

PREVENTING EDUCATION?

HUMAN RIGHTS AND UK
COUNTER-TERRORISM
POLICY IN SCHOOLS

JULY 2016



'It appears that Prevent is having the opposite of its intended effect: by dividing, stigmatizing and alienating segments of the population, Prevent could end up promoting extremism, rather than countering it.'

UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association at the Conclusion of his Visit to the United Kingdom, 21 April 2016.



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EXECUTIVE SUMMARY

In recent years in the United Kingdom, the government's focus on so-called 'home grown' terrorism has seen it develop and deploy the Prevent strategy: a policy which seeks to pre-empt terrorist attacks by identifying those at risk of becoming terrorists. Recent legislation in the form of the Counter-Terrorism and Security Act 2015 now enlists public sector workers such as teachers to carry out the government's work, requiring teachers from the child care sector up to university level to identify apparent signs of student extremism, and to refer students to the government's deradicalization programme, known as Channel.

But the Prevent strategy is not fit for purpose, and its effect on education and students' human rights raises serious concerns. In this report, the most comprehensive analysis to date of the effect of the Prevent strategy on schools in the United Kingdom, Rights Watch (UK) sets out the key problems in the development of the strategy and its impact on students, especially children. The report finds that the Prevent strategy is leaving a generation of young Britons fearful of exercising their rights to freedom of expression and belief and risks being counter-productive by driving children to discuss issues related to terrorism, religion and identity outside the classroom and online where simplistic narratives are promoted and go unchallenged.

Brought into operation without adequate consideration of its impact on children's rights, the Prevent strategy and the statutory duty on schools is predicated on a series of flawed assumptions. The most concerning of these is that holding non-violent extremist views is a reliable precursor of future participation in terrorism (the discredited '*conveyor belt*' theory of radicalization). Even then, the supposed indicators of non-violent extremism (and, therefore, under the strategy, vulnerability to becoming a terrorist) are overly broad and ambiguous. By way of example, under the strategy, extremism is defined as opposing so-called '*British values*.'

In the classroom, teachers, with no background in counter-terrorism, are under a positive duty to identify students expressing so-called extremist views, with the adequacy of teachers' compliance in this regard contributing to their schools' Ofsted ratings. To equip them to carry out these duties, teachers, in most cases, receive no more than a few hours' training, delivered by way of a training video.

The effect of this flawed strategy, implemented by teachers concerned with compliance but inadequately equipped, is the systematic breach of children's human rights in the school setting. As detailed in this report, Prevent has led to violations of the right to education, the right to freedom of expression, the right to freedom of religion, the right to privacy, the right to freedom from discrimination, and the fundamental principle that actions taken in relation to children must treat the child's best interests as a primary consideration. From interviews with students, teachers, parents, and other professionals, this report sets out how the Prevent strategy is having a chilling effect on discussions of political and religious issues in the safe space of school, how children are under pressure to reveal personal beliefs or inform on classmates, and how Muslim children in particular feel that they are subject to additional scrutiny, especially if they deviate from the particular version of Islam that the government has deemed acceptable.

This report profiles the experience of a number of children and their families who have been affected by Prevent. It recounts how an 8 year-old child was referred for intrusive questioning (without his parents present) due to an apparent misidentification of an Arabic name on his T shirt. How a 4 year-old has been judged at risk of becoming a terrorist because a teacher thought his pronunciation of 'cucumber' sounded like 'cooker bomb.' How one child was questioned for borrowing a library book on terrorism, and others for using the word 'l'écoterrorisme' in a French lesson discussing radical environmental tactics, or for wearing a Palestinian scarf. Just as troubling, the clear inference from the evidence is that, despite the Prevent strategy's supposed goal of preventing extremism across the spectrum, it is Muslim children who are disproportionately affected. Children referred under the Prevent strategy also face the prospect of their referral following them in a permanent record. In one case documented in the report, a 17 year-old, referred under Prevent for expressing solidarity with Palestine, has been told that authorities have collected information on him without his consent, with the suggestion being that this information will be held by the authorities indefinitely. This raises serious privacy and data protection concerns, and the legal basis for this data collection and retention has never been made clear by the government.

This report also reveals that Parliament never properly considered how counter-terrorism objectives should be balanced with education and the human rights of children. When the statutory Prevent duty was introduced via the Counter Terrorism and Security Bill in 2015, there was no consideration of the potential differential impact on the rights of Muslim children and no acknowledgement that the strategy might violate children's human rights, particularly their rights to education, freedom of expression, freedom of religion, and privacy.

The report also reveals that a lack of clarity as to the meaning of schools' obligations, combined with schools' concern to be seen to be taking action, has clearly engendered a culture of over-referral and excessive scrutiny of children, particularly Muslim children.

The Prevent strategy as currently structured and implemented is untenable. The strategy in this country's schools needs to be abolished, and the government needs to reconsider how it approaches preventing terrorism. This is undoubtedly a complicated task and there are few easy solutions. But what is clear is that targeting Muslim children, making them feel that they are not welcome to discuss political or religious matters at school, and creating a dynamic in which Muslim youth come to be fearful of the educational setting and distrustful of their teachers and their classmates, is counter-productive, discriminatory, and a violation of the fundamental rights that are at the heart of the very civil society the government seeks to protect.

METHODOLOGY

This report focuses on the implementation of the Prevent strategy in schools in the United Kingdom and the degree to which the strategy and its implementation comply with human rights law, both domestic and international. In particular, it focuses on the effect of the Prevent strategy since the introduction of the statutory Prevent duty on schools from 1 July 2015.

The findings of this report are based on extensive desk research as well as interviews conducted by Rights Watch (UK). Rights Watch (UK) carried out 26 interviews with people across the United Kingdom including with parents and students, teachers and school governors, serving and retired members of the police, a Member of Parliament and local councillors, union representatives, representatives of education associations, journalists, academics and representatives of religious institutions.

All interviewees were informed of the purpose of the interview and how their information might be used. None received compensation or other financial incentives for their testimony. Due to interviewees' availability, a small number of interviews were conducted by telephone.

The report also draws on an in depth review of: relevant academic and other professional publications; government legislation, policy documents and relevant guidance; Parliamentary debates and legislative scrutiny; and domestic and international legal standards, case law and commentary.

Rights Watch (UK) would like to thank the individuals and organizations who agreed to meet with us and whose insights and experiences inform this report. All interviews were conducted with the individual's informed consent. In particular, Rights Watch (UK) wishes to thank the school-aged children and their families who shared their stories and trusted Rights Watch (UK) to raise their concerns. In the report, the real names of interviewees are used where informed consent was provided, otherwise names and other identifying information have been withheld for reasons of confidentiality.

ACKNOWLEDGEMENTS

Rights Watch (UK) has consulted widely in preparing this report with teachers, academics, students, and families. Rights Watch (UK) thanks them all for their assistance, candour, and thoughtful contributions. Rights Watch (UK) is also indebted to two organizations which have done much to publicize the effects of the Prevent strategy and Channel programme, and which have facilitated contact with affected individuals, namely: Prevent Watch¹ and MEND (Muslim Engagement and Development).² This report has been drafted by Adriana Edmeades, Senior Human Rights Officer, with input from Victoria Vasey, former Senior Human Rights Officer and Vittorio Infante, Consultant, and supervised by Yasmine Ahmed, Director.

1. www.preventwatch.org
2. www.mend.org.uk

INTRODUCTION

1. This report considers the human rights compliance of the government's Prevent strategy as it relates to schools in the United Kingdom. The report considers, by reference to a range of case studies (both previously reported and newly collated), the implementation of Prevent in UK schools, analysing the degree to which the Prevent strategy, both in its development and in its operation today, complies with human rights law, both domestic and international. The report is the first substantial research project to consider the lawfulness of this key plank of UK counter-terrorism strategy since the introduction of the statutory Prevent duty on schools on 1 July 2015, and it brings to light a series of case studies never reported before.
2. Rights Watch (UK) ('RW(UK)') is a non-government organization which works to promote, protect, and monitor human rights, especially in the context of the UK's engagement in conflict and counter-terrorism measures. RW(UK) is concerned to ensure that the decisions taken in purported pursuit of national security always conform with the requirements of international and domestic law: requirements which have too frequently been breached in the past. In line with RW(UK)'s mission, and in contrast to previous assessments of the policy rationale for the Prevent strategy, this report is concerned with how the development and implementation of Prevent fits with the government's legal obligations, voluntarily entered into at the international level, and explicitly enacted by Parliament.
3. This report comprises five sections: the first introduces the Prevent strategy, noting some of the structural problems inherent in its design; the second section sets out the relevant human rights framework binding upon the government as a matter of domestic and international law; the third section considers the flawed Parliamentary process by which the Prevent strategy has been introduced and the human rights implications of that flawed process; the fourth section sets out, by reference to a range of case studies of the operation of Prevent in UK schools, a picture of the interferences with human rights which the strategy entails and the adequacy of such purported justifications as have been offered for those interferences; and the fifth and final section sets out RW(UK)'s conclusions and recommendations.

I. THE PREVENT STRATEGY

The Strategy Architecture

4. Prevent is a government policy with the stated aim '*to stop people becoming terrorists or supporting terrorism*'.³ It is one of the four pillars of the UK government's post-9/11 counter-terrorism strategy CONTEST,⁴ the others being 'Pursue' (stopping terrorist attacks), 'Protect' (strengthening protection against terrorist attacks), and 'Prepare' (mitigating the impact of any successful attack).
5. The current version of the Prevent strategy has three stated objectives:
 - 5.1. To '*respond to the ideological challenge of terrorism and the threat we face from those who promote it*;
 - 5.2. To '*prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support*;' and
 - 5.3. To '*work with sectors and institutions where there are risks of radicalisation which we need to address*'.⁵
6. Under the Prevent strategy, delivery of the first and third of these objectives is co-ordinated by government agencies, led by the Office of Security and Counter-terrorism ('OSCT') within the Home Office. The OSCT's work in this field involves local authority outreach and communication with communities, policing, and work overseas.⁶ But delivery of the second objective relies on a far wider pool of people, namely those listed as '*specified public authorities*' under the Counter-Terrorism and Security Act 2015 ('the 2015 Act'),⁷ including those in the health sector, prisons and, since the second half of 2015, all educational institutions in England, Wales and Scotland.⁸
7. By 1 July 2015, all schools and registered childcare providers in England, Wales, and Scotland⁹ (including registered child minders)¹⁰ were subject to a duty, under section 26 of the 2015 Act, to the effect that, in the exercise of their functions, they must '*have due regard to the need to prevent people from being drawn into terrorism*'.¹¹ The duty was extended to apply to higher and further educational institutions on 18 September 2015. Educational institutions must also have regard to the relevant statutory guidance approved under the 2015 Act:¹² separate sets having been issued in respect of schools and childcare providers in England and Wales, equivalent providers in Scotland, further education institutions in England and Wales, further education institutions in Scotland, higher education institutions in England and Wales, and higher education institutions in Scotland.¹³

3. HM Government, Prevent Strategy (Cm 8092, June 2011) ('Prevent Strategy'), [3.8].

4. Current version: HM Government, CONTEST: The United Kingdom's Strategy for Countering Terrorism (Cm 8123, July 2011).

5. Prevent Strategy, [3.21].

6. Prevent Strategy, [3.44].

7. Counter-Terrorism and Security Act 2015, Schedule 6.

8. Part 1 of Schedule 6 sets out the specified public authorities to which the duty applies in England and Wales; Part 2 of Schedule 6 deals with Scotland.

9. The duty came into force with respect to Scotland on 25 March 2015, and with respect to England and Wales on 1 July 2015.

10. That is, persons registered under Chapter 2, 2A, 3, or 3A of Part 3 of the Childcare Act 2006.

11. Counter-Terrorism and Security Act 2015, s26(1).

12. Counter-Terrorism and Security Act 2015, s29.

13. See: Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015/1697, reg 3.

8. Under the statutory guidance, schools are expected to *'assess the risk of children being drawn into terrorism, including support for extremist ideas that are part of terrorist ideology.'*¹⁴ They are required to have in place policies *'to identify children at risk, and intervene as appropriate,'*¹⁵ including by making referrals to the Channel programme. To provide school staff with some guidance as to when a child might be at risk of being *'drawn into terrorism,'* training programmes to introduce teachers to the Channel programme and its approach to the risks of involvement in terrorism have been provided across the country. That training, known as Workshop to Raise Awareness of Prevent ('WRAP') follows a syllabus set by the Home Office and is typically delivered via a 90-minute video, coupled with an online tutorial format.
9. WRAP training has been criticized by Mary Bousted, the General Secretary of the Association of Teachers and Lecturers, as containing *'poor quality and sometimes factually incorrect information.'*¹⁶ In particular, teachers have criticized the videos that training providers often use for containing overdone stories of radicalization filmed in black and white with emotive music, included presumably for dramatic effect, rather than clear instruction on the statutory requirements and the scope of the relevant government guidance.¹⁷ Further, teachers interviewed by RW(UK) have revealed that WRAP training programmes contain no systematic coverage of the human rights framework relevant to this flagship counter-terrorism policy,¹⁸ and that there is no uniformity or coordination in the type of training delivered across the country or between (academy/comprehensive/independent) sectors.¹⁹
10. As Sir Peter Fahy, the former Chief Constable of Greater Manchester Police, said when interviewed recently by RW(UK), *'The extension of the Prevent duty to the education sector was introduced in haste and without the time for proper training. This led in some cases to inappropriate referrals.'*²⁰ Even leaving aside the accuracy of the content of the WRAP training, it is questionable whether a few hours of training could ever be sufficient to equip individuals who have no background in counter-terrorism to make judgments about whether or not an individual is evincing signs of radicalization.
11. Taking preventative action in the field of counter-terrorism is fraught with difficulty even for highly trained professionals. As an organization that has over 25 years' experience of working in the field of national security and human rights in Northern Ireland, RW(UK) (formerly British Irish Rights Watch) can point to numerous examples in Northern Ireland where the wide ambit given to State officials in the name of counter-terrorism has led to arbitrary and abusive behaviour.²¹ Further, as again the experience of Northern Ireland shows, the lasting effect of tactics used purportedly to prevent terrorism, but which actually result in the securitisation of communities, is to stoke community unrest and provide fertile ground for terrorist recruitment, thereby stimulating further violence. The risk of adverse effects is particularly acute in relation to vulnerable members of society, such as children, who are unable to protect their own interests from arbitrary interference. Where children are concerned, there is no room for error in the deployment of counter-terrorism strategies. In fact, the need for a high level of rigour in training, implementation, and scrutiny is particularly acute.

