of the religious dimension of the Prevent Duty – in the context of religious radicalisation – necessary to the study of Law and Religion?'; the second part of this thesis (Chapters Four to Six) has looked at: 'what are the implications of highlighting the religious dimension of the Prevent Duty for faith communities?'. This final chapter will summarise the findings of this thesis in relation to both of these research questions, outline and reflect on the arguments made, and discuss the potential contributions this work may make to future work.

7.2 Research Question One: Why is the study of the religious dimension of the Prevent Duty – in the context of religious radicalisation – necessary to the study of Law and Religion?

As stated, the first part of the main research question underpinning this thesis has been addressed throughout Chapters One to Three. In addressing this research question, the thesis emphasised the importance of highlighting the religious dimension of the Prevent Duty for the field of Law and Religion through three sub-research questions, the findings of which will be outlined below.

7.2.1 How is the Prevent Duty relevant to the field of Law and Religion?

Chapter One has argued that the field of Law and Religion should give greater focus to the study of terrorism.[1160] The chapter found that the field of Law and Religion routinely omits the study of terrorism and the statutory Prevent Duty in the context of the main areas of study addressed by the field. For example, there is no detailed discussion of terrorism in the context

[1160] Section 1.2 of Chapter One.

of the historical development of the interaction between law and religion in the United Kingdom,[1161] of the interaction between religion and the civil law,[1162] and as to how the criminal law treats religion.[1163] For instance, the chapter found that Doe and Sandberg do not deal with terrorism as part of the interaction between law and religion in the United Kingdom nor across wider Europe.[1164] In many international texts on law and religion, the chapter found that terrorism is not mentioned.[1165]

The chapter addressed the research question underpinning it by highlighting that although there are some exceptions to this rule –[1166] for example, terrorism has been commented on to some extent in the context of certain civil law matters, such as family law and education –[1167] the literature largely omits discussions of terrorism in the context of law and religion. For example, historical accounts of the interaction between law and religion rarely mention terrorism despite,[1168] as the chapter highlights, the influence of religious radicalism on the rise of modern-day terrorism throughout the periods which are touched upon.[1169] As for the civil law, the chapter found that the Prevent Duty is sometimes commented on in the context of education, but that the significance of its role in this context has been largely dismissed.

[1161] Section 1.2.1 of Chapter One.
[1162] Section 1.2.2 of Chapter One.
[1163] Section 1.2.3 of Chapter One. In the context of the religious offences, this was discussed fully in Chapter Three; see section 7.2.3 of Chapter Seven for findings.
[1164] M Hill, R Sandberg, N Doe, C Grout *Religion and Law in the United Kingdom: Great Britain* (2nd edn Wolters Kluwer 2021); R Sandberg (eds), *Leading Works in Law and Religion* (Routledge 2019); N Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford University Press 2011); R Sandberg *Law and Religion* (Cambridge University Press 2011). It is recognised that a future project which looks at the religious dimension of terrorism prevention from a comparative European, or even international, perspective would be certainly valuable. However, this was outside the scope of this thesis.
[1165] F S Ravitch, *Advanced Introduction to Law and Religion* (Edward Elgar Publishing Ltd 2023); J S Nielsen, S Ferrari, M Foblets, A Nalborczyk, M Rohe and P Shah (eds) *Annotated Legal Documents on Islam in Europe* (various dates).
[1166] For example, Edge, Hall and Oliva recognise the Prevent Duty and the religious dimension of terrorism in their work, as do Nash and Jivraj. See: P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002); J Oliva, H Hall, *Religion, Law and the Constitution. Balancing Beliefs in Britain* (Routledge 2018); P Nash, *British Islam and English Law: A Classical Pluralist Perspective* (Cambridge University Press 2022); S Jivraj, *The Religion of Law: Race, citizenship and children's belonging* (Palgrave 2013)
[1167] See, for example: S Jivraj, *The Religion of Law: Race, citizenship and children's belonging* (Palgrave 2013) and P Nash, *British Islam and English Law: A Classical Pluralist Perspective* (Cambridge University Press 2022) 189-190, as discussed in Chapter One.
[1168] J Oliva, H Hall, *Religion, Law and the Constitution. Balancing Beliefs in Britain* (Routledge 2018); R Sandberg, *Law and Religion* (Cambridge University Press 2011); J Rivers, *The Law of Organised Religions: Between Establishment and Secularism* (Oxford University Press 2010).
[1169] Section 1.2.1 of Chapter One. On reflection, it is suggested that the historical context of radicalism is an area of potential future research; a historical account of the religious dimension of radicalisation, as it applies to modern-day terrorism, from the perspective of the field of Law and Religion would provide for an insightful and important piece of work.

