

ERODING TRUST

Executive Summary



**The UK's PREVENT Counter-Extremism
Strategy in Health and Education**

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Open Society Justice Initiative



“I’ve never felt not British. And this [Prevent experience] made me feel very, very, like they tried to make me feel like an outsider. We live here. I am born and bred here, not from anywhere else”.¹

“It could have gone the opposite way if I wasn’t thinking straight, if I were the type who was being brainwashed. The way they went about it, [Prevent] could have made me do exactly what they told me not to do. I associate with Prevent negatively, it is not helpful at all”.²

Executive Summary and Recommendations

The UK’s Prevent strategy, which purports to prevent terrorism, creates a serious risk of human rights violations. The programme is flawed in both its design and application, rendering it not only unjust but also counterproductive.

Launched in 2003, the Prevent strategy has evolved against the background of increased public fears over the threat of “home grown” terrorism. The strategy in its current form aims “to stop people becoming terrorists or supporting terrorism”.³ In 2015, legislation created a statutory Prevent duty on schools, universities, and NHS trusts, among other public sector entities, to have “due regard to the need to prevent people from being drawn into terrorism”.⁴ This requires doctors, psychologists, and teachers, among other health and education professionals, to identify individuals at risk of being drawn into terrorism (including violent and non-violent “extremism”) for referral to the police-led multi-agency “Channel” programme (for England and Wales) or “Prevent Professional Concerns” (for Scotland), both of which purport to “support” such individuals⁵.

This report analyses the human rights impact of Prevent in its current form in the education and health sectors. It focuses on these sectors because they are critically dependent on trust and have particular care-giving functions that have not traditionally been directed towards preventing terrorism. Under Prevent, doctors and teachers who have a professional duty to care for their charges are now required to assess and report them for being at risk of “extremism”, which is defined as “vocal or active opposition to

fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.⁶ Because the conscription of these sectors into preventing terrorism is part of a growing trend,⁷ the report’s principal findings, listed below, not only apply to the United Kingdom, but are relevant and instructive for other governments grappling with these challenges.

- ▶ First, the current Prevent strategy suffers from multiple, mutually reinforcing structural flaws, the foreseeable consequence of which is a serious risk of human rights violations. These violations include, most obviously, violations of the right against discrimination, as well the right to freedom of expression, among other rights. Prevent’s structural flaws include the targeting of “pre-criminality”, “non-violent extremism”, and opposition to “British values”. This “intensifies” the government’s reach into “everyday lawful discourse”.⁸ Furthermore, Prevent’s targeting of non-violent extremism and “indicators” of risk of being drawn into terrorism lack a scientific basis. Indeed, the claim that non-violent extremism – including “radical” or religious ideology – is the precursor to terrorism has been widely discredited by the British government itself, as well as numerous reputable scholars.⁹ Prevent training, much of it based on unreliable indicators, appears to be largely unregulated. Moreover, the statutory duty creates an incentive to over-refer. This incentive is reinforced by the adverse consequences associated with non-compliance with the Prevent duty¹⁰ and the lack of adverse consequences for making erroneous referrals. The case studies and interviews in this report confirm the tendency to over-refer individuals under Prevent. The fundamental nature of these defects makes them unlikely to be cured by a mere renaming of Prevent to “Engage”.¹¹
- ▶ Second, Prevent’s overly broad and vague definition of “non-violent extremism” creates the potential for systemic human rights abuses. On the basis of this definition, schools, universities, and NHS trusts, among other “specified authorities” subject to the Prevent duty, are required to assess the risk of children, students, and patients being drawn into terrorism and report them to the police-led Channel programme where necessary.¹² By the government’s own admission, thousands of people have been erroneously referred to the Channel programme¹³. Individuals (including children) erroneously referred under Prevent experience the referral as inherently stigmatising and intensely intimidating. They also fear continued surveillance and the creation and retention of Prevent records, which may taint them and lead others to view them as “extremists” in the future¹⁴.