14. HM Government, Revised Prevent Duty Guidance for England and Wales (16 July 2015) ('Prevent Duty Guidance'), [67].

15. Prevent Duty Guidance, [68].

16. Mary Bousted, 'Damned If You Report, Damned If You Don't...Prevent,' FE Week (21 September 2015), available at: <http://feweek.co.uk/2015/09/21/damned-if-you-report-damned-if-you-dont-prevent/>

17. See, for instance, the experience of Rob Faure Walker: RW(UK) Interview, 19 May 2016.

18. For instance, a Religious Education teacher (interviewed on condition of anonymity): RW(UK) Interview, 7 June 2016.

19. According to the Association of Teachers and Lecturers: RW(UK) Interview, 3 June 2016.

20. RW(UK) Interview, 20 May 2016.

21. See, for instance: Sir John Stevens, Stevens Enquiry 3: Overview & Recommendations (2003); Collusion Inquiry Reports (2004); Rt Hon Sir Desmond de Silva QC, Report of the Pat Finucane Review (2012); and Police Ombudsman for Northern Ireland, Statutory Report Relating to a Complaint by the Victims and Survivors of the Murders at the Heights Bar, Loughinisland (2016).

12. An integral part of the Prevent strategy is the referral of students into what is called the Channel programme. The Channel programme involves the screening of referred cases from public sector agencies and, where appropriate, the tailoring of programmes designed to stop the referred individual being drawn into terrorism. The Channel programme relies on panels (known as 'Channel panels') which the 2015 Act requires all local authorities to establish.²² Channel panels must include police representatives,²³ and may include other representatives from fields such as education, social work, immigration, housing, and health.²⁴ Aside from the compulsory police presence, the composition of panels, their size, and changes to their make-up over time remain at the discretion of the local authority. Where a child referred for assessment is already known to social services, or if there is a concern that a child's family circumstances are such that they are at risk of significant harm such as to justify social services intervention in any event,²⁵ then it is recommended (but not compulsory) that a social worker be present on the Channel panel and involved in its decision-making.²⁶ The police representative is designated as the co-ordinator of the panel's work, and known as the Channel Police Practitioner ('CPP').²⁷
13. Following referral, the CPP assesses whether or not an individual case is '*potentially appropriate for Channel*.' So long as the CPP is satisfied that it is so, then the referral moves to a Screening and Information Gathering Stage, in which the CPP seeks information about the individual from other members of the Channel panel and a range of institutions (including schools), those institutions being subject to a statutory duty to co-operate with the CPP and the Channel panel under section 38 of the 2015 Act.²⁸ Statutory guidance suggests that organizations should first consider seeking the consent of the individual referred (or their parent/guardian) to the sharing of information about them, but recognizes that, as part of Channel, there is no absolute requirement for the consent of the subject to the sharing of their information, and a decision not to seek consent will '*be dependent on the circumstances of the case but may relate to issues such as the health of the individual, law enforcement or protection of the public*.'²⁹
14. Following the Screening and Information Gathering Stage, the Channel panel undertakes an assessment of the referred individual's apparent vulnerability to becoming a terrorist. This vulnerability is to be assessed by reference to the three criteria used in the Channel programme's Vulnerability Assessment Framework:
- 14.1. The degree of the referred individual's *engagement* with a group, cause, or ideology;
- 14.2. The individual's *intent* to cause harm; and
- 14.3. The individual's *capability* to cause harm.

22. Counter-Terrorism and Security Act 2015, s36.

23. Counter-Terrorism and Security Act 2015, s37(1).

24. HM Government, Channel Duty Guidance: Protecting Vulnerable People From Being Drawn into Terrorism (2015) ('Channel Duty Guidance'), [24].

25. Pursuant to the Children Act 1989.

26. Channel Duty Guidance, [25].

27. Channel Duty Guidance, [30]-[32].

28. Counter-Terrorism and Security Act 2015, s38, which specifies that all organizations listed in Schedule 7 to the 2015 Act are required to co-operate.

29. Channel Duty Guidance, [46].

Inherent design problems

15. The centrepiece of the Channel programme within the Prevent strategy is the use of a vast network of public sector workers to act on the front line of counter-terrorism policy: identifying potentially dangerous individuals before they are radicalized and become terrorists. Many education professionals have objected to being co-opted to serve government counter-terrorism objectives, and the National Union of Teachers in March 2016 passed a motion rejecting Prevent,³⁰ with one member commenting that the Prevent duty required teachers to act as the '*Secret Service of the public sector*.'³¹ Russell Hobby, the General Secretary of the National Association of Head Teachers, summarized the position thus: '*To put it bluntly, teachers are not counter-terrorism experts, have no wish to be ancillary members of the security service and lack the training to do it well even if they did*.'³² As Kevin Courtney, the Deputy Secretary of the National Union of Teachers, put it in a recent interview with RW(UK), it is no part of the teacher's role to be a second-tier police force.³³

16. But leaving aside political criticism, and focussing solely on the operation of the strategy on its own terms, the Prevent and Channel model of mass counter-terrorism prevention raises three significant concerns:
 - 16.1. First, the wide degree of discretion involved, both in respect of the selection and composition of Channel panels, and at the stages of the referral decision by the specified public authority and the CPP's decisions regarding information-gathering and onward referral to the Channel programme;

 - 16.2. Second, the assumption that the indicators to which decision-makers are directed (teachers as the initial Referral Stage and Channel panels at the Vulnerability Assessment Framework stage)³⁴ are in fact signs of extremism or terrorism; and

 - 16.3. Third, that the asserted link between extremism and terrorism (upon which the whole notion of prevention before an individual moves from the former state to the latter is based) is valid.

17. It is not the objective of this report to rehearse in any detail the many policy criticisms which have already been made of the design of the Prevent strategy and the Channel programme. Previous studies by bodies such as the Institute of Race Relations and the Muslim Council of Britain have analysed the practical and theoretical policy concerns that attach to the policy.³⁵ Instead, the focus of this report is to consider the impact of Prevent (including Channel) in schools from the perspective of its compliance with human rights law, and so this report identifies and considers the flaws inherent in Prevent's design not for their own sake, but because those flaws have important implications for the lawfulness of the restrictions upon human rights which the policy entails.

30. The full text of the motion is available at: <http://schoolsweek.co.uk/nut-prevent-strategy-motion-what-it-actually-says/>

31. See: Sean Coughlan, 'Teachers Warn Extremism Policy Prevents Open Debate,' BBC News (28 March 2016), available at: <http://www.bbc.co.uk/news/education-35907831>

32. Russell Hobby, 'Prevent Strategy: "Teachers Aren't Counter-Terrorism Experts and Don't Want to be Members of the Security Service,"' TES (21 October 2015), available at: <https://www.tes.com/news/school-news/breaking-views/prevent-strategy-'teachers-aren't-counter-terrorism-experts-and-don>

33. RW(UK) Interview, 10 June 2016.

34. WRAP training highlights for teachers the same vulnerability factors as found in the Channel programme's Vulnerability Assessment Framework.

35. See: Arun Kundnani and Institute of Race Relations, *Spooked! How Not to Prevent Violent Extremism* (October 2009) ('Spooked!'); and Muslim Council of Britain, *The Impact of Prevent on Muslim Communities* (February 2016).

Discretion

18. Dealing first with the breadth of discretion inherent in the Prevent strategy, it is important to recall that, while the Prevent duty is set out in the 2015 Act, the terms of that duty are not clear or prescriptive, and that the Prevent duty guidance referring to the obligations of schools merely sets out that *'[s]pecified authorities are expected to assess the risk of children being drawn into terrorism, including support for extremist ideas that are part of terrorist ideology,'³⁶ while 'having robust safeguarding policies in place to identify children at risk, and intervening as appropriate.'³⁷ In the absence of clear instructions as to precisely when such a risk assessment is triggered, or when and in what form an intervention is *'appropriate,'* the practical decisions upon which compliance with the Prevent duty relates all reside within the discretion of decision-makers at schools: what type of activity, and how many instances of it, warrants intervention, what type of intervention ought to be made, and under what circumstances (with or without parental notification, with or without removal from lessons). Without the uniformity and predictability provided by an explicit framework set out in primary legislation or statutory guidance, there is no guarantee for students that decisions taken within schools will be consistent or predictable. Nor, of course, is there any comfort for schools that the decisions they are making comply with their duties. This has profound implications for assessing the certainty which is required before any action can be legitimately deemed *'prescribed by law.'**
19. As well as vesting teachers with wide discretion, it is worth noting that the Ofsted school inspection framework takes into account the degree to which schools demonstrate compliance with their Prevent duties.³⁸ Understandable concern for a school's inspection record may well lead to over-referral without firm justification.

Indicators of vulnerability and risk

20. Dealing next with the indicators of a child's risk of becoming a terrorist (to which teachers and Channel panels are directed under the Prevent guidance), these indicators are overbroad in their scope and ambiguous in their meaning. These indicators are poorly correlated with potential terrorist activity, and apply to many more circumstances than necessary or appropriate.
21. Indicators of *engagement* with terrorism identified in the Channel statutory guidance include the individual *'spending increasing time in the company of other suspected extremists,' 'changing their style of dress or personal appearance to accord with the group,' and 'communications with others that suggest identification with a group/cause/ideology.'*³⁹ Identified indicators of apparent *'intent'* include *'clearly identifying another group as threatening what they stand for and blaming that group for all social or political ills,' and 'using insulting or derogatory names or labels for another group.'*⁴⁰ And the indicators of *capability* apparently include (as well as a history of actual violence) being *'criminally versatile,' 'having occupational skills that can enable acts of terrorism (such as civil engineering, pharmacology or construction),' or 'having technical expertise that can be deployed (e.g. IT skills, knowledge of chemicals, military training or survival skills).'*⁴¹

36. Prevent Duty Guidance, [67].

37. Prevent Duty Guidance, [68].

38. See: Ofsted, School Inspection Handbook: Handbook for Inspecting Schools in England under Section 5 of the Education Act 2005 (2015), available at: <https://www.gov.uk/government/publications/school-inspection-handbook-from-september-2015>

39. Channel Duty Guidance, [51].

40. Channel Duty Guidance, [52].

41. Channel Duty Guidance, [53].

22. The government's dedicated guidance on the Vulnerability Assessment Framework,⁴² which lists in full the 22 criteria to be used by Channel panels, is even less specific. In that guidance, the engagement factors are said to include: '*feelings of grievance and injustice,*' '*feeling under threat,*' '*a need for identity, meaning, and belonging,*' '*a desire for status,*' '*a desire for excitement and adventure,*' '*a desire for political or moral change,*' '*being at a transitional time of life,*' '*being influenced or controlled by a group,*' and '*relevant mental health issues.*'⁴³ Further, as revealed by a Religious Education teacher recently interviewed by RW(UK) on condition of anonymity, the WRAP training actually provided to schools (by a variety of private providers) asks teachers to identify further purported warnings signs, many so generalized as to be of little meaningful use. In the training given at her school, apparent warnings signs included '*someone becoming quieter,*' '*grades going up,*' and '*grades going down.*'⁴⁴
23. Clearly the fact of a student studying engineering or chemistry, or wearing dress traditionally associated with a Muslim-majority community, or doing better/worse at school, discloses no link with any matter of extremism or terrorist ideology. Accordingly, were decision-makers to faithfully following the Prevent guidance on indicators of vulnerability, the potential exists for over-referral without justification.
24. Further, phrases such as '*identifying another group as threatening what [the child's group] stand for*' and '*using insulting or derogatory names or labels*' are ambiguous. The guidance does not suggest that a group so identified need be classed as a '*group*' by reference to their race, religion, gender, or other similar status. Would identification of '*politicians*' or '*the upper classes*' as a group qualify? Nor is there any sense of what '*threatening what*' another person '*stand[s] for*' requires. Given the lack of clarity with respect to precisely what constitutes the sort of activity indicative of risk, the scope exists for teachers and Channel panels, acting in good faith attempting to carry out their statutory obligations, to return referrals and decisions which identify an excessive number of students, or are inconsistent in their application.

The assumed path from extremism to terrorism

25. A further key assumption underpinning Prevent and Channel is that indicators of *extremism* are relevant to an assessment of the risk of terrorism. For clarity, while the task set for school staff and Channel panels is to consider whether a referred individual is *vulnerable* to becoming a *terrorist*, the sort of *group* with which engagement or identification would raise concerns of *vulnerability is not an actual terrorist group*. Association with proscribed terrorist groups has long constituted a stand-alone criminal offence under the Terrorism Act 2000 ('the 2000 Act'),⁴⁵ as has raising⁴⁶ or displaying support for such groups (even to the extent of wearing clothing in such a way as to arouse reasonable suspicion of support for the terrorist group).⁴⁷ Accordingly, despite the prominence of references to Al Qa'ida in the Prevent strategy, a child's actual association with or support for Al Qa'ida (or indeed other prominent organizations such as the al-Nusrah Front, Al Shabaab, Ansar al-Sharia-Benghazi, or ISIL/Daesh)⁴⁸ would not be a matter for Prevent: it would be a matter for the criminal law.

42. HM Government, Channel: Vulnerability Assessment Framework (October 2012) ['Vulnerability Assessment Framework'].

43. Vulnerability Assessment Framework, 2.

44. RW(UK) Interview, 19 May 2016.

45. Terrorism Act 2000, s11.

46. By, for instance, inviting donations for such an organization, or arranging a meeting supporting that organization: Terrorism Act 2000, s12.

47. Terrorism Act 2000, s13.

48. See: Home Office, Proscribed Terrorist Organizations (18 March 2016), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509003/20160318proscription.pdf

26. In contrast, the Channel programme is consciously directed at apparent indicators of engagement with groups which are outside the list of proscribed terrorist organizations but, rather, fall within the definition in the Prevent strategy of groups which espouse 'extremist' ideology.⁴⁹ That definition states that extremism comprises:

'vocal or active opposition to fundamental British values,⁵⁰ including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in the definition of extremism calls for the death of members of our armed forces, whether in this country or overseas.'⁵¹

27. The definition of extremism is meaningfully different from the definition of terrorism set out in section 1 of the 2000 Act. Terrorism, according to the 2000 Act, entails the 'use or threat of action ... designed to influence the government ... or to intimidate the public or a section of the public' 'for the purpose of advancing a political, religious or ideological cause.'⁵² Further, the 'action,' must be of a kind which 'involves serious violence against a person, involves serious damage to property ... endangers a person's life, other than that of the person committing the action, ... creates a serious risk to the health or safety of the public or a section of the public, or ... is designed seriously to interfere with or seriously to disrupt an electronic system.'⁵³ The Court of Appeal has recently confirmed that, for an action to constitute an act of terrorism, the perpetrator must intend that the action will have one of those outcomes (violence, risk of harm, etc) or be reckless as to such an outcome.⁵⁴
28. While the Supreme Court determined in *R v Gul* that the definition in the 2000 Act is 'very far reaching indeed,' it proceeded on the basis that 'the definition would seem to cover any violence or damage to property if it is carried out with a view to influencing a government or [inter-governmental organization] in order to advance a very wide range of causes.'⁵⁵ And while there is no clear consensus at the international level as to what precisely constitutes terrorism, there is similarly a general presumption that the essence of it lies in the use of violence, with the purpose of intimidating or coercing a government or population. The UN Security Council resolution 1566/2004, for instance, sets out, in the context of condemning terrorism, a list of acts accepted by the Security Council as never justifiable, all of which relate to violence to persons where the purpose is to intimidate or compel, namely:

'criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.'⁵⁶

49. Channel Duty Guidance, [56].

50. The more recent Counter-Extremism Strategy has slightly tweaked the government's definition of 'extremism,' recasting 'fundamental British values' as 'our fundamental values,' but this change has not been reflected in the wording of relevant Prevent or Channel guidance. See: HM Government, Counter-Extremism Strategy (Cm 9148, October 2015), 9.