The chapter also found that terrorism is not viewed as an integral part of the discussion of religion and the criminal law,[1170] and this finding was developed in Chapter Three.

In establishing the extent to which terrorism is omitted from the study of Law and Religion, the chapter highlighted a potential limitation of the lens through which the scholarship studies the interaction between law and religion: detailed commentary on terrorism does not align with the Christian-centric lens through which the field views religion. The chapter suggested that recognising terrorism legislation (including the statutory Prevent Duty) which seeks to prohibit certain manifestations of religious belief is an important dimension of discussion for the field. This is because this premise challenges the existing approach of the literature which largely presents religion as a force for good, and focuses on the progressive trajectory towards toleration and religious freedom. It was argued, for this reason, that terrorism law should be treated by the field in greater detail than it is currently, as it applies to religion.

7.2.2 Is religion central to terrorism law?

Chapter Two has argued that religion is not only relevant to terrorism, but that it is central to it. However, the chapter highlighted that this religious dimension of the terrorism legislation has so far been largely overlooked by the field of Law and Religion. The chapter challenges this omission in the Law and Religion literature by arguing that, because religion is central to terrorism law, terrorism is central to discussions of the interaction between law and religion.

The chapter addressed the research question by building on and updating the work of Edge, who looked at the definition of 'terrorism' under the Terrorism Act 2000 in the context of how it would impact religious organisations.[1171] In developing this argument, the chapter identified that religion has become central to terrorism law following the 2000 Act: every subsequent piece of 'hard' and 'soft' law which deals with terrorism, the chapter found, relies on the 2000 Act definition which establishes that religion is central to terrorism.[1172] The chapter explored statutes which have not yet been addressed in detail by the field of Law and Religion as they apply to the interaction between religion and terrorism, and highlighted the extent to which religion is central to both the 'hard' law and the 'soft' law which deals with counter-terrorism in England and Wales.[1173] The chapter also established, based on

[1170] Section 1.2.3 of Chapter One.
[1171] P W Edge, *Legal Responses to Religious Difference* (Kluwer Law International 2002) 120-121; see also Terrorism Act 2000, s 1.
[1172] Section 2.2 of Chapter Two.
[1173] See sections 2.2 to 2.5 of Chapter Two; see also, for 'hard' law: the Terrorism Act 2000, the Terrorism Act 2006, the Terrorism Prevention and Investigation Measures Act 2011, the Counter-Terrorism and Security Act 2015. For 'soft' law, see: The CONTEST Strategy and the Prevent Strategy.

arguments proposed by my previously published work on the religious dimension of the Prevent Duty,[1174] that given the significance of religion to the Prevent Duty, the study of religiously motivated terrorism must be emphasised as an important component of discussion surrounding the interaction between law and religion.[1175]

Chapter Two highlighted that terrorism unquestionably sits within the view of the Law and Religion scholarship, as religion is central to it. Religiously motivated terrorism, then, represents a significant area that requires attention from the field. If the test for the field of Law and Religion in identifying relevant matters for the field to address is whether those matters mention – explicitly or implicitly – religion, terrorism sits firmly within this category.

7.2.3 Is terrorism omitted in Law and Religion discussions of the criminal law?

Chapter Three has argued that the significance and relevance of terrorism in discussions on religion and the criminal law, particularly in the context of the religious offences, have been overlooked within the field of Law and Religion. The chapter found that although the field has extensively discussed the religious offences in the context of the criminal law,[1176] this discussion largely omits the extent to which the offences overlap – and interact – with the terrorism offences and with the statutory Prevent Duty.[1177] Law and Religion scholars, therefore, are largely missing an important dimension of the interplay between the criminal law and religion.