Specifically, the targeting of non-violent extremism raises serious concerns about possible violations of the right to freedom of expression. Children in schools have been targeted under Prevent for expressing political views.¹⁵ University conferences

relating to Islamophobia and Islam in Europe have been cancelled,¹⁶ raising questions of possible breaches under the Education Act (1986) and article 10 of the European Convention on Human Rights.¹⁷ More generally, the case studies and interviews in this report suggest that Prevent has created a significant chilling effect on freedom of expression in schools and universities, and undermined trust between teachers and students.¹⁸ This risks driving underground, removed from debate and challenge, conversations about controversial issues such as terrorism. In addition, as indicated by the large number of interviewees for this report who requested anonymity, there is a genuine and intensely held fear among some that public criticism of Prevent will trigger retaliation.¹⁹ This fear is particularly acute for parents who fear that their children will bear the brunt of the retaliation.

- ▶ Third, the Prevent duty creates a risk of discrimination, particularly against Muslims. Frontline professionals have broad discretion to act on their conscious or unconscious biases in deciding whom to report under Prevent. Current and former police leads for Prevent recognise that currently, Prevent operates in a climate marked by Islamophobia.²⁰ Significantly, between July 2015 and July 2016, Islamophobic crime in London rose by 94 percent.²¹ This climate creates the risk that Muslims in particular may be erroneously targeted under Prevent. All of the case studies relating to the targeting of individuals under Prevent raise serious questions about whether they would have been targeted in this manner had they not been Muslim.²² Relatedly, in some case studies, Muslims appear to have been targeted under Prevent for displaying signs of increased religiosity, raising questions about the violation of their right to manifest their religion.²³
- ▶ Fourth, by requiring the identification and reporting of individuals at risk of violent and non-violent extremism, Prevent creates a risk of violations of the right to privacy. Many of the case studies describe individuals being intrusively questioned under intimidating conditions about their religious and/or political beliefs²⁴. One case study raises troubling questions about the collection (apparently without informed consent) of names and political opinions from Muslim children for the Home Office.²⁵
- ▶ Fifth, there are serious concerns about the treatment of children under Prevent.²⁶ Although the government describes Prevent as a form of “safeguarding” (a statutory term which denotes promotion of welfare and protection from harm), the two sets of obligations have materially different aims, particularly with respect to children. In contrast to the Prevent strategy, for which the primary objective is preventing terrorism,²⁷ the primary objective of the duty to safeguard children under domestic legislation is the welfare of the child.²⁸ This reflects the obligation under article 3(1) of the Convention on the Rights of the Child to make the best

interests of the child a primary consideration in all actions relating to children.²⁹ Accordingly, while compliance with safeguarding obligations would only permit referral to Channel while prioritising the best interests of the child, the Channel duty guidance does not specify that as a mandatory or even a relevant consideration. All of the case studies in this report relating to children – including one in which a four year-old child was targeted³⁰ – appear to be instances in which the best interests of the child were not a primary consideration.

- ▶ Sixth, the Prevent duty risks breaching health bodies' duty of confidentiality towards their patients and undermining the relationship between health professionals and their patients. The standard for disclosure of confidential information under Prevent appears to be much lower than that warranted by the common law duty of confidentiality enshrined in the NHS confidentiality code of practice and the General Medical Council's confidentiality guidance. Specifically, requiring a medical professional to report to the police-led Channel programme an individual who is at "risk of being drawn into terrorism", including "non-violent extremism", appears to be a much lower standard than requiring the medical professional to report (under the GMC guidance) the individual only when failure to disclose confidential information would expose others to a risk of death or serious harm. This could generate breaches of the confidentiality duty along with violations of the right to private life under article 8 of the European Convention on Human Rights.³¹
- ▶ Finally, there are serious indications that Prevent is counterproductive. The case studies show that being wrongly targeted under Prevent has led some Muslims to question their place in British society.³² Other adults wrongfully targeted under Prevent have said that, had they been different, their experience of Prevent could have drawn them *towards* terrorism, and not away from it.³³ Government data reveal that 80% of all Channel referrals were set aside, implying that there were thousands of individuals wrongly referred to Channel³⁴. This in turn risks undermining the willingness of targeted communities to supply intelligence to law enforcement officials which could be used to prevent terrorist acts.³⁵

As Sir David Omand, the architect of the original version of Prevent, has observed: "The key issue is, do most people in the community accept [Prevent] as protective of their rights? If the community sees it as a problem, then you have a problem".³⁶ This report demonstrates that the UK's Prevent strategy is indeed a serious problem.