51. Prevent Strategy, Annex A.

52. Terrorism Act 2000, s(1)-(4).

53. Terrorism Act 2000, s1(2).

54. *R (Miranda) v Secretary of State for the Home Department and Commissioner of Police for the Metropolis* [2016] 1 WLR 1505 (CA), [55] (Lord Dyson MR).

55. *R v Gul* [2014] AC 1260 (UKSC), [29] (Lord Neuberger and Lord Judge).

56. UN Security Council Resolution 1566/2004, UN Doc. S/RES/1566 (2004), [3].

29. Accordingly, the Channel programme entails an assessment of the vulnerability of a person becoming a terrorist (a person engaged in the advancement of causes by violent criminal means) by, *inter alia*, their association with extremism (defined as a belief system at odds with apparent 'fundamental British values'). This assessment assumes that *extremism* and *terrorism* sit as two points on a continuum, such that support for extremism is a reliable indicator of future participation in terrorism. The government has adopted this approach even while admitting that 'it is possible to be engaged [with a group or ideology] without intending to cause harm.'⁵⁷ Nonetheless, the Prevent strategy assumes that terrorists follow such a path – termed 'radicalisation' – and that terrorist harms can be obviated if only intervention occurs at a sufficiently early point.
30. Obviously, there is a political question as to whether it is acceptable for a government to seek to target activity which is not illegal (extremism), as opposed to an activity which is (terrorism). The Prime Minister has made it clear that it is the government's intention, through Prevent, to focus on the pre-crime space. As he put it in 2015, 'for too long, we have been a passively tolerant society, saying to our citizens "as long as you obey the law, we will leave you alone."⁵⁸ But as others have pointed out, non-violent extremist opinions have a place in public discussion. As Professor Timothy Garton Ash, Professor of European Studies at the University of Oxford, noted in June 2016 with reference to the Prevent strategy in universities: 'Now non-violent extremists? That's Karl Marx, Rousseau, Charles Darwin, Hegel, and most clearly Jesus Christ, who was definitely a non-violent extremist. The Home Office wouldn't want him preaching on campus.'⁵⁹ That political point is validly raised: but the concern of this report is with the legal implications of assuming that extremism and terrorism are reliably connected.
31. In the words of the government's own executive summary, the Prevent strategy involves 'intervening to stop people moving from extremist groups or from extremism into terrorist-related activity.'⁶⁰ Further, the government's clearing-house website resource to assist schools in giving effect to the Prevent duty – educateagainsthate.com – explicitly refers to a 'Path to radicalisation.'⁶¹ Use of the metaphor of individuals travelling on a path or conveyor belt from extremism to terrorism has not been limited to the government. The Intelligence and Security Committee, in its report relating to the murder of Fusilier Lee Rigby, has also used the same language, describing the potential value of Prevent as 'successfully diverting individuals from the radicalisation path.'⁶²
32. But while that 'conveyor belt' metaphor is rhetorically attractive, there is considerable debate as to its validity in describing the process by which individuals first come to undertake terrorist activity. A linear theory of gradual radicalization from radical beliefs to violent terrorism has been roundly criticized as unsound,⁶³ even, at times, within government.⁶⁴ Ben Emmerson QC, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism,

57. Channel Duty Guidance, [3.6].

58. 'New Laws to Target Radicalisation,' BBC News (13 May 2015), available at: <http://www.bbc.co.uk/news/uk-politics-32714802>

59. Prof Timothy Garton Ash, Speech delivered at Hay Festival, 30 May 2016.

60. Prevent Strategy, [3.10].

61. HM Government website: <http://educateagainsthate.com/teachers/how-do-people-become-radicalised-5/>

62. Intelligence and Security Committee of Parliament, Report on the Intelligence Relating to the Murder of Fusilier Lee Rigby, 25 November 2014, HC 795, p6.

63. For a starting point on the voluminous literature in this area, see: Arun Kundnani, *The Muslims Are Coming! Islamophobia, Extremism and the Domestic War on Terror* (2014), Ch 4; and Youth Justice Board, *Preventing Religious Radicalisation and Violent Extremism: A Systematic Review of the Research Evidence* (2012).

64. See the denunciation of the 'conveyor belt' metaphor in restricted documents relating to Hizb ut Tahrir, reported by Andrew Gilligan, 'Hizb ut Tahrir is Not a Gateway to Terrorism, Claims Whitehall Report,' *The Telegraph* (25 July 2010), available at: <http://www.telegraph.co.uk/journalists/andrew-gilligan/7908262/Hizb-ut-Tahrir-is-not-a-gateway-to-terrorism-claims-Whitehall-report.html>; and the similar conclusions of classified internal research on radicalization conducted by MI5, reported by Alan Travis, 'MI5 Report Challenges Views on Terrorism in Britain,' *The Guardian* (20 August 2008), available at: <https://www.theguardian.com/uk/2008/aug/20/uksecurity.terrorism1>

summed up the difficulties with the simplistic approach in his recent report to the UN Human Rights Council as follows:

‘Many programmes directed at radicalisation are based on a simplistic understanding of the process as a fixed trajectory to violent extremism with identifiable markers along the way. That has sometimes elided factors that are recognised in hindsight as having contributed to an individual’s radicalisation with predictive markers of general application. A more accurate understanding is that the path to radicalisation is individualized and non-linear, with a number of common “push” and “pull” factors but no single determining feature. A confluence of issues at local, national and supranational level may all play a part in promoting or avoiding radicalisation and, when considering influencing factors, States have tended to focus on those that are most appealing to them, shying away from the more complex issues, including political issues such as foreign policy and transnational conflict. Commentators have noted that there can be too much focus on religious ideology as the driver of terrorism and extremism while factors related to identity, or misguided altruism, are overlooked.’⁶⁵

33. Given that the Prevent strategy and its Channel programme are predicated upon a reliable and meaningful link between *extremism* and *terrorism*, if the link is in fact illusory or uncertain, decisions made by reference to dealing with extremism (defined as ideological opposition to certain political values) cannot properly be relied upon as serving an aim of combating *terrorism* (requiring intended violence). This disjunct is potentially of great relevance when human rights compliance – which depends upon, among other things, measures actually serving legitimate public safety objectives – is considered.
34. In addition, the content of key terms underlying the Prevent strategy and its Channel programme – such as ‘*British values*’ is contested and, in any event, poorly defined. In a recent interview with RW(UK), the journalist Simon Hooper, who has written extensively on Prevent, recalled confusion among child-minding groups about how to instil those values, and what they might comprise. Training failed to allay the concerns as training organizations sometimes revert to lazy stereotyping, suggesting that British values mean listening to British music or eating roast beef.⁶⁶ The use of ambiguous or poorly-defined terms in a policy with such a potential impact on children’s lives clearly raises significant questions.

65. Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, UN Doc. A/HRC/31/65 (22 February 2016), [15].

66. RW(UK) Interview, 23 May 2016.

II. THE RELEVANT HUMAN RIGHTS FRAMEWORK

35. The UK government is required, as a matter of both domestic and international law, to comply with and protect fundamental human rights in giving effect to the Prevent strategy. At the domestic level, the government, along with all other public authorities, is prohibited by section 6 of the Human Rights Act 1998 ('the 1998 Act') from acting 'in any way which is incompatible with a [European] Convention right,'⁶⁷ except insofar as it makes or gives effect to primary legislation which is explicitly so incompatible.⁶⁸ Violations of that prohibition are actionable before the domestic courts, and may attract damages awards in appropriate cases.⁶⁹ Further, under the government's Ministerial Code, the executive is bound to comply with, *inter alia*, international law.⁷⁰
36. At the international level, the UK is bound to protect and give effect not only to the rights set out in the European Convention on Human Rights,⁷¹ but also to those rights enumerated in, *inter alia*, the International Covenant on Civil and Political Rights ('the ICCPR'),⁷² the International Covenant on Economic, Social, and Cultural Rights ('ICESCR'),⁷³ and the United Nations Convention on the Rights of the Child ('the CRC').⁷⁴ While these obligations have not been incorporated into domestic law, and while the UK has so far declined to ratify the relevant protocols providing for international oversight of its compliance with these conventions, that does not affect the fact that, as a matter of international law, the UK is obliged to provide the human rights protections set out therein.
37. The Prevent strategy, as implemented with respect to educational institutions, has implications for the following fundamental human rights:
- 37.1. The right to freedom of expression, which includes the freedom to hold, receive, and impart information and ideas without interference;⁷⁵
- 37.2. The right to freedom of thought, conscience, and religion;⁷⁶
- 37.3. The right to education;⁷⁷

67. Human Rights Act 1998, s6(1).

68. Human Rights Act 1998, s6(2).

69. See Human Rights Act 1998, s8.

70. Albeit that the explicit reference to international law in the 2010 edition of the Ministerial Code is no longer contained in the 2015 edition (see: Cabinet Office, Ministerial Code (October 2015), [1.2]). That said, the Cabinet Office has confirmed that the new wording that the executive must 'comply with the law' includes compliance with international law, and the Attorney General, the Rt Hon Jeremy Wright QC MP, on the same day as the 2015 Ministerial Code was published, gave a speech describing the Ministerial Code duty as one of complying 'with the law, including international law and treaty obligations.' See: House of Commons Library, 'The Ministerial Code and the Independent Adviser on Ministers' Interests,' Briefing Paper Number 03750 (21 October 2015), p6.

71. Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 ('ECHR').

72. UN General Assembly, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR').

73. UN General Assembly, International Covenant on Economic, Social, and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 ('ICESCR').

74. UN General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 ('CRC').

75. ECHR, Article 10; ICCPR, Article 19; and CRC, Article 13.

76. ECHR, Article 9; ICCPR, Article 18; and CRC, Articles 14 and 30.

77. ECHR, Article 2 of the First Protocol; ICESCR, Article 13; and CRC, Articles 28 and 29.

37.4. The right to privacy;⁷⁸

37.5. The right to enjoy other rights free from discrimination on grounds such as religion, or political or other opinion;⁷⁹

37.6. The right, for children, to have their best interests as the primary consideration where any public body takes any action concerning them.⁸⁰

Freedom of expression

38. Article 10 of the ECHR provides, *inter alia*, that:

‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.’

39. Article 19 of the ICCPR provides, in similar terms, that:

***‘1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’***

40. And Article 13 of the CRC provides that:

‘The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.’

41. The right to freedom of expression is consistently considered to be a right of particular importance, given that it is through free expression that a range of other human rights, such as rights of political participation,⁸¹ freedom of association, and freedom of religion are realised. As the UN Human Rights Committee declared in its General Comment 34:

‘Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society ... Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.’⁸²

78. ECHR, Article 8; ICCPR, Article 17; and CRC, Article 16.

79. ECHR, Articles 1 and 14; ICCPR, Articles 2 and 26; ICESCR, Article 2(2); and CRC, Article 2.

80. CRC, Article 3(1).

81. See the decisions of the UN Human Rights Committee in *Gauthier v Canada*, UN Doc. CCPR/C/65/D/633/1995, [13.4]; and *Aduayom, Diasso and Dobou v Togo*, UN Doc. CCPR/C/57/D/422-4/1990, [7.4].

82. UN Human Rights Committee, General Comment 34, UN Doc. CCPR/C/GC/34 [12 September 2011], [2].

42. Courts worldwide have emphasized the foundational significance of free expression for individual fulfilment, the proper scrutiny of government, and the functioning of a democratic society. The Court of Justice of the European Union observed in the case of *Criminal Proceedings Against Patricello* that freedom of expression is 'an essential foundation of a pluralist, democratic society reflecting the values on which the Union ... is based.'⁸³ Further, as the European Court of Human Rights has made clear, opinion and expression does not forfeit its protection merely by virtue of being untrue, shocking, offensive, disturbing, or indeed through challenging the democratic principles which justify its being protected.⁸⁴ The right is of broad application and 'includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse.'⁸⁵ In addition, since the right entails the freedom to seek, receive, and impart information, it is a right enjoyed by potential audiences and potential communicators at the same time.⁸⁶
43. Interference with the right may take many forms, including explicit restrictions on certain types of expression (such as laws prohibiting sedition or hate speech), or implicit restrictions such as licensing conditions placed upon persons wishing to broadcast information. But one of the most frequent ways in which freedom of expression is restricted is the creation of a public climate which discourages persons from exercising their right to free expression even before they have a chance to do so. Where the fear of adverse consequences for the exercise of free expression leads to self-censorship, human rights jurisprudence worldwide typically describes such a situation as having a 'chilling effect' on freedom of expression.⁸⁷
44. In circumstances where the policies or actions of public authorities interfere with the right to freedom of expression, human rights law provides that such interferences are only lawful if *all* the following cumulative criteria are satisfied:
- 44.1. That the interference be 'prescribed by law' or 'provided by law' in the sense that the legal basis for the interference is not only clearly set out in a non-arbitrary format (such as a legislative provision) but also that the scope, meaning, and effect of the provision are sufficiently clear and predictable to allow individuals to regulate their actions so as to avoid the interference;
- 44.2. That the interference serves one of a specific list of legitimate aims (including national security, public safety, the prevention of disorder or crime, and the protection of the rights of others); and
- 44.3. That the interference must be necessary and proportionate,⁸⁸ in the sense that the effect of the interference upon the enjoyment of the human right must be proportionate to the legitimate aim pursued. Satisfying this test requires that the severity of impacts upon rights is balanced against the importance of the aim pursued, and demands that any restriction must 'be the least intrusive instrument amongst those which might achieve their protective functions' in relation to the stated aim.⁸⁹

83. Case C-163/10 *Criminal Proceedings Against Patricello* [2011] ECR I-7565, [31].

84. *Handyside v UK* [1976] ECHR 5; [1976] 1 EHRR 737, [49]; and *Gündüz v Turkey* [2003] ECHR 652, [51].