This chapter addressed the research question by developing one of the conclusions drawn in Chapter One; that the field of Law and Religion omits the study of terrorism in the context of the criminal law. This chapter developed this work by exploring the extent to which this is true in the context of the religious offences. The chapter found that not only does the field of Law and Religion routinely omit terrorism in discussions of the criminal law in general, it does so in relation to the religious offences in particular, despite there being clear overlaps and interactions between the two.[1178] The chapter explored whether religiously motivated terrorism fits within the pre-existing framework of religious offences under UK law.

Blasphemy, the chapter found, has been explicitly and recently recognised as relevant to terrorism by the most recent independent review of the Prevent Duty.[1179] The chapter

[1174] R Riedel, 'Religion and Terrorism: The Prevent Duty' (2021) 23 *Ecclesiastical Law Journal* 3, 280-293.
[1175] Section 2.4.3 of Chapter Two.
[1176] Section 3.2 of Chapter Three.
[1177] Section 3.3 of Chapter Three.
[1178] Section 3.3 of Chapter Three.
[1179] W Shawcross CVO, 'Independent Review of Prevent' (2023).

suggested that this interpretation of blasphemy – as a justification for violence against mainstream British Muslims – not only highlights the Christian-centric focus of the Law and Religion literature to date, but also that future discussions involving blasphemy should incorporate discussions of terrorism as an important and timely dimension.[1180]

As for the offence of religious hatred, the thesis suggested the relevance of terrorism to this offence has also been a largely neglected – but necessary – part of the discussion.[1181] Building on the work of Edge,[1182] the chapter suggested that discussions from the field which look towards religious hate speech should involve discussions of statements which glorify terrorism.[1183] The chapter also develops on the work of Sandberg,[1184] suggesting that although the field acknowledges that the offence of religious hatred is rarely prosecuted based on its freedom of expression clause (which is almost always upheld), expressions which offer support for – or actively encourage – terrorism are almost always prosecuted.[1185] The chapter therefore suggested that the terrorism offences deal, at least implicitly, with religious hate speech which would otherwise be permitted through the freedom of expression clause of religious hatred law; the terrorism offences and the offence of religious hatred are therefore linked.[1186]

Chapter Two found that there is a clear interaction between the terrorist offences and the offences which deal with religious aggravation;[1187] some acts of religious aggravation will, indeed, amount to religiously motivated terrorism. The thesis argued that this interaction between the religious offences and terrorism also highlights one of the major problems with the centrality of religion to terrorism as established in Chapter Two: the offence is restricted to only deal with offences which are motivated by, *inter alia*, religious causes.[1188] Chapter Three, therefore, underscores the argument that although Law and Religion scholars have studied extensively the criminal law as it applies to religion, terrorism is an important – but so far omitted – part of this discussion.

[1180] Section 3.3.1 of Chapter Three.
[1181] Section 3.3.1 of Chapter Three.
[1182] P W Edge, 'Oppositional Religious Speech: Understanding Hate Preaching' (2018) 20 *Ecclesiastical Law Journal*, 278-289.
[1183] Section 3.3.1 of Chapter Three.
[1184] R Sandberg, Law and Religion (Cambridge University Press 2011).
[1185] Section 3.3.1 of Chapter Three.
[1186] Section 3.3.1 of Chapter Three.
[1187] Section 2.2.2 of Chapter Two; section 3.2.4 of Chapter Three.
[1188] Section 2.2.2 of Chapter Two.

7.3 Research Question Two: What are the implications of highlighting the religious dimension of the Prevent Duty for faith communities?

The second part of the main research question was addressed by Chapters Four to Six of this thesis which, again, were guided by individual research questions. Here, the implications of highlighting the religious dimension of the Prevent Duty for faith communities was explored.

7.3.1 How is the Prevent Duty of importance for faith communities?

Chapter Four has argued that, despite the faith sector not being listed as a specified authority, the Prevent Duty remains important to faith communities. In light of the centrality of religion to terrorism,[1189] the chapter suggested that although the UK Government has provided definitions and guidance relating to religiously motivated terrorism, these definitions are largely inadequate. It is this finding that underpinned the main argument of Chapter Four: that the Prevent Duty is of importance for faith communities.