Recommendations

To the UK Government:

1. Repeal the Prevent duty with respect to the health and education sectors.
2. End the targeting and reporting of “non-violent extremism” under the Prevent strategy.
3. End the use of empirically unsupported indicators of vulnerability to being drawn into terrorism.
4. Establish an independent public inquiry – with civil society participation – into the Prevent strategy and associated rights violations.
5. Create a formal and independent complaints mechanism through which individuals whose rights have been violated by the Prevent strategy can seek and obtain prompt and meaningful remedies.
6. Publicly commit to a policy of zero tolerance regarding retaliation against individuals who allege rights violations under Prevent.
7. Publicly disclose data on total number of individuals referred to and processed through Prevent, Channel, and Prevent Professional Concerns (PPC), as well as the breakdown of these figures by age, type of extremism, and referring authority.
8. Publicly disclose, to the extent it exists, evidence underpinning and data relating to the UK’s Extremism Risk Guidance (ERG) 22+.

To the Children’s Commissioners for England, Wales, and Scotland:

Conduct an assessment of the impact of Prevent on children, including but not limited to whether the best interests of the child are a primary consideration in Prevent-related actions.

To the National Association of Head Teachers, the National Association of Schoolmasters Union of Women Teachers, the Association of Teachers and Lecturers, the National Union of Teachers, and other teachers associations:

Conduct an assessment of the impact of Prevent on teachers and children, including but not limited to the extent to which the best interests of the child are a primary consideration in Prevent-related actions.

To Universities UK:

Conduct an assessment of the impact of Prevent in universities, including but not limited to its impact on academic freedom and freedom of speech.

To the General Medical Council:

Review and clarify professional standards relating to the duty of confidentiality as interpreted and applied in Prevent settings.

To the British Medical Association, the British Psychological Society, the Academy of Medical Royal Colleges, the Royal College of General Practitioners, the Royal College of Psychiatrists, and other professional bodies in the health sector:

Conduct an assessment of the impact of Prevent on the practice of doctors, psychologists and other healthcare professionals, and on patients and patient care, including but not limited to an assessment of how the duty of confidentiality is being interpreted and applied in Prevent settings.

Endnotes

1. Interview with mother of four year-old child targeted under Prevent, Luton, 18 April 2016 (Case study 4).
2. Interview with nurse targeted under Prevent, Birmingham, 21 April 2016 (Case study 17).
3. Prevent strategy, June 2011, para 3.8.
4. Counterterrorism and Security Act, section 26(1).
5. Revised Prevent Duty Guidance for England and Wales, 16 July 2015; Revised Prevent Duty Guidance for Scotland, 16 July 2015.
6. Prevent Strategy, June 2011, p. 107; Revised Prevent Duty Guidance for England and Wales, 16 July 2015, para 7; Revised Prevent Duty Guidance for Scotland, 16 July 2015, para 5. (Emphasis added).
7. Thorbjørn Jagland, Sayeeda Warsi and Francesco Ragazzi, How to talk about terrorism, 2 September 2016, <http://www.politico.eu/article/teaching-young-europeans-how-to-talk-about-terrorism-schools-major-role>; Richard Vaughan, France looks to UK Prevent strategy in battle to tackle extremism among pupils, 25 January 2016, <https://www.tes.com/news/school-news/breaking-news/france-looks-uk-prevent-strategy-battle-tackle-extremism-among-pupils>; Commonwealth of Massachusetts Executive Office of Health and Human Services, Enhancing Resilience to Violent Extremism in Massachusetts through a Continuum of Prevention and Intervention Strategies, Request for Information, 11 March 2016, p. 6 <https://www.commbuys.com/bso/external/bidDetail.sdo?docId=BD-16-1039-EHS01-EHS02-oooooooo7502&external=true&parentUrl=bid>.
8. Lord Ken Macdonald, video of speech regarding Prevent in the Academy, 10 February 2016., <https://www.wadham.ox.ac.uk/news/2016/february/prevent-in-the-academy> (approx 16.39 until 17.20). Emphasis in original.
9. Andrew Gilligan, Hizb ut Tahrir is not a gateway to terrorism, claims Whitehall report, *The Telegraph*, 25 July 2010; Matthew Weaver, Cameron's anti-terror strategy is 'barking up wrong