85. UN Human Rights Committee, General Comment 34, [11].

86. See *Mavlonov and Sa'di v Uzbekistan*, UN Doc. CCPR/C/95/D/1334/2004, [8.4].

87. *Mosley v UK* [2011] ECHR 774, [129]; and *Adonis v Philippines*, UN Doc. CCPR/C/103/D/1815/2008/Rev.1.

88. The proportionality test is implied into the ECHR's description of restrictions as lawful only where they are 'necessary in a democratic society': see *Handyside v UK*, [58]. The proportionality criterion has been frequently reiterated by the UN Human Rights Committee as a condition of the lawfulness of State action: see UN Human Rights Committee, General Comment 27, UN Doc. CCPR/C/21/Rev.1/Add.9, [14]; *Marques v Angola*, UN Doc. CCPR/C/83/D/1128/2002; and *Coleman v Australia*, UN Doc. CCPR/C/87/D/1157/2003.

89. UN Human Rights Committee, General Comment 27, [14]; and General Comment 34, [34].

Freedom of thought, conscience, and religion

45. Article 9(1) of the ECHR provides that:

‘Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance.’

46. Article 18(1) of the ICCPR is almost identical in its wording, but Article 18(2) goes on to provide that:

‘No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.’

47. Further, Article 14 of the CRC provides, *inter alia*, that:

‘1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.’

48. The right of freedom of thought, conscience, and religion contains two important aspects: the absolute right to hold and change opinions in relation to matters of religion and comparable ideology (interference with which is never lawful); and the right to *manifest* those beliefs through ritual and practice (the restriction of which may be lawful in certain circumstances). As regards what type of opinion or belief enjoys protection, international legal opinion has tended towards the expansive. The UN Human Rights Committee for instance considered, in *Yong-Joo Kang v Republic of Korea*, that a South Korean citizen sympathetic to the North Korean regime who was forced to undertake a programme of ideological conversion under national security legislation had been the victim of a violation of the right of freedom of thought, conscience, and religion (as well as a violation of the right of freedom of expression).⁹⁰

49. As with freedom of expression, under the ECHR,⁹¹ ICCPR,⁹² and CRC⁹³ some restrictions upon the right to manifest one’s religion or beliefs may be lawful,⁹⁴ but it is clear that no restrictions at all are lawful insofar as they purport to affect a person’s *inner convictions – the forum internum*.⁹⁵ Accordingly, as the UN Human Rights Committee has set out, the freedom to ‘*have or adopt a religion or belief of one’s choice ... are protected unconditionally ... [N]o one can be compelled to reveal his thoughts or adherence to a religion or belief.*’⁹⁶ The right therefore prohibits State action aimed at ‘*coercion that would impair the right to have or adopt a religion or belief, including the use or threat of physical force or penal sanctions to compel believers ... to recant their religion.*’⁹⁷ Further, ‘*[p]olicies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment*’ are similarly inconsistent with the right.⁹⁸

90. *Yong-Joo Kang v Republic of Korea*, UN Doc. CCPR/C/78/D/878/1999, [7.2].

91. ECHR, Article 9(2).

92. ICCPR, Article 18(3).

93. CRC, Article 14(3).

94. UN Human Rights Committee, General Comment 22, UN Doc. CCPR/C/21/Rev.1/Add.4 [27 September 1993], [8]; see also *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc. E/CN.4/1985/4, [10].

95. See this concept in *Kokkinakis v Greece* [1993] ECHR 20; [1994] 17 EHRR 397, [31]; and *Kalaç v Turkey* [1997] ECHR 37; [1999] 27 EHRR 552, [27].

96. UN Human Rights Committee, General Comment 22, [3].

97. UN Human Rights Committee, General Comment 22, [5].

98. UN Human Rights Committee, General Comment 22, [5].

Right to education

50. Closely aligned with the rights of freedom of expression and freedom of thought, conscience, and religion is the right to education. Article 13 of ICESCR, echoing the language of the Universal Declaration of Human Rights,⁹⁹ provides that:

'The States Parties ... recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups...'¹⁰⁰

51. The right is obviously particularly important for children, and Article 28 of the CRC records that States Parties 'recognize the right of the child to education,' and obliges them 'with a view to achieving this right progressively and on the basis of equal opportunity' to, among other things, 'make [secondary education] available and accessible to every child...'¹⁰¹ The CRC also requires that education be directed to, *inter alia*, '[t]he development of respect for ... his or her own cultural identity, language and values, for the national values of the country in which the child is living ... [and t]he preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups...'¹⁰²

52. At the European level, Article 2 of the First Protocol to the ECHR provides that '[n]o person shall be denied the right to education.'¹⁰³ Despite the negative formulation of that wording, the European Court of Human Rights held, in the Belgian Linguistics case, that the Article provides a positive right of access to educational institutions.¹⁰⁴

53. Education, like freedom of thought and expression, has long been considered of fundamental importance due to its character as a 'multiplier' right:¹⁰⁵ that is, a right which is not only important in its own right, but also in its ability to contribute to the enjoyment of other human rights. As the Committee on Economic Social and Cultural Rights ("the CESCR Committee") has put it:

'Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.'¹⁰⁶

99. Universal Declaration of Human Rights, Article 26(1)-(2).

100. ICESCR, Article 13(1).

101. CRC, Article 28(1).

102. CRC, Article 29(1)(c) and (d).

103. ECHR, First Protocol, Article 2. The UK has entered a reservation to the second sentence of the Article (which requires respect for parents' religious and philosophical convictions), consistent with the approach taken in section 9 of the Education Act 1996, which provides that respect for religious and philosophical convictions is extended only so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

104. *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium (No 2)* [1968] ECHR 3; [1968] 1 EHRR 252, 280-281.

105. See the use of this term by former UN Special Rapporteur on the Right to Education, Katerina Tomasevski, in *Removing Obstacles in the Way of the Right to Education* (2001), 9.

106. CESCR Committee, General Comment 13, UN Doc. E/C.12/1999/10 (8 December 1990), [1].

54. Further, and again reminiscent of the right of freedom of expression, human rights law considers the right of students to education implies also a matching set of rights for those who impart that education. As the CESCR Committee has noted:

***'[T]he right to education can only be enjoyed if accompanied by the academic freedom of staff and students ... Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction.'*¹⁰⁷**

55. While for many States, the right to education (and its implied right of academic freedom for both students and teachers) can only be an aspiration,¹⁰⁸ given that universal free education is already compulsory and available in the UK, the UK government may not, as a matter of international law, take any steps which would jeopardize students' and/or academics' existing access to, or scope of, education.¹⁰⁹ As Lord Bingham put it in the case of *A v Head Teacher and Governors of Lord Grey School*:

***'The test is ... a highly pragmatic one: ... have the authorities of the state acted so as to deny to a pupil effective access to such educational facilities as the state provides for such pupils?'*¹¹⁰**

56. While international law instruments do not expressly set out the circumstances in which the right to education may be restricted, it is generally accepted that some administrative restriction will be lawful so long as, in keeping with other rights, those restrictions are foreseeable, serve legitimate aims, are proportionate, and do not impair the essence of the right or deprive it of its effectiveness.¹¹¹

Right to privacy

57. As a matter of international human rights law, every person enjoys the right to a private and family life without undue interference from the State (or indeed private actors). Article 8 of the ECHR provides that everyone 'has the right to respect for his private and family life, his home, and his correspondence,'¹¹² while Article 17 of the ICCPR ensures that '[n]o one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence...'¹¹³ The CRC further specifically confirms that children also enjoy the right to privacy in the same terms.¹¹⁴

107. CESCR Committee, General Comment 13, [38]-[39].

108. Reflected in the principle of 'progressive realization' set out in CESCR, Article 2(1).

109. CESCR Committee, General Comment 3, UN Doc. E/1991/23 [14 December 1990], [9]; and see the comments to this effect in the Committee's *Conclusions and Recommendations on Senegal*, UN Doc. E/C.12/1993/18 [1994], [7].

110. *A v Head Teacher and Governors of Lord Grey School* [2006] 2 AC 363 (HL), [24] (Lord Bingham); confirmed by the European Court of Human Rights in *Ali v UK* [2008] ECHR 1659; [2011] 53 EHRR 12.

111. See, for instance: *Leyla Şahin v Turkey* [2004] ECHR 299; [2004] 44 ECHR 99, [154]ff.

112. ECHR, Article 8(1).

113. ICCPR, Article 17(1).

114. CRC, Article 16. Further, while the protection of a minor's right is not explicit in the ECHR, the operation of Article 34 of the ECHR (which prohibits discrimination in rights protection on the basis of age), and the practice of the European Court of Human Rights (which accepts cases brought by children, such as *Marckx v Belgium* [1979] ECHR 2; [1979] 2 EHRR 330), make it clear that children enjoy the same protection under that Treaty (and thus under UK domestic law).

58. While the right is expressed in economical language in key treaties, jurisprudence has consistently interpreted it broadly to cover the right of persons to freely choose how they wish to live according to their own ideas and without undue State influence. The UN Human Rights Committee has accordingly held that *'the notion of privacy refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone.'*¹¹⁵ More pithily, in their seminal 1890 article, 'The Right to Privacy,' Samuel Warren and later US Supreme Court Justice Louis Brandeis defined the essence of it as *'the right to be let alone.'*¹¹⁶
59. The right to privacy is, however, not absolute, and a key question is the extent to which the State may interfere in a person's private life (including their communications and/or personal data) in the interests of detecting crime or protecting public or national security. In common with many rights, interferences with privacy may be lawful if they satisfy the three cumulative criteria of being carried out according to law (including avoiding indiscriminate or arbitrary application), pursuing a legitimate aim, and being necessary and proportionate.
60. But it is important to bear in mind that human rights jurisprudence takes a dim view of blanket State interventions into the private sphere. The European Court of Human Rights in *S and Marper v UK*, for instance, considered that the UK's policy of retaining personal information (in the form of a DNA profile) from all persons arrested on suspicion of crime constituted a violation of, inter alia, Article 8 of the ECHR,¹¹⁷ while, in *Liberty and British Irish Rights Watch v UK*, a system of effective blanket surveillance of electronic communications between England and Ireland in the 1990s was similarly unlawful due to its indiscriminate effect.¹¹⁸
61. In line with the protection of private information, the use of personal data held by public authorities is subject to particular restrictions under European Union and domestic legislation. The Data Protection Directive 95/46/EC sets out in detail a framework for the processing of personal and sensitive data,¹¹⁹ which has been domestically implemented through the Data Protection Act 1998 ('the DPA'). Under the DPA, any person who controls *'personal data'* about an individual is obliged to comply with the *'data protection principles'* set out in Schedule 1. *'Personal data'* includes *'data which relate to a living individual who can be identified (a) from those data, or (b) from those data and other information which is in the possession'* of the data controller.¹²⁰ The first of the *'data protection principles'* requires that data are processed (that is, collected, stored, or disseminated) fairly and lawfully, which includes a requirement for transparency, with the subject of the data to be informed about not only the fact that personal data are being collected, but how it is intended that the data will be used.¹²¹

115. UN Human Rights Committee, *Coeriel and Aurik v The Netherlands*, UN Doc. CCPR/C/52/D/453/1991 [9 December 1994], [10.2].

116. Samuel Warren and Louis Brandeis, 'The Right to Privacy' [1890] *Harvard Law Review* 193, 195.

117. *S and Marper v UK* [2008] ECHR 1581; [2009] 48 EHRR 50.

118. *Liberty v UK* [2008] ECHR 568; [2009] 48 EHRR 1, [68]ff.

119. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, OJ L 281, 23 November 1995, 31-50.

120. Data Protection Act 1998, s1(1).

121. Data Protection Act 1998, Schedule 1, para 1.

Freedom from discrimination

62. A key principle of human rights law is that all persons are entitled to the same substantive protections, without discrimination on the basis of any of their personal characteristics. This requirement is set out in Article 14 of the ECHR as follows:

‘The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.’¹²²

63. The same principle is confirmed in Articles 2 of the ICCPR,¹²³ ICESCR,¹²⁴ and the CRC,¹²⁵ while Article 26 of the ICCPR goes further in prohibiting unjustified discrimination in respect of the government’s enforcement of *all laws*, not just laws governing specific rights.¹²⁶ (While the more expansive bar on discrimination is now reflected in the European system by Article 1 of Protocol 12 to the ECHR, the UK has not ratified that Protocol).
64. In addition, public authorities in the UK are subject to a specific statutory duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and to advance equality of opportunity between persons.¹²⁷
65. Importantly, discrimination is prohibited both in its *direct*, and *indirect* forms. As the UN Human Rights Committee has noted:

“[D]iscrimination” ... should be understood to imply any distinction ... based on any ground ... which has the purpose or effect of nullifying and impairing the recognition, enjoyment, or exercise by all persons, on an equal footing, of all rights and freedoms’ (emphasis added).¹²⁸

66. Where a measure has the purpose of treating persons belonging to one group in a less advantageous manner than others, then *direct* discrimination occurs. But when the effect of a rule which is neutral on its face is, as a matter of fact, exclusively or disproportionately negative for persons belonging to a particular group, that constitutes *indirect* discrimination, which is no less wrong.¹²⁹ Accordingly, when policy which, while purporting to apply to all persons, as a matter of fact affects Muslims almost exclusively, and certainly disproportionately, it will constitute unlawful indirect discrimination unless it satisfies the cumulative criteria of occurring according to law, serving a legitimate aim, and being necessary and proportionate.

122. ECHR, Article 14.

123. ICCPR, Article 2(1).

124. ICESCR, Article 2(2).

125. CRC, Article 2(1).

126. See the UN Human Rights Committee’s decision in *Broeks v The Netherlands*, UN Doc. A/42/40 at 139; and General Comment 18, UN Doc. HRI/GEN/1/Rev.9 (10 November 1989), [12].

127. Equality Act 2010, s149(1).

128. UN Human Rights Committee, General Comment 18, [7].

129. See UN Human Rights Committee, *Althammer v Austria*, UN Doc. CCPR/C/78/D/998/2001, [10.2]. Indirect discrimination is a principle well-recognized in human rights and equality law. See, for instance, the prohibition on indirect discrimination in section 19 of the Equality Act 2010 (UK), and the decision of the Committee on the Rights of Persons with Disabilities in *HM v Sweden*, UN Doc. CRPD/C/7/D/3/2011.