The argument of this chapter was supported by findings that highlighted the limitations of government guidance on the subjects of Islamist terrorism and the religious radicalisation process itself. The chapter argued that, through these definitions, the Government has failed to sufficiently distinguish between extreme and mainstream expressions of religion. This lack of distinction, the chapter suggested, contributes to the stigmatisation of Islam in the UK. The chapter revealed that these government-issued definitions are inconsistent with the wider counter-terrorism literature. It is in these ways, the chapter argued, that the Prevent Duty is of importance to faith communities. In analysing the government assessment frameworks used to assess risk of radicalisation, the chapter found that the UK Government do not explicitly – and sufficiently – describe the stages of the radicalisation process, either.[1190] Applying the work of Edge and Sandberg – on the importance of definitions – to the context of counter-terrorism,[1191] the chapter demonstrated the importance of defining terms such as 'Islamist terrorism', arguing that by failing to adequately distinguish between mainstream and extreme Islam, the Government has failed to challenge the negative stereotyping of Muslims perpetrated by the Prevent Duty and by the centrality of religion to terrorism.[1192]

[1189] As established in Chapter Two.
[1190] The Vulnerability Assessment Framework and the ERG22+ as set out in section 4.2.2 of Chapter Four.
[1191] P W Edge, *Religion and Law: An Introduction* (Ashgate 2006); P W Edge, *Legal Responses to Religious Difference* (Kluwer Law 2002); R Sandberg, 'Clarifying the Definition of Religion Under English Law: The Need for a Universal Definition' (2018) 20 *Ecclesiastical Law Journal* 2, 132-157.
[1192] Section 4.3.2 of Chapter Four.

Through a detailed comparison with the literature,[1193] the chapter highlighted that the Government has underplayed the significance of the role of the radicaliser,[1194] specifically in faith contexts,[1195] and the role of violence in the radicalisation process.[1196] A review of the literature also indicated that scholars believe faith settings are an important part of the radicalisation process.[1197] This, the chapter argued, underscores the importance of the Prevent Duty to faith communities. Importantly, the chapter found that whilst specified authorities are instructed to look for signs of Islamist terrorism, Channel panels are provided with assessment frameworks which seek to deal with all forms of terrorism. This, the chapter suggested, highlights a clear inconsistency within the government guidance on the subject.

This chapter found that faith communities are largely unsupported by the UK Government, in light of the 'soft' law guidance which refers to faith settings and the wider literature which suggests that faith settings are an important part of the radicalisation process. The chapter suggested that because the faith sector is not listed as a specified authority under the statutory Prevent Duty, faith communities remain unsupported in challenging terrorism and combatting radicalisation within their institutions. The chapter established that faith communities have been both underappreciated and overlooked by the Government in relation to the Prevent Duty.

7.3.2 How can faith communities be supported?

Chapter Five has argued that, if not listed as specified authorities, faith communities must be supported to challenge radicalisation and terrorism through alternative means. The chapter highlighted the impact that radicalisation has had on faith communities; for example, in out-of-school settings. This, the chapter suggested, underscored the findings of Chapter Four: radicalisation is, indeed, of great concern for faith communities. Through an analysis of the prevent and safeguarding policies of various faith institutions and organisations,[1198] the chapter suggested that faith communities may be referred to as 'quasi-specified

[1193] Section 4.3 and 4.4 of Chapter Four. For example, looking at the work of: S Maher, S*alafi-Jihadism: The History of an Idea'* (Penguin Books 2017); B Prinsloo, 'The etymology of "Islamic extremism": A misunderstood term?' (2018) 4 *Cogent Social Sciences* 1, 1-8; M Wilkinson, *The Genealogy of Terror* (Routledge 2019); Q Wiktorowicz, *Radical Islam Rising: Muslim Extremism in the West* (Oxford: Rowman & Littleford 2005) and various other works.
[1194] Section 4.2.3 of Chapter Four.
[1195] Section 4.2.3 of Chapter Four.
[1196] Section 4.4.1 of Chapter Four.
[1197] Section 4.4.2 of Chapter Four.
[1198] Sections 5.2.3, 5.2.4 and 5.2.5 of Chapter Five.

authorities':[1199] some specified authorities have faith elements, such as chaplaincy services, which have not been provided with specific guidance as to the radicalisation process.

Building on and updating the work of Edge,[1200] who considered the impact of counter-terrorism legislation – before the statutory Prevent Duty – on sacred places, the chapter highlighted why the faith sector is not listed as a specified authority under the 2015 Act.[1201] The chapter suggested, for this reason, that faith communities may already be sufficiently equipped to deal with radicalisation in their institutions.[1202] However, the chapter found, through analysing the Prevent policies of various faith institutions and organisations, that they are not.[1203] Developing the work set out in Chapter Four, and in my previously published article,[1204] the chapter suggested that faith communities are not fully supported by the Government in challenging the radicalisation which takes place in faith settings.[1205]

To this end, the chapter suggested that radicalisation may be viewed through the lens of child welfare in faith contexts.[1206] This, the chapter argued, would enable faith communities to be better supported. Developing the work of Elzen, who looked at radicalisation as a form of conversion,[1207] the chapter placed radicalisation for the first time in the context of faith-based and spiritual abuse, suggesting that the forced conversion of children amounted to a form of spiritual abuse.[1208] To this end, the chapter suggested that, in the context of faith communities who are largely unsupported in challenging radicalisation, it may be more appropriate for the UK Government to frame radicalisation as a form of abuse. Therefore, the chapter has highlighted an important new lens through which to view radicalisation in the context of faith: as a matter of child abuse linked specifically to the manipulation of one's faith.

7.3.3 Is it useful to reframe religious radicalisation as a matter of child welfare?

Chapter Six argued that children should be protected against radicalisation as a matter of child welfare in the context of exploitation. Developing the findings of Chapter Five – that radicalisation can be viewed as a matter of child welfare and abuse – the chapter found that

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[1199] Section 5.3 of Chapter Five.
[1200] P W Edge, 'Hard Law and Soft Power: Counter-Terrorism, the Power of Sacred Places, and the Establishment of an Anglican Islam' (2010) 12 *Rutgers Journal of Law and Religion* 2, 359-381.
[1201] Section 5.2.1 of Chapter Five.
[1202] Section 5.2 of Chapter Five.
[1203] Section 5.2 of Chapter Five.
[1204] R Riedel, 'Religion and Terrorism: The Prevent Duty' (2021) 23 *Ecclesiastical Law Journal* 3, 280-293
[1205] Section 5.2.5 of Chapter Five.
[1206] Section 5.3 of Chapter Five.
[1207] J Elzen, 'Radicalisation: A Subtype of Religious Conversion?' (2018) 12 *Perspectives on Terrorism* 1, 69-80.
[1208] Section 5.3 of Chapter Five.

protecting children from the harms of radicalisation is a distinct issue not addressed by the Prevent Duty.[1209]

In drawing these conclusions, the chapter explored the rights of the child across England and Wales,[1210] particularly as to their welfare and to their religious rights.[1211] The chapter looked at family law cases where radicalisation was the primary concern, highlighting that in this context, children and adults are treated differently by the law.[1212] The chapter also found that many children's organisations and practitioners already view radicalisation as a matter of safeguarding without government direction on the subject.[1213] To this end, the chapter suggested that the Prevent Duty protects society, the public and – indirectly – vulnerable persons; viewing radicalisation as a matter of child welfare would shift the Prevent Duty into the realm of safeguarding, where the object of protection is the individual themselves, except where this abuse is also a crime. This, the chapter found, reinforces the relevance of the Prevent Duty to the criminal law.[1214]

The chapter also found that the government describes radicalisation as a form of abuse that children can be subjected to;[1215] however, developing this, the chapter suggested that radicalisation may be better described as a matter of child exploitation because, although the radicalisation and grooming processes are similar,[1216] there is almost always an element of exchange in the radicalisation process which best aligns it with child exploitation.[1217] However, the chapter suggested that, ultimately, the exposure to – and encouragement to engage with – extremism and terrorism is a form of extremism based abuse. The radicalisation process itself, the chapter suggested, amounts to a form of spiritual abuse and could be described as a form of child exploitation.