67. That said, to accommodate the provision of education by schools of religious foundation, certain aspects of discrimination in the sphere of education are, under the UK's Equality Act 2010, exempted from compliance with the principles of anti-discrimination (even where they are carried out by a public authority).¹³⁰ But the functions so exempted relate to matters such as the development of curriculum,¹³¹ acts of worship,¹³² and admissions,¹³³ and do not extend to matters relating to the treatment of students in class and/or their exclusion or removal from lessons.

Best interests of the child

68. In addition to enjoying the full protection of the universal human rights framework, children are due special protections as a result of the CRC. Article 3 of the CRC provides, *inter alia*, that:

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'¹³⁴

69. According to the UN Committee on the Rights of the Child, the authoritative body tasked with the interpretation of the CRC, contained within the broad concept of the '*best interests of the child*' are three concepts:¹³⁵

69.1. A substantive right for each child '*to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child;*'

69.2. An interpretative principle that, '*[i]f a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen;*' and

69.3. A rule of procedure to the effect that, '*[w]henver a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned.*'

70. With respect to the substantive aspect of the right, as the Committee has noted, the words '*shall be*' in Article 3(1) of the CRC '*place a strong legal obligation on States*' and the words '*primary consideration*' mean that the '*child's best interest may not be considered on the same level as all other considerations.*'¹³⁶ On the contrary, public authorities are obliged, in making decisions capable of affecting children, to afford the children's best interests '*high priority,*' rather than treat those interests merely as one of several considerations: '*a larger weight must be attached to what serves the child best.*'¹³⁷ At the domestic

130. See: Equality Act 2010, Schedule 3, para 11.

131. Equality Act 2010, Schedule 3, para 11(a).

132. Equality Act 2010, Schedule 3, para 11(c).

133. Equality Act 2010, Schedule 3, para 11(b).

134. CRC, Article 3(1).

135. Committee on the Rights of the Child, General Comment 14, UN Doc. CRC/C/GC/14 (29 May 2013), [6].

136. Committee on the Rights of the Child, General Comment 14, [36]-[37].

137. Committee on the Rights of the Child, General Comment 14, [39].

level, these concerns are reflected in family law, with section 1 of the Children Act 1989 stipulating that when a Court determines any question with respect to the upbringing of a child, or the administration of property or income due to a child, *'the child's welfare shall be the Court's paramount consideration.'*¹³⁸

71. The UN Committee on the Rights of the Child has further advised that the child's own views are central to the best-interests assessment, echoing the stand-alone right under Article 12 of the CRC for children to express their views in every decision which affects them.¹³⁹ That right entails an obligation on States to *'assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'*¹⁴⁰
72. As a result, from the procedural point of view, the Committee has advised that *'a vital element [of the best interests decision-making process] is communicating with children to facilitate meaningful child participation and identify their best interests,'*¹⁴¹ both in relation to decisions taken regarding individual children and decisions taken regarding children as a group. In the latter case, the Committee has urged government institutions to *'find ways to hear the views of a representative sample of children and give due consideration to their opinions when planning measures or making legislative decisions which directly or indirectly concern the group, in order to ensure that all categories of children are covered.'*¹⁴²
73. Accordingly, where the interests of individual children, or the interests of children as a group, are potentially affected, governments and public authorities are obliged, under the CRC, to take active steps to involve children in decision-making where possible, and in all cases to give particular weight to the best interests of the child in balancing the competing rights at issue. Given that the lawfulness of interferences with human rights involves (except where those rights are absolute) a balancing of competing interests, the effect of the best interests principle is that the actions of a government or public authority which restricts the human rights of children requires a more robust justification than would be the case in respect of restrictions on the human rights of adults. In a similar vein, UK family law also requires that Court interventions in children's autonomy be justified by demonstrable *'significant harm'* in the absence of such intervention.¹⁴³ Treating the child's best interests as a *'primary consideration'* demands nothing less.

138. Children Act 1989, s1(1)(a)-(b).

139. Committee on the Rights of the Child, General Comment 14, [53].

140. CRC, Article 12(1).

141. Committee on the Rights of the Child, General Comment 14, [89].

142. Committee on the Rights of the Child, General Comment 14, [91].

143. Children Act 1989, s31.

III. PREVENT AND PARLIAMENT

Lack of Oversight

74. Before dealing with individual case studies regarding interventions under the Prevent duty, however, it is important to consider the degree to which the very introduction of the Prevent strategy and the statutory duty under the 2015 Act complies with the government's own human rights obligations.
75. The government's counter-terrorism strategy, CONTEST, was first published in 2003, but the Prevent element was not developed into a published strategy until 2006, following the attacks in London of 7 July 2005, in which 52 people were killed and hundreds more injured. That first iteration of the Prevent strategy explicitly targeted Muslims, and funding was allocated to local authority projects in proportion to Muslim population densities. There was, at this stage, no Prevent duty placed upon public sector workers, and Prevent in this period focussed on capacity-building projects for members of the Muslim community, police-community engagement, and the production and dissemination of anti-terrorism communication materials.¹⁴⁴ From April 2007, the option for referral to a Channel programme existed, but the programme was initially classified and limited in scope to a small number of pilot areas.
76. Following significant criticism of Prevent within affected communities, the revelatory Institute of Race Relations report *Spooked! How Not To Prevent Violent Extremism* exposed the strategy to wider scrutiny among the non-Muslim population. In 2010/11, the new coalition government undertook the first major review of Prevent, overseen by the UK's then Independent Reviewer of Terrorism Legislation, Lord Carlile of Berriew QC.¹⁴⁵ The review found that the policy was wrong to explicitly target Muslims and recognized the concerns of members of Muslim communities that the Prevent strategy amounted to them being spied upon by the government en masse. The review also found that spending on projects had been directed to extremist organizations, allegations which had already been made in the press. The review concluded, however, that much of the Prevent strategy was sound, and that the fundamental basis – a concerted attempt to intervene early in individual cases and at the community level to stop persons becoming terrorists – was worthwhile. In fact, the review recommended the extension of the project from its initial focus on so-called Islamist extremism to all forms of extremism. Lord Carlile's review did *not*, however, advocate that public authorities or schools should be made subject to the Prevent duty as they would come to be.
77. Indeed, while the Prevent strategy was re-formulated in 2011 along the lines recommended by Lord Carlile, it was not until 2015 that key aspects of the strategy were codified and made compulsory by virtue of the duties and processes introduced in the 2015 Act, such as the enactment of the Prevent duty, the duty of co-operation with the CPP, the establishment of the Channel panels, and the dissemination of the statutory guidance setting out the indicators for public authorities, school staff, and Channel

144. For an overview of the eclectic mix of projects funded by various local authorities during this period, see: Arun Kundnani and Institute of Race Relations, *Spooked!*, 17-20.

145. Lord Carlile of Berriew QC, Report to the Home Secretary of the Independent Oversight of Prevent Review and Strategy (May 2011), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97977/lord-carlile-report.pdf

panels to take into account in considering referrals. But while the government described the 2015 Act as putting Prevent and Channel 'on a statutory footing',¹⁴⁶ certain features underpinning the strategy remain purely at the level of policy, and have never been subject to Parliamentary oversight (by the Joint Committee on Human Rights, the Commons, or the Lords). Those features include the definitions of 'extremism' and 'radicalisation,' the oversight mechanisms for the strategy, and the actual content of the statutory guidance.

78. Despite the current Independent Reviewer of Terrorism Legislation, David Anderson QC, suggesting the setting up of an independent board to review Prevent,¹⁴⁷ the 2015 Act does not formalize any such review process. As a matter of practice, the strategy is monitored by the non-statutory Prevent Oversight Board within the Home Office's OSCT.¹⁴⁸ The 2015 Act requires that relevant statutory guidance (for example, the guidance issued in relation to the Prevent duty in higher education institutions) be published,¹⁴⁹ but the content of the same was neither incorporated into the 2015 Act nor subject to Parliamentary approval.¹⁵⁰
79. Accordingly, while the Prevent strategy has been in place for a decade, only certain elements (and by no means the whole architecture) were subject to Parliamentary scrutiny ahead of the 2015 Act being adopted. The adequacy of the scope of scrutiny, and the adequacy of that scrutiny even where it occurred, require assessment from the point of view of the government's human rights obligations.
80. A fundamental procedural aspect of human rights protection in the UK resides in the duty upon the Minister in charge of a Bill to, before the Second Reading stage, and pursuant to section 19 of the 1998 Act, either 'make a statement to the effect that in his view the provisions of the Bill are compatible with the [ECHR]' or 'make a statement to the effect that although he is unable to [make such a statement] the government nevertheless wishes the House to proceed with the Bill.'¹⁵¹ The objective of this procedure is to ensure that the human rights implications of proposed legislation are explicitly considered within government prior to their being enacted, and that the government makes explicit its position as to the human rights compliance of all legislation. As a matter of practice, at the committee stage, the relevant government department also typically makes a submission to the relevant committee (frequently the Joint Committee on Human Rights) setting out the government's reasoning as to its conclusion on a Bill's compatibility or otherwise.
81. But where fundamental aspects of the Prevent strategy and Channel programme have never been incorporated into primary legislation, this important step has been avoided. Just as important, insofar as the aspects of the Prevent strategy and Channel programme contained within the 2015 Act were subject to pre-legislative scrutiny within government and in Parliament, a troubling lack of consideration was given to the application of the strategy within schools and its potential effect on staff and students.

146. See the statements to this effect in the Commons Second Reading Speech of the Home Secretary (Hansard, House of Commons, 2 December 2014, Col 216 [Rt Hon Theresa May MP]) and the Lords Second Reading Speech of the Minister of State in the Lords (Hansard, House of Lords, 13 January 2015, Col 662 [Rt Hon the Lord Bates]).

147. See his oral evidence to the Joint Committee on Human Rights: Legislative Scrutiny: Counter-Terrorism and Security Bill, Fifth Report of Session 2014-15 ('JCHR Legislative Scrutiny Report'), Oral Evidence of 26 November 2014, Q23, p17.

148. See: Prevent Strategy, [11.8]-[11.9].

149. Counter-Terrorism and Security Act 2015, s29(9).

150. As observed by Neville Harris, 'Academic Freedom: New Conflict,' [2015] 16(1) *Education Law Journal* 3, and by the JCHR Legislative Scrutiny Report, [6.3].

151. Human Rights Act 1998, s19(1).

The Home Secretary, upon introducing the Bill which would become the 2015 Act, made a statement that the provisions were compatible with the ECHR,¹⁵² and the Home Office provided a memorandum to the JCHR purporting to address the ECHR implications.¹⁵³ But the discussion of the implications of the Prevent strategy in that memorandum is very limited indeed: the two paragraphs which deal with it consider only the potential Article 8 privacy impact of the duty of authorities to co-operate in providing information to CPPs and Channel panels about referred individuals.¹⁵⁴ There is no consideration of the impact on other rights relevant to the operation of Prevent or Channel in educational settings (such as the rights of free expression or freedom of thought), no discussion of the potential for Prevent, like all counter-terrorism powers, to have a differential impact on the rights of Muslims (to freedom of religion and freedom from discrimination), and no acknowledgment that special considerations might apply with respect to educational settings involving children.¹⁵⁵

82. The Parliamentary Library Research Paper on the Bill, produced to inform Parliament's discussions, went wider, at least noting that the Prevent strategy in its pre-2015 Act form had provoked controversy in respect of its impact on freedom of expression on university campuses, and recognising that some consideration would need to be given to the impact on freedom of expression.¹⁵⁶ But despite making reference to the Prime Minister's statement in the House of Commons confirming that the Bill would create a legal obligation for institutions *including schools* (the obligation which became the statutory Prevent duty),¹⁵⁷ the Research Paper afforded no space to considering any particular impacts of the proposal on school children or school staff, and whether their interests might differ from those at the university level.
83. One of the submissions to the Joint Committee on Human Rights during its consideration of the Bill did note the potential for the Channel programme to extend to school-aged and nursery children,¹⁵⁸ and did set out criticisms of the Prevent and Channel aspects of the Bill in terms of compliance with the right to privacy, freedom of expression, freedom of thought, and prohibition of discrimination.¹⁵⁹ But the Joint Committee on Human Rights report on the Bill included no recommendations other than a recommendation that the Prevent duty *not* be applied to universities, on freedom of expression grounds alone.¹⁶⁰ That recommendation was not adopted by the government.¹⁶¹ The same – limited – objection was raised in the Commons¹⁶² and the Lords,¹⁶³ with the government's compromise being to retain the provision extending the Prevent duty to universities, but to add¹⁶⁴ an additional provision in the 2015 Act to the effect that, when carrying out its Prevent duty, a provider of higher or further education must '*have particular regard to the duty to ensure freedom of speech*'¹⁶⁵ and '*must have particular regard to the importance of academic freedom*.'¹⁶⁶

152. Available at: <http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0127/15127.pdf>.

153. Home Office, Counter Terrorism and Security Bill: European Convention on Human Rights Memorandum ('Home Office ECHR Memo'), available at: http://www.parliament.uk/documents/joint-committees/human-rights/ECHR_Memo_Counter_terrorism_Bill.pdf.

154. Home Office Memo, [61]-[62].

155. Strictly speaking, of course, children's rights under the CRC lie outwith the scope of a considering compliance with the ECHR.

156. Parliamentary Library, Research Paper 14/63: Counter-Terrorism and Security Bill (27 November 2014) ('Library Research Paper'), [7.4]-[7.6].

157. Hansard, House of Commons, 25 November 2014, Col 749 (Rt Hon David Cameron MP).

158. Center for Democracy and Technology, 'Failure of "Support" Provisions of Draft Counter-Terrorism and Security Bill to Comply with Fundamental Human Rights and Democratic Principles,' 12 January 2015 ('CDT Submission'), [15], citing Liberty, 'Liberty's Second Reading Briefing on the Counter-Terrorism and Security Bill in the House of Commons' (December 2014).

159. CDT Submission, [24]-[36].

160. JCHR Legislative Scrutiny Report, [6.8]-[6.13].

161. See the letter of the Immigration and Security Minister, James Brokenshire MP, to the JCHR, dated 20 January 2015, available at: http://www.parliament.uk/documents/joint-committees/human-rights/Letter_from_James_Brokenshire_MP_200115.pdf

162. See Parliamentary Library, Standard Note SN/HA 07073: Counter-Terrorism and Security Bill 2014-15 – Parliamentary Stages (10 February 2015) ('Library Standard Note'), pp12-13.

163. Library Standard Note, pp27-28.

164. See Library Standard Note, p32.

165. Counter-Terrorism and Security Act 2015, s31(2)(a). The duty to ensure freedom of speech is explicitly set out in section 43 of the Education Act (No 2) 1986.