Importantly, this chapter demonstrated the extent to which radicalisation can be viewed as a matter of child welfare; exposing children to the harms of radicalisation can have traumatic effects. This chapter has therefore provided a detailed account of radicalisation through the lens of child welfare, and opened dimensions for discussion about the real impact that

[1209] Section 6.5 of Chapter Six.
[1210] Section 6.2 of Chapter Six.
[1211] Section 6.2.2 and 6.2.3 of Chapter Six.
[1212] Section 6.2.4 of Chapter Six.
[1213] Section 6.3.1 of Chapter Six.
[1214] Section 6.5 of Chapter Six.
[1215] Section 6.3.2 of Chapter Six.
[1216] Section 6.4.3 of Chapter Six.
[1217] Section 6.4 of Chapter Six.

radicalisation has outside its role in leading to acts of terror, as well as how faith communities may be supported in the future.

7.4 Contribution of work to future projects

This thesis has highlighted the numerous ways in which terrorism has been neglected by the field of Law and Religion, arguing that there are multiple facets to this. This section will explore a few of the ways in which this thesis may contribute to future projects. First, by suggesting work which may be addressed by scholars; second, by outlining how the work in this thesis may impact policy and practice.

7.4.1 Questions for the scholarly community

First, in terms of work which may be addressed in future academic research, this thesis has argued that Law and Religion, as a field, has so far been limited by the omission to study terrorism. However, it has been argued that more detailed study of the subject has the potential to provide new and important avenues for research. This future work would progress the field by not only challenging the 'Christian-centric' lens through which the field views religion but also the over-emphasis placed on the religious offences (see Chapter 1). Although terrorism has been commented upon by Law and Religion scholars to some extent – for example, in the context of the education law and Islam in Britain – this thesis has argued that the interaction between terrorism law and religion is far wider and has so far been underappreciated. Future work which addresses this omission is vital.

Another avenue of research which may stem from this thesis may involve investigating the extent to which religious terrorism is explored and dealt with by leading Criminal Law texts. This thesis has highlighted that terrorism is rarely dealt with in sufficient detail in the leading Criminal Law textbooks and is more often considered in the context of public law.[1218] This draws a parallel between how terrorism is treated by the key Law and Religion texts and how it is treated by the key Criminal Law texts – terrorism is often understudied and is considered, largely, a civil law matter. A comparison of this kind has the potential to expand on the findings of this thesis, developing the earlier chapters into an exploration of other legal subdisciplines where terrorism is also not given appropriate importance.

[1218] See, for example: D Ormerod, K Laird, Smith, Hogan, and Ormerod's Essential's of Criminal Law (4th edn, Oxford University Press 2021) 21 and 44; this is also how terrorism is treated in J Loveless, M Allen, C Derry, Complete Criminal Law: Text, Cases, and Materials (8th edn, Oxford University Press 2022).

Further, a full historical account which compares between modern day and historical religious terrorism and outlines how the law has been used both to penalise and protect religion and belief, would be a valuable use of the work in this thesis. For example, possible historical subjects may include the Reformation era or radicalism throughout the 17th century. This future study would provide a new lens through which to understand the religious motivation behind modern-day terrorism and explore lessons to be learned by gaining a historical perspective.

As for how the contributions made by this thesis may contribute to future projects, this thesis has provided an initial study of how terrorism law operates in England and Wales in the context of religion. However, the work in this thesis could contribute to future comparative studies into the securitisation of religion in across Europe and internationally, such as expanding existing work completed by the European Consortium for Church and State Research.[1219]

The first part of the thesis (chapters 1-3) could be developed into a critique of the Law and Religion scholarship itself, exploring other controversial areas of law that are not studied by the field in sufficient detail. Alternatively, and as stated above, the work may be used to develop a study which compares the work in this thesis with other legal disciplines which do not deal with terrorism in appropriate detail. The second part of the thesis (chapters 4-6) could be developed separately to create a wider research network which looks at viewing radicalisation as a safeguarding concern on an international scale.