166. Counter-Terrorism and Security Act 2015, s31(2)(b). The description of academic freedom is set out in section 202 of the Education Reform Act 1988.

84. Concerns other than freedom of expression in the higher education context merited no treatment in the passage of the relevant parts of the 2015 Act. In particular, the relevance of the strategy to nursery, primary, and secondary education went entirely unremarked upon throughout the process in Parliament and, needless to say, the potential effect on children was neither explained to, nor discussed with, schoolchildren or their parents. Thus, contrary to the obligations imposed by the CRC, the best interests of children were not afforded any explicit consideration, let alone primary importance as required. Unlike in the higher education/further education sector, where dedicated statutory guidance has been developed, there is no such dedicated statutory guidance for schools and childcare operators. Such guidance as exists is relegated to passing mention in the general Prevent duty guidance. And that general guidance does not purport to weigh up the impact of the programme on children and their best interests. Nor can Prevent or Channel be characterized as merely an extension of existing child safeguarding responsibilities and thus somehow automatically in keeping with the best interests of children. As Dr Stephanie Petrie, legal academic and social worker, has pointed out:

‘There is now a substantial body of knowledge about the nature and causes of child abuse and how it may be prevented. None of this knowledge is evident in Channel guidance and it is misleading to imply that what is primarily a surveillance operation is intended to protect young people from harm.’¹⁶⁷

167. Stephanie Petrie, ‘How UK Anti-Terror Guidance Could Violate Children’s Human Rights,’ The Conversation (22 July 2015), available at: <https://theconversation.com/how-uk-anti-terror-guidance-could-violate-childrens-human-rights-45013>

IV. RIGHTS VIOLATIONS AND PREVENT: CASE STUDIES

85. This section of the report provides the most comprehensive picture of the Prevent duty in action in schools in the period following its introduction on 1 July 2015. Drawing on dozens of original interviews conducted in 2016 with teachers, students, parents, local authority representatives, and police, this report identifies a number of case studies which demonstrate the human rights impacts of the Prevent strategy and its Channel programme in schools in the UK.

The T-shirt case

86. RW(UK) interviewed the mother of an 8 year-old boy in east London referred to social services, apparently pursuant to the school's understanding of its Prevent duty. Two incidents were notified by the school. The first related to a T-shirt he wore to school which bore the words 'I want to be like Abu Bakr al-Siddique' (i.e. Abu Bakr the Truthful), a reference to the major Islamic figure Abu Bakr, popularly considered one of the first converts to Islam, and, according to the Sunni tradition, the first Caliph of the faith after the death of the Prophet Muhammad. In terms of significance, Abu Bakr might be considered to be analogous to, in the Christian faith, St Peter.

87. The second notified incident occurred when the boy noticed some girls in his class wearing nail polish, and told them that his father had a '*secret job*' selling nail polish. The mother understands that the notion of a '*secret job*' was the point reported by the school. The child has subsequently explained to his mother that he was referring to the fact that his father sells nail polish on eBay, something his father never publicized (which the child had interpreted as secrecy).

88. When the mother of this child was contacted by her local authority social services team in February 2016, she was informed by the social services representative that they wished to discuss the incidents with the child, and the mother recalls the word '*deradicalisation*' being used. At the subsequent interview, the child was questioned – with his parents kept out of the room – about the meaning of the T-shirt, and whether it had any reference to ISIL/Daesh. This line of questioning was presumably on the basis of a misreading of the name on the T-shirt as referring to Abu Bakr al-Baghdadi, the leader of ISIL/Daesh. Not surprisingly, the 8 year-old child being questioned knew nothing about ISIL/Daesh or its leader. The child was also asked questions about his religious beliefs, including whether Muslims or Christians go to hell after they die, and questions about what he liked to watch on TV. The mother recalls being informed later by social services that they had recorded a form of caution against her son, but she remains uncertain as to what the status of this caution is, and what its effects on her son might be in the future.

89. Follow-up communications with the child's school and with the local authority's social services team revealed an apparent confusion as to whether the school was acting in keeping with the Prevent strategy or not. The mother recalls that the child's head teacher talked in terms of a '*referral*' to social services, and that, in the initial social services telephone call, the word '*deradicalisation*' was used. But subsequently the head of social services has told the mother that the Prevent strategy does not govern the child's situation (which would seem to accord with why the formal Prevent process of referral to the CPP does not appear to have occurred).

90. Schools, now subject to the Prevent duty, are understandably anxious to both comply with their legal obligations, and be seen to be doing so. But where schools seek the intervention of social services for ‘*deradicalisation*’ on the basis of incomplete information, where they fail to take straightforward steps to enquire into the basis for a staff member’s impression of an event, those schools act in an irrational manner. Whether or not the referral by the school was formally dealt with through the CPP and Channel panel apparatus is beside the point with respect to the impact on the child and the family. That said, given that the referral appears to have been grounded in a mistaken assumption of ISIL/Daesh sympathies, and deradicalization proposed, it appears very likely that operational staff assumed that the Prevent strategy was engaged.
91. Thus powers were exercised, purportedly to give effect to the Prevent duty, subjecting a child to questioning, on his own and without his mother present, on an entirely spurious basis. The effect of the questioning on this child was predictable: his mother reports that her formerly confident son has become increasingly reserved and reluctant to speak up at school. That the boy’s school and subsequently social services subjected him to separation and questioning as a direct result of things he had apparently expressed by words and clothing¹⁶⁸ comprises a *prima facie* restriction on his right to freedom of expression, contrary to Article 10 ECHR, Article 19 of the ICCPR, and Article 13 of the CRC. More significant than the discrete reaction to the specific incidents, however, it is clear that the child now feels impeded in expressing himself at school: this is the paradigmatic ‘*chilling effect*’ on future expression, stymying the child’s opportunity to share and receive information.
92. Such an interference with rights could, in theory, be lawful so long as it was ‘*prescribed by law*’ in the sense of constituting the non-arbitrary application of a clear legal provision, occurred in service of a legitimate aim, and was proportionate. But the circumstances of this interference suggest nothing of the sort. Far from the application of clear legal provisions, it appears that members of school and social services staff were not clear as to what programme governed the referral and questioning of the child. In circumstances where the public authorities responsible are uncertain as to the scope and nature of their powers, the objects of those powers – children and teachers – cannot possibly enjoy the certainty which would allow them properly to carry out their lives in knowledge of the likely consequences of doing so. That ability to plan and predict the consequences of actions is the essence of legal certainty: and the confusion governing the application of the Prevent duty in schools such as the school in this case study denies that to children and parents.
93. Turning to justification, presumably school and social services decision-makers elected to question the child on the flawed assumptions that his T-shirt referred to Abu Bakr al-Baghdadi and that his father’s ‘*secret job*’ was a cause for suspicion. Neither was correct. But what is more important is that neither was even a reasonable position for the school or social services personnel to hold. It may well be that those decision-makers were ignorant of the identity of such a major figure in Islamic and world history as Abu Bakr al-Siddique. That, of course, calls into question the adequacy of training and awareness of decision-makers tasked with identifying ‘*radicalisation*’ among, *inter alia*, Muslim communities, training which one might hope would entail at least a modicum of knowledge of Islam. But even assuming such ignorance, there was nothing legitimate to suggest a link between the name on the T-shirt and the name of a prominent terrorist. The only inference available is that school and social services staff drew the inappropriate conclusion that an Arabic name was suspicious in and of itself. That inference is irrational, with the result that any action taken pursuant to it cannot properly be described as action in service of a legitimate aim.

168. UN Human Rights Committee, General Comment 34, [12].

94. The same applies in respect of action taken on the basis of an inference as to the nature of what the child described as his father's 'secret job.' It is difficult to see how that phrase could reasonably raise a concern as to the child's vulnerability to terrorism (assuming the decision-makers considered that the Prevent duty applied) or indeed any other safeguarding concern (if they were not acting pursuant to Prevent). As a result, action taken on that inference cannot constitute action properly in service of any such Prevent-related or general safeguarding duty, and so cannot properly satisfy the requirements that interferences with human rights must actually serve legitimate aims if they are to be lawful.
95. Further, the public authority action of separating the child from his parents and questioning him about ISIL appears to violate the general principle under Article 3 of the CRC that all action taken with respect to a child must take the best interests of the child as a primary consideration. While the precise reasoning of the school and the social services personnel are unknown, it is difficult to see how questioning of the child alone in this instance could have been thought to serve his interests better than having the support of a parent. Certainly, those responsible for the decision did not ask the child whether he wished to have a parent present, a matter on which a 8 year-old would clearly be capable of expressing a preference. Accordingly, it appears that the approach taken to this child violated both the substantive and the procedural aspects of the CRC best interests rule, as well as the specific requirement under Article 12 of the CRC that children be given the opportunity to express their views in relation to every decision which affects them.
96. In addition to the action directly taken with respect to the child in this case, a second aspect of the case raises serious concerns. The statement to the child's mother that the local authority's social services team retains some form of 'caution' or other record of the matter engages the right to privacy under Article 8 ECHR, Article 17 of the ICCPR, and Article 16 of the CRC. As is clear under European Court of Human Rights jurisprudence, the collection and storage of data capable of affecting the child's reputation is, *prima facie*, an interference with his private life.¹⁶⁹ Further, under the DPA, collection and storage of data without notice as to collection and transparency as to the purposes to which that data may be put, violates the data protection principle of fair processing.¹⁷⁰
97. While Article 8 does not prohibit the record-keeping or dissemination of information relating to criminal convictions, the European Court of Human Rights has made it clear that the keeping and revealing of unproven charges against a person will constitute an interference.¹⁷¹ That applies a *fortiori* to circumstances such as those in the present case, where the matter apparently recorded against the child does not even achieve the formal level of an unproven charge. Since, as discussed above, insofar as there is anything to record against the name of the child, it amounts to questioning, in breach of human rights, on an incorrect and spurious basis. In the circumstances, an interference with rights through a public authority's keeping of a record of such an incident cannot be justified, and so cannot be lawful.
98. Despite this, however, there is no apparatus within the Prevent strategy which offers a remedy for unlawful actions, or unjustified referrals. Human rights law requires that, where there is a breach, victims have access to a remedy.¹⁷² Of course, in theory, a person affected may commence litigation in

169. See, for instance, *Leander v Sweden* [1987] ECHR 4; [1987] 9 EHRR 433, [48]; *Amann v Switzerland* [2000] ECHR 88; [2000] 30 EHRR 843, [69] & [80]; and *Rotaru v Romania* [2000] ECHR 192; [2000] 8 BHRC 449, [46].

170. Data Protection Act 1998, Schedule 1, para 1.

171. *Kyriakides v Cyprus* [2008] ECHR 1087, [52].

172. See, for instance, ECHR, Article 13: 'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.'

respect of violations of human rights protected in domestic law (such as the ECHR rights incorporated into English law by the 1998 Act, or the privacy rights protected under the DPA). But the likelihood of children availing themselves of such a remedy is minimal, and renders victims of inappropriate actions taken pursuant to Prevent with little practical recourse. Accordingly, while strictly speaking there may be no violation of the right to a remedy, the design and practical operation of the Prevent policy hardly facilitates effective human rights protection.

Rahmaan's case

99. RW(UK) interviewed a 17 year-old north London boy named Rahmaan, who, when in year ten, expressed his solidarity with people in the occupied Palestinian territories by wearing a Palestine badge, wearing a Palestine scarf, and handing out leaflets at school highlighting the humanitarian emergency and water shortages in Gaza. Teachers directed him to take off his badge and scarf, asserting that wearing them was contrary to the school's uniform policy. His leaflets were confiscated as well, and he was questioned by a member of school staff who was described as a '*special constable*' responsible for Prevent within the school. While neither Rahmaan nor his parents were notified, it appears that his school made a referral under the Prevent strategy, because in summer 2015 two police officers visited Rahmaan at home to question him on his views regarding Palestine, Israel, and the Middle East. They told Rahmaan they were there '*because of what you have done in school.*'



Rahmaan Mohammadi
Sixth form student

100. Rahmaan was also asked about his religious beliefs and whether he was a Sunni or Shia Muslim. When he answered that he was a Shia, the police officers replied that they were '*only looking for certain types of Muslims,*' and his questioning was brought to a close relatively quickly. Rahmaan noticed that the police officers had with them a substantial file – apparently relating to him – to which they referred during the questioning. Rahmaan recalls the officers telling him that the file would be kept for the rest of his life, and that while it '*is not active,*' if he did '*anything similar then it will be brought up again.*'

101. While Rahmaan was being questioned, he attempted to translate what was happening for the benefit of his mother (who does not speak English well). But Rahmaan was asked by the police questioning him to stop doing so, and told that he ought not to speak in a language that they could not understand. As a starting point, it is difficult to see how the best interests of a child are respected when the child's parent is kept in the dark as to the content of questions put to their child.

102. Further, the questioning by school staff and police in response to Rahmaan's clothing and distribution of pamphlets¹⁷³ is a clear *prima facie* violation of his right to freedom of expression, contrary to Article 10 ECHR, Article 19 of the ICCPR, and Article 13 of the CRC. Rahmaan sums up the potential 'chilling effect' on valid political expression (and the danger of closing off options for legitimate debate that expression promotes) by referring to a friend of his who went through a similar experience. According to Rahmaan, his friend:

'has completely withdrawn from politics. He turned from, [someone] in year 10... [who] was a very proud Palestinian supporter, [someone who would] always go out on rallies and demos and always hand out pamphlets, and now, because of Prevent, he...[has become] really quiet and submissive and withdrawn from society. And if you look at all those people that have gone to ISIS, it's because they have been withdrawn from society that they found these different societies on the Internet.'

*'So I guess if two massive police officers come to your house and shout at you in front of your parents ... if you're brought to a special constable, if you're brought to the Principal and they question you and tell you not to talk about Palestine you are going to turn toward radicalisation more. So I guess Prevent can be extremely counterproductive rather than being productive. Prevent can have the opposite effect.'*¹⁷⁴

*'It results in alienating them, and it leads people underground or online, or because they cannot talk [about] stuff freely. [Instead] you're looking stuff up on the Internet, where most radicalization takes place.'*¹⁷⁵

103. London Assembly Member and Islington Councillor, Caroline Russell shares these concerns. Interviewed recently by RW(UK), Cllr Russell noted that *'when dialogue gets pushed underground, and people look at extremist ideas on the Internet where things don't get debated ... it's more difficult to get those views challenged.'*¹⁷⁶

104. Children are, understandably, sensitive to their rights being interfered with, and the response of withdrawal from ordinary society at school, and recourse to unsupervised and potentially dangerous discussion circles online in reaction to such interference cannot be ignored. The link between the chilling of legitimate expression and the counter-productive promotion of extremism as a response was also noted by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association following his recent follow-up visit to the UK:

173. UN Human Rights Committee, *Shchetoko v Belarus*, UN Doc. CCPR/C/87/D/1009/2001 (2006).

174. RW(UK) interview, 24 May 2016.

175. RW(UK) Interview, 24 May 2016.

176. RW(UK) Interview, 26 May 2016.

'[The] lack of definitional clarity, combined with the encouragement of people to report suspicious activity, have created unease and uncertainty around what can legitimately be discussed in public. I heard reports of teachers being reported for innocuous comments in class, for example. The spectre of Big Brother is so large, in fact, that I was informed that some families are afraid of even discussing the negative effects of terrorism in their own homes, fearing that their children would talk about it at school and have their intentions misconstrued.'

*'It appears that Prevent is having the opposite of its intended effect: by dividing, stigmatizing and alienating segments of the population, Prevent could end up promoting extremism, rather than countering it.'*¹⁷⁷

105. And that chilling effect on discussion has been broadly observed by many in the field of education: at the NUT annual conference, the General Secretary, Christine Blower, noted that, after the Charlie Hebdo attack 'some students, particularly some Muslim students, said they felt if they expressed that they were offended by the cartoons, they would be labelled as extremist. The idea that people themselves are shutting this down means that they are locked out of the discussion.'¹⁷⁸ Rob Faure Walker, a teacher in East London interviewed by RW(UK), recalls that 'as the awareness of Prevent increased and specifically when it became a duty in school [political] discussion and that debate ceased suddenly with all of the Muslim students that I teach. And I believe that this was a direct impact of the fear that they might be reported to the security services as is now the duty of teachers.'¹⁷⁹



Rob Faure Walker
Teacher and Academic

106. Further, as a current Religious Education teacher interviewed (on condition of anonymity) by RW(UK) noted, the chilling effect has an impact on teachers as much as on students, restricting teachers' rights to freedom of expression, and students' right to receive information and right to education (under Article 2 of the First Protocol, Article 13 ICESCR, and Articles 28 and 29 of the CRC):

177. Statement by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association at the Conclusion of his Visit to the United Kingdom, 21 April 2016.

178. Hannah Richardson, 'Teachers "Fear Extremism Debates in Class"', BBC News (6 April 2015), available at: <http://www.bbc.co.uk/news/education-32162012>

179. RW(UK) Interview, 19 May 2016.

*'As a Muslim in this role I avoid certain conversations with children, I personally feel paranoid about some of the things I have to teach. When I was head of RE, one or two years ago, one of the teachers taught about the Iranian revolution and the Taliban in Afghanistan. I didn't feel free to research the issues because I felt my research would be scrutinized, as a Muslim teacher they would question if I'm biased. I don't think as a Muslim I can research about ISIS or what's going on, if someone knew I googled a specific subject, it'd be taken in the wrong way. It's made me more paranoid.'*¹⁸⁰

107. Forcing teachers to censor themselves before they can raise issues in classroom discussion stymies education and harms their ability to mould thoughtful, rather than vulnerable, young minds. As Kevin Courtney, the Deputy Secretary of the National Union of Teachers, noted in a recent interview with RW(UK), *'the best role teachers play is by encouraging discussions ... Prevent isn't doing a good job at keeping children safe because it is not allowing an open discussion, which is crucial for development.'*¹⁸¹
108. With respect to the question of whether interferences in this instance could be justified and lawful, as with the entire apparatus of Prevent, which is shot through with a troubling degree of discretionary power, Rahmaan's case demonstrates how unpredictable and arbitrary the interferences with children's lives can be. Rahmaan recalls that the response to his badge and scarf was explicitly stated by school staff to be due to the Palestinian subject matter: as Rahmaan pointed out to school staff at the time, a poppy badge or a Manchester United scarf would have been allowed.
109. Indeed, one suspects that there was more than simple arbitrariness at work. The response to signs of support for Palestine – a majority Muslim people, coupled with the police officers' candid admissions that they were predominantly interested in only *'certain types of Muslims'* unlike Shias such as Rahmaan, suggests that interventions may be targeted at Sunni Muslim students in particular. There is no principled basis for such a scope: indeed, one of the key aspects of the revision of the Prevent strategy in 2011 was purportedly to broaden the scope of the programme to embrace *all* extremism rather than merely types of Islamist extremism.¹⁸²
110. The suggestion that action taken under Prevent is targeted at Muslim students appears consistent with such figures as are available regarding referrals. The most recent statistics on Prevent referrals which note the religion of the referred individuals relate to the 2012-2013 year (despite requests for updated figures under the Freedom of Information Act 2010). The 2012-2013 figures, provided by the Association of Chief Police Officers, indicate that in that year 57.4% of all referrals were Muslim, as against other groups of 26.7% of unknown religion, 9.2% Christian, and no other religion having more than 0.5% representation. While no data on religion is available for referrals between 2011 and 2012, between its launch in April 2007 and December 2010, the percentage of individuals referred recorded as Muslim was 67%, with 26% of no recorded religion, and all other religions accounting for 7%.¹⁸³ That disproportionate incidence of Muslim referrals (Muslims making up 4.8% of the UK population in the most recent Census data),¹⁸⁴ raises an inference that not only is the Prevent duty being given effect to in an arbitrary and selective manner, but that that selectivity is on the discriminatory basis of the referred individuals' religious identity (or perceived religious identity), contrary to Articles 1 and 14 ECHR, Article 2 and 26 of the ICCPR, Article 2(2) ICESCR, and Article 2 of the CRC.

180. RW(UK) Interview, 19 May 2016.

181. RW(UK) Interview, 10 June 2016.

182. See Prevent Strategy, [6.8]-[6.12].

183. See Association of Chief Police Officers, Freedom of Information Request Reference Number: 000117/13, undated, available at: <http://site.np-cccms.coraider.com/documents/FoI%20publication/Disclosure%20Logs/Terrorism%20&%20Allied%20Matters%20FOI/2013/117%2013%20ACP0%20Response%20-%20Channel%20Project%20Referrals.pdf>

184. See: Office of National Statistics, Religion in England and Wales 2011, available at: <http://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/religioninenglandandwales2011/2012-12-11>

111. In addition to the act of being separated and questioned by school staff and police violating the right of freedom of expression, the content of the questioning of Rahmaan appears to contravene his right to freedom of religion, contrary to Article 9 ECHR, Article 18 of the ICCPR, and Article 14 of the CRC. As is clear from the structure of Article 14 of the CRC, which provides at Article 14(3) that the child's freedom to *manifest* their religion may be subject to certain restrictions subject to criteria of lawfulness, the child's freedom of thought, conscience, and religion within the internal sphere cannot be subject to restriction. Accordingly, a child may never be forced to reveal his or her thoughts, confirming the position under Article 18 of the ICCPR.¹⁸⁵ In keeping with the protection of the *forum internum*, the UN Committee on the Rights of the Child has interpreted Article 14 as including '*the freedom to choose and change one's religion.*'¹⁸⁶
112. Rahmaan, however, was required by police officers to reveal his religious convictions under questioning. Not only that, Rahmaan, or children like him, could well feel pressure, so as to avoid or prevent questioning, to deny their religious convictions if they felt revealing them would promote further questioning. Indeed, when interviewed by RW(UK), Rahmaan advised other students: '*if anyone does have a meeting with the Prevent officers, just say that you are a Shia Muslim and then most will probably write you off and say that you are definitely not a terrorist or radical at all.*'¹⁸⁷ Cllr Caroline Russell has recounted anecdotal constituent evidence of Muslim children not wanting to admit their religion in Religious Education lessons.¹⁸⁸ Placing children in a position where their choices are to reveal their religious convictions, or to dissemble about them, is an unjustifiable incursion into the internal space of thought, conscience, and belief, protected as a matter of human rights law and out of the bounds of any government programme.
113. Further, quite apart from the actions of the school and the questions asked by the police officers, it is clear that, in Rahmaan's case, information was gathered on him (presumably by the CPP, and potentially constituting a formal Screening and Information Gathering stage relying on the duty under section 38 of the 2015 Act on Channel partners to co-operate with police requests for information). That a file of information had been obtained and provided to the police officers is troubling in circumstances where neither Rahmaan nor his parents were aware, before Rahmaan's being questioned, of the fact of such information gathering taking place, or the contents of the disclosure. In addition, neither Rahmaan nor his parents gave consent to such disclosure of Rahmaan's data. And, despite Rahmaan expressing concern, during the police questioning, as to whether the file would affect his future employment prospects, the police indicated that the file would be retained by the authorities in some form..
114. This collection, collation, and retention of data without Rahmaan's consent is a clear *prima facie* interference with his right to privacy. That the collection of data was not notified to Rahmaan, and the uses to which it may be put never explained, means that the DPA principle of fair processing has also been undermined in this instance.¹⁸⁹ To constitute a justified interference with Rahmaan's rights, the collection and retention of his personal data would need to comply with the criteria of being '*prescribed by law,*' be in service of a legitimate aim, and be proportionate. But, as a result of the fact that the 2015 Act only gave legislative effect to select parts of the Prevent strategy, the statutory basis of the power to retain (apparently indefinitely) files of information on individual children referred under Prevent is unclear.

185. UN Human Rights Committee, General Comment 22, [3].

186. UN Committee on the Rights of the Child, Summary Record of the 317th Meeting: Morocco, UN Doc. CRC/C/SR.317 (1996), [51] and [60]. See also, UN Human Rights Committee, General Comment 22, [5].

187. RW(UK) Interview, 24 May 2016.

188. RW(UK) Interview, 26 May 2016.

189. Data Protection Act 1998, Schedule 1, para 1.

115. Where personal information is collected in secret, the European Court of Human Rights has made clear that the very least that is required is that there be detailed provision governing who may consult the files, the nature of the files, the procedures that must be followed, and the use to which the information may be put.¹⁹⁰ The UN Human Rights Committee has similarly advised that lawful gathering and storage of personal data requires that *'every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored ... and for what purposes.'*¹⁹¹ In the case of Prevent, no guidance is available as to how and for what purposes data collected is or may be deployed, rendering the invasions of privacy the strategy allows unlawful.

The 'eco-terrorism' case

116. While Rahmaan expressed political opinions, the Prevent duty has seen schools making referrals in respect of students who have expressed no opinion at all, and done nothing more than refer to certain words or concepts. This occurred in the case of a 14 year-old student in North London, who was removed last year from his French lesson by an adult he did not know and had not seen before, and questioned about whether or not he was affiliated with ISIL/Daesh. The child's mother, Ifhat Smith, recently told RW(UK) that the first she had learned of the questioning was when her son returned from school visibly distressed following the questioning.¹⁹² When she rang the school to ask why her son had been questioned like that, the mother learned that her son's French teacher had removed the child from class and referred him for questioning. The child had, in a class discussion about deforestation, used the term *'l'écoterrorisme'* to describe some anti-logging activists' tactics. The child had learned about counter-terrorism in the school debating society, and was trying to contribute what he had recently learnt.



Ifhat Smith
Mother of secondary school
student

190. *Rotaru v Romania*, [57]ff.

191. UN Human Rights Committee, General Comment 16, [10].

192. RW(UK) Interview, 26 May 2016.

117. Just as in Rahmann's case, the impact on the child's rights to education (contrary to Article 2 of the First Protocol, Article 13 ICESCR, and Articles 28 and 29 of the CRC) and freedom of expression (contrary to Article 10 ECHR, Article 19 of the ICCPR, and Article 13 of the CRC), is clear, as is the disregard for his interests in subjecting him to intimidating questioning alone and without his parents having been notified and present. As the mother noted, under the school's own child protection policy, parents are routinely notified if children are to be taken out of lessons and asked any questions about concerning behaviour. But, as RW(UK) has consistently found, long-standing school protocols are disregarded in the attempt to comply with the perceived obligations imposed by the Prevent duty.
118. And, just as in Rahmaan's case, it is hard to avoid the inference that this child's referral was based in part on unstated conclusions drawn because he was a Muslim. Even leaving aside the context in which the reference to eco-terrorism was made, nothing about eco-terrorism suggests affiliation with or support for ISIL/Daesh. (indeed, given ISIL/Daesh's gratuitous destruction of natural and cultural heritage,¹⁹³ nothing could be further from the truth). But this child was asked about ISIL/Daesh, which strongly suggests that some factor other than his reference to eco-terrorism was in the mind of those questioning him. It is hard not to concur with what another non-Muslim friend said of the incident: *'I bet they would not have taken me.'* If decision-making at the school makes for different treatment of Muslims as against other students, that constitutes clear discrimination under Articles 1 and 14 ECHR, Article 2 and 26 of the ICCPR, Article 2(2) ICESCR, and Article 2 of the CRC.

The library book case

119. The case of a 16 year-old student in Hampshire with special needs who was referred to Prevent after borrowing a book on terrorism from the school library has already gained some publicity.¹⁹⁴ Interviewed recently by RW(UK), the child's mother captured the absurdity of a student being identified as vulnerable to becoming a terrorist by virtue of merely being a student:

'If a child isn't allowed to take a book out of a library and read it, what do they have it for? If that book is in a library any student can go and read it, then if he can't read it, who is allowed to read it?'¹⁹⁵

120. Most obviously, the decision by the school to fix adverse consequences (a referral under Prevent) to the act of borrowing a book which was generally available (and thus presumptively appropriate) for instruction and study in the school infringes the student's right to *receive* information (contrary to Article 10 ECHR, Article 19 of the ICCPR, and Article 13 of the CRC) and his right to *education* in the most basic sense (contrary to Article 2 of the First Protocol, Article 13 ICESCR, and Articles 28 and 29 of the CRC). Applying Lord Bingham's test in *A v Head Teacher and Governors of Lord Grey School*,¹⁹⁶ the authorities have, by imposing an adverse consequence for borrowing this book, denied the student effective access to the educational facilities provided for students such as him and have, as a result, breached his right to

193. Condemned unanimously by the UN Security Council in Resolution 2249/2015, UN Doc. S/RES/2249 (2015).

194. See: Prevent Watch, School Library Book, available at: <http://www.preventwatch.org/incident-school-library-book/>

195. RW(UK) Interview, 2 June 2016.

196. *A v Head Teacher and Governors of Lord Grey School*, [24] [Lord Bingham].

education. Research on the subject matter of terrorism *per se* cannot be excluded from education for the self-evident reason that, as an issue of significant political and social import in the modern world, it forms part of any child's proper understanding of the world, in keeping with the objective that education 'shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.'¹⁹⁷

121. In recognition of the importance of ensuring that education covers the appropriate scope of content, the UN Committee on Economic, Social, and Cultural Rights has, in its reports on State compliance, noted with concern situations in which curricula are unbalanced¹⁹⁸ or textbooks are biased.¹⁹⁹ A situation such as this case, in which a school attaches adverse consequences to the study of some topics available in the library (but not others), offends the same principles of balance and even-handedness in education, and similarly jeopardizes the achievement of education which enables the students properly to participate in society in knowledge of the full width of important subject matter. Given the formative importance of education in a child's development,²⁰⁰ an effective restriction on access to learning such as in the present case also violates the principle of affording a child's best interests primary importance, contrary to Article 3 of the CRC.