7.4.2 Impact on practitioners

In relation to how this thesis may impact policy and practice, the work in this thesis has highlighted the impact that government definitions and guidance on religious radicalisation and Islamist terrorism has on practice: the definitions and guidance are insufficient to support both specified authorities and faith communities in their fight against religiously motivated terrorism. This thesis, therefore, has the potential to impact future policy decisions as it promotes a prioritisation of clear definitions and guidance in policy which balance the stigmatisation of Islam against the impact of scripture and religious belief systems on

[1219] N Doe, R Riedel 'Securitisation of Religious Freedom: Religion and the Limits of State Control in the United Kingdom' in *Securitisation of Religious Freedom: Religion and Limits of State Control* (Granada 2020) European Consortium for Church and State Research 421-435.

terrorism, making use of wider counter-terrorism literature and building on the work of, for example, Wilkinson.[1220]

The work also highlighted the role of faith settings and children in the radicalisation process, framing religious radicalisation as a harm that children may be subjected to due to its faith element. This may impact future policy decisions by reframing radicalisation, in the context of children and faith, as a safeguarding concern. This has the potential to separate the radicalisation of children from the radicalisation of adults in policy and guidance on the subject. Specifically, this work could benefit specified authorities and policy-makers involved with Prevent and safeguarding more widely.

The work may also be developed to protect vulnerable adults, such as those on the autism spectrum who become involved in terrorist activity. The impact that this could have on policy is substantial – at present, there only exists the statutory Prevent Duty and relevant guidance, which seeks to protect the public from terrorism; the work in this thesis has the potential to be used to create policy and guidance which seeks to protect children from radicalisation, framing them as victims.

7.5 Conclusion

This thesis is the first to focus in detail on terrorism in the context of both law, religion and faith communities. By emphasising the religious dimension of the Prevent Duty, this thesis has explored its impact on both Law and Religion as a field and the faith community.

The first part of this thesis has argued that although the field of Law and Religion has largely omitted the study of terrorism, religion remains central to terrorism. Specifically, the thesis suggested that terrorism should be a principal part of discussions about the interaction between religion and the criminal law by the field. Scholars in the field of Law and Religion already recognise the interplay between religion and the criminal law – primarily in the context of the religious offences – however, it is argued that a greater focus must be given to terrorism in this context. This is because religion is central to terrorism law and to the statutory Prevent Duty. This reveals new dimensions for the literature to explore, the extent of which have so far been largely unidentified.

[1220] M Wilkinson, The Genealogy of Terror (Routledge 2018).

The second part of this thesis has argued that although the faith sector is not listed as a specified authority under the Counter-Terrorism and Security Act 2015,[1221] the Prevent Duty – and counter-terrorism more generally – remains important for faith communities. This is because the UK Government does not sufficiently distinguish between mainstream and extreme Islam, and this, it has been argued, has contributed to the stigmatisation of Islam. Due to the importance of the Prevent Duty – in the context of religious radicalisation – for faith communities, it has been argued that they deserve support outside the confines of the list of specified authorities. For this reason, it has been argued that radicalisation has the potential to be viewed as a matter of child welfare in the context of abuse and exploitation.

This thesis has provided a comprehensive look at a previously understudied area of religion law: the relationship between law, religion and the Prevent Duty. For the field of Law and Religion, the thesis has highlighted a new dimension of the interaction between law and religion in the United Kingdom, while providing valuable insight as to the complexities of radicalisation outside its role as a cause for terrorism. For faith communities, the thesis has provided a detailed exploration of radicalisation, again looking beyond its role in the progression towards acts of terrorism, by placing it within the framework of child welfare. The work has highlighted the need for an approach to terrorism prevention which recognises the intersectionality of the welfare of children, the right to religious freedom and the need to confront the undisputed harm caused by terrorism.

[1221] Counter-Terrorism and Security Act 2015, Schedule 6 for full list of specified authorities. See also section 5.2.1 of Chapter Five which explains why the faith sector was not listed.

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