122. A further troubling aspect of this case, revealed in RW(UK)'s recent interview with the student's brother, is that, prior to the incident with the book, the family's other son had been pursued and pressured by Prevent officers (some apparently serving police officers, others apparently retired), to meet with them and provide information about himself and others. The pressure was constant. As the brother recalled:

'I got texts asking for meetings, early in the morning, at night ... they were trying to pressure me, to manipulate me so that I could work with them, [saying:] "If you know anyone, tell us, we'll pay you to inform."'²⁰¹

123. While the officers' attempts to 'recruit' the student's brother, who at that stage was 19, as an informant were ultimately unsuccessful, they continued to seek and record information about the family:

'They had also been texting my mum asking how I was, they took down my passport number, my facebook and twitter details, what mosque I went and they made a note of it all, they asked me how many countries I visited, when ... was the last time I went abroad.'²⁰²

124. Actions such as these demonstrate the wide scope for incursion in private and family life offered by the expansive Prevent powers. Coercion of students to become informants for State authorities infringes the personal autonomy which is protected as the core of the right to privacy under Article 8 ECHR, Article 17 of the ICCPR, and Article 16 of the CRC, as well as, of course, breaching the privacy of those who might be informed upon. If the touchstone for privacy is Warren's and Brandeis's '*right to be let alone*,' a situation where State authorities send text messages pressing students to assist in their enquiries is a clear violation.

125. The student Rahmaan also recalled pressure being placed on children to inform on their peers. He recounted that students were shown a 40 minute training video regarding signs to look out for in

197. ICESCR, Article 13(1). And see, to similar effect, CRC, Article 29(1)(a)-(b).

198. Committee on Economic, Social, and Cultural Rights, Concluding Observations: Georgia, UN Doc. E/C.12/1/Add.42 (17 May 2000), [19].

199. Committee on Economic, Social, and Cultural Rights, Concluding Observations: Japan, UN Doc. E/C.12/1/Add.67 (24 September 2001), [59].

200. UN Committee on the Rights of the Child, General Comment 14, [79].

201. RW(UK) Interview, 2 June 2016.

202. RW(UK) Interview, 2 June 2016.

friends.²⁰³ Placing children in a position of being asked to observe and potentially inform on their classmates cannot comply with the duty to consider their best interests under Article 3 of the CRC, as it threatens their friendships and social development. Further, considered from the point of view of proportionality, using vulnerable children to do the counter-terrorism detective work of the State cannot be the ‘*least intrusive instrument*’ to achieve any purported goal of safeguarding children, and so must be rejected as a breach of human rights.

Munadiah’s case

126. RW(UK) has recently interviewed a sixth form college student named Munadiah from east London, who has ambitions to study at a top university and work as a barrister. Munadiah’s story demonstrates the Prevent strategy’s pernicious effect on students even where those students have not themselves been subject to individual referral. Munadiah has recently changed colleges, and recalls that her former college, clearly in an attempt to promote the ‘*British values*’ that Prevent trumpets, invited a series of secular/ liberal Muslims (only) to speak to students. Munadiah, a high-achieving observant Muslim, recalled feeling patronized, and as though her religious beliefs were being criticized as never acceptable in the UK:

‘[A]s someone who is very firm in my beliefs and firm in my religious beliefs I felt quite undermined. I felt my intellect was undermined because we had...people telling us that “your version of Islam will take you off to Syria” and I completely disagreed with that ... For me I think that as individuals within our society everyone has different views, everyone has different opinions and different things, but what is so great about British society is that we respect each other and we appreciate each other’s differences and I felt at this point my difference wasn’t being appreciated.’²⁰⁴



Munadiah
Sixth form college student

203. RW(UK) Interview, 24 May 2016.

204. RW(UK) Interview, 20 May 2016.

127. Muniadiah described how the messages promoted by Prevent – that so-called ‘radical’ Islam is pitted against ‘British values’ – affected her so much that she withheld from contributing to discussions at school, adding to her anxieties as a final year student.

‘I go into college and 6th form and think okay I need to get this done, I need to revise for this, oh and make sure you don’t say something too extreme or someone might misunderstand what you are trying to say and report you to Prevent. That should not be a worry of mine and the thing is, for me, I like discussing controversial things, I like opening up dialogue. I believe in political correctness but I do not believe political correctness stops dialogue, it encourages it. And what I find is that when we do have very controversial discussions it is very, like, hush hush, don’t say something too loud or someone may misinterpret what you say and then...it disrupts our freedom of speech.’²⁰⁵

128. Like other students, she thinks that the fear of speaking out and discussing issues, which the anxiety about Prevent referrals engenders, has the power to be counter-productive:

‘If we are isolating individuals, if we isolate young Muslims what we are doing is only pushing them further. You say to me that you are no longer a part of the society ... where do I stand? That is the problem I think. I think Prevent started out with this intention of helping people but what it is doing is making our teachers and making people that we trust into spies. And it isolates us so much that we don’t know who to turn to. If that is the case then it is very dangerous ... [Students] may feel that they have to go to someone else that will accept them, be it someone with a small amount of knowledge about Islam or someone with lots. The thing is it is very easy to go into bad company or into people [who] can mislead you, especially as a young person...’²⁰⁶

129. A group of sixth-formers interviewed by RW(UK) had the same opinion. One said:

‘Prevent is counterproductive because a lot of people who go to Syria are normal people with normal lives, who might feel alienated and like they don’t belong. What encourages them is the need to find a sense of belonging. When people are ostracised and left out, that’s what encourages them to go towards violence.’²⁰⁷

130. Teachers interviewed by RW(UK) echo this anxiety about counter-productive isolation of students. Rob Faure Walker, a teacher in East London, noted that, in talking with students about Prevent, ‘numerous students have said that they are scared to talk openly with adults now ... I have got no doubt that Prevent isolates Muslim students.’²⁰⁸

131. Muniadiah’s case demonstrates how even articulate, confident, and successful students feel inhibited in the Prevent era in what they can discuss, and what they can accordingly learn and explore both in the classroom and among their peers. The interferences with the rights of education and expression, and the violations of the principle that public authorities like schools must seek to afford the best interests

205. RW(UK) Interview, 20 May 2016.

206. RW(UK) Interview, 20 May 2016.

207. RW(UK) Interview, 25 May 2016.

208. RW(UK) Interview, 19 May 2016.

of the child primary importance, are clear. But Munadiah's account is revealing, too, for what it shows about how Prevent is interfering with the freedom of religion of Muslim children. In service of the Prevent duty, schools have taken to promoting a particular picture of 'acceptable' Islam (one that is secular or liberal) to students as compatible with 'British values,' by implication suggesting that stricter or 'orthodox' Islam is fundamentally unacceptable. Munadiah recounted that observant Muslims at her school, who wished to observe gender-segregated prayers in a school prayer room, had attracted comments from teachers, and that the school had taken to vetting the student-written sermons delivered on Fridays.²⁰⁹

132. Such actions tend not only to inhibit students' freedom of religion *per se* (contrary to Article 9 ECHR, Article 18 of the ICCPR, and Article 14 of the CRC), but are particularly problematic in that they tend to result in the favouring and promotion of one religious tradition over another, which amounts to religious discrimination, contrary to Article 14 ECHR. Whether or not schools, or the government, do in fact intend to favour one strand of Islam over others is beside the point: as the UN Human Rights Committee has advised, discrimination is found just as clearly where acts have the 'effect of nullifying and impairing the recognition, enjoyment, or exercise by all persons, on an equal footing, of all rights and freedoms,'²¹⁰ even where the State does not have the explicit *purpose* of doing so.

The cucumber case

133. Under Prevent, teachers are hyper-vigilant, having, as they do, a positive duty to report under Prevent, with their action (or inaction) in this field being linked to their school's OFSTED rating. Given inadequately trained teachers, anxious to comply with duties to identify ambiguous apparent risk factors in children, it is hardly surprising that common sense is an early victim, as an incident relating to a four year-old child demonstrates.²¹¹ As his mother recounted to RW(UK), her son's nursery called her in and informed her that her son had 'been drawing inappropriate pictures.' The picture of apparent concern was described by her son as a drawing of his father slicing a cucumber: the nursery teacher said she thought the infant had said 'cooker-bomb.' By the time the mother was contacted, her son had already been referred under Prevent – the nursery was contacting her to ask for her signature on a formal referral record.

134. The mother expressed her surprise that the nursery would make a referral on a misunderstood act by her infant son: as the staff confirmed, there were no other incidents of concern. The mother asked why staff had rushed to judgment. In her words:

'I was a bit surprised because my daughter had gone to the same nursery school, and the staff had been there at the time, the Deputy [Head] had been there as long as I brought my kids there. So I told the Deputy, "You know me, why do you think I'm like this? What makes you think this? There's nothing else, it's just a picture." They said, "Yes, but it's what he said about this one picture." I was quite distraught and upset, so I said "Do I look like a terrorist to you?" It's a deradicalisation programme. I was shocked. And the nursery manager replied, "Did Jimmy Savile look like a paedophile to you?"'²¹²

209. RW (UK) Interview, 20 May 2016.

210. UN Human Rights Committee, General Comment 18, [7].

211. Previously reported by Prevent Watch: <http://www.preventwatch.org/the-cucumber-case/>

212. RW(UK) Interview, 31 May 2016.

135. It is important to bear in mind what it means for the nursery to have been acting under the Prevent duty in this case. However unlikely, if nursery staff *genuinely* thought that this child was revealing the fact that his father was a bomb-maker (or revealing the fact that bomb terminology was spoken at home), they could have taken various (entirely conventional) steps to assure themselves as to the child's safety at home. But what the fact of a referral under the Prevent duty reveals is that the nursery *considered the child himself at risk of becoming a terrorist* and in need of potential intervention. Considering the fact that (as the nursery have conceded) the basis for taking action was an infant's drawing (and an infant's attempted explanation of it), three points emerge:

135.1. If this was actually judged sufficient to satisfy any of the indicators of extremism which teachers and other educational staff are trained to identify, then those indicators are excessively broad;

135.2. If this was not judged to satisfy those indicators, but nursery staff considered themselves able nonetheless to make a referral under the Prevent strategy, then the discretion of decision-makers under Prevent is too broad; and

135.3. If nursery staff were not clear as to how to treat this incident, but made a referral anyway, then this incident demonstrates a pronounced failure of training, and just how problematic it is to create a positive duty for teachers, with their performance in this area affecting their school's OFSTED rating.

136. From the perspective of compliance with relevant human rights obligations, each point is problematic. Given the requirement that any restriction on rights be given effect to by means of legal provisions which are clear in their meaning and predictable in their application, uncertainties about what indicators under Prevent or Channel guidance mean and how decision-makers should act mean that human rights violations are inevitable. Thus this child was subject to sanction for his drawing – an interference with his free expression pursuant to Article 10 ECHR, Article 19 of the ICCPR, and Article 13 of the CRC – without lawful justification. And, in breach of the nursery's obligation, under Article 3 of the CRC, to treat the best interests of the child as a primary consideration, no consideration appears to have been given to any investigation of child safety (such as inquiry with his parents at the relevant time) before moving straight to a referral under the Prevent strategy.

V. CONCLUSIONS AND RECOMMENDATIONS

137. This report has set out, by reference to the procedural history of the Prevent strategy, and the evidence of its current implementation in schools, a catalogue of serious violations of the human rights protections the UK government, and public institutions such as schools, owe to individuals, particularly children. Fundamental rights to freedom of expression, freedom of thought, conscience, and religion, the right to education, the right to privacy, the freedom from discrimination, and the principle that decisions made with respect to children must afford their best interests primary importance, have all been violated one way or another.

138. The chilling effect of Prevent on inquiry and discussion is unacceptable anywhere, but particularly in the educational setting where, as a number of articulate students and concerned teachers have noted, driving vulnerable children to discuss issues relating to terrorism, religion, and identity outside the classroom and online counterproductively risks the very marginalization and radicalization the Prevent strategy was developed to stop. Further, the revelation that information regarding children is being collected, stored, and accessed without any apparent statutory framework, or clear non-statutory guidance, raises serious data protection and privacy concerns, and exposes the inadequacy of the piecemeal manner in which certain aspects of the Prevent strategy and Channel programme have (or have not) been put on a statutory footing, with the result that the programme has not been subject to proper searching examination by Parliament and civil society.

139. **As a result, RW(UK) is led to conclude and recommend the following:**

139.1. That the Prevent strategy and Channel programme insofar as they apply to schools must be repealed and abandoned;

139.2. That a full and independent audit of the operation of the Prevent strategy and Channel programme must be undertaken by an independent reviewer, with the results made public;

139.3. That the government undertake an urgent review of the legislative and policy frameworks aside from Prevent relating to terrorism and child protection (including existing criminal laws regarding support for terrorism and hate speech, and safeguarding policies for children at risk) to determine whether there are, in fact, legal or policy gaps which need to be addressed (or ever needed to be before the development of Prevent);

139.4. That, in the event gaps in existing legal and policy frameworks are identified, whatever is proposed to address those gaps must comply with the UK's human rights obligations, in particular its obligations with respect to the human rights of children. Doing this will require:

139.4.1. Genuine and wide stakeholder consultation, bearing in mind the impact that Prevent has already had on the relationship between members of the Muslim community and Government; and

139.4.2. Proper Parliamentary scrutiny of any legislative proposals, including (unlike in the case of the Prevent strategy), a searching assessment of the full range of potential human rights impacts;

139.4.3. Recognition of the need for children to be able to discuss a wide range of topics, including political and religious issues, even radical or non-violent views, in a safe and open environment;

139.4.4. Assessment of the counter-productive effects of stymying such discussion; and

139.4.5. Proper explanation of the theory of the causes of terrorism on which any further action is based (which will not include the discredited '*conveyor belt*' theory underpinning the Prevent strategy); and

139.5. That the government, recognizing the failure of the Prevent strategy in schools, and the human rights violations caused to date, provides reparations to those children and families harmed by the strategy.



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