tree', says expert, *The Guardian*, 20 July 2015; Marc Sageman (2014) "The Stagnation in Terrorism Research, Terrorism and Political Violence", 2014, p. 568–9.

10. See, e.g., Revised Prevent Duty Guidance for England and Wales, 16 July 2015, para 26 ("Where a specified body is not complying with the duty, the Prevent Oversight Board may recommend that the Secretary of State use the power of direction under section 30 of the Act"); *ibid*, para 72 ("Maintained schools are subject to intervention, and academies and free schools may be subject to termination of their funding agreement, if they are judged by Ofsted to require significant improvement or special measures").

11. House of Commons, Home Affairs Committee, Radicalisation, the Counternarrative and radicalisation tipping point, 19 July 2016, para 56, <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/135/135.pdf> (recommending "that the Government abandon ... the now toxic name 'Prevent' for the strategy and rename ... it with the more inclusive title of 'Engage'").

12. Revised Prevent Duty Guidance for England and Wales, 16 July 2015, paras 66–68 (schools), paras 77–80 (schools); Prevent Duty Guidance for higher education institutions in England and Wales, paras 19–23; Prevent Duty Guidance for further education institutions in England and Wales, para 21.

13. NPCC, National Channel Referral Figures, <http://www.npcc.police.uk/FreedomofInformation/NationalChannelReferralFigures.aspx> (supplying data from April 2007 until 21 March 2014).

14. Case studies 2, 5, and 11.

15. Case studies 5, 10, 11.

16. Case studies 12, 13, 15.

17. Case studies 12, 13, 15.

18. Case studies 5, 11, 13.

19. Interview with teacher, West Midlands, 26 February 2016 (Case study 7).

20. Interview with Simon Cole, QPM, Chief Constable of Leicestershire Police and NPCC Lead for Prevent, 2 September 2016; interview with Sir Peter Fahy, former Chief Constable of Greater Manchester Police and NPCC Lead for Prevent, Cheadle Hulme, 12 July 2016.

21. From 83 Islamophobia-related crimes to 161. Metropolitan Police, Crime Figures, http://www.met.police.uk/crimefigures/textonly_month.htm.

22. Case studies 1–11, 14, 16, 17.

23. Case studies 9, 17.

24. Case studies 7, 9, 11, 14, 16, 17.

25. Case study 1.

26. Case studies 1, 3–5, 7–11.

27. Revised Prevent Duty Guidance for England and Wales, 16 July 2015, para 5; Revised Prevent Duty Guidance for England and Wales, 16 July 2015, para 4.

28. Sections 11(2)(a) & 28(2)(a) of the Children Act of 2004; see also section 1 of the Children Act of 1989.

29. See *ZH (Tanzania)* [2011] UKSC 4.
30. Case study 4
31. *L.H. v. Latvia*, ECtHR, Judgement of 29 July 2014, paras 56, 59.
32. See, e.g., Case studies 3, 4, 5, 17.
33. See, e.g., Case studies 14, 17.
34. NPCC, National Channel Referral Figures, <http://www.npcc.police.uk/FreedomofInformation/NationalChannelReferralFigures.aspx> (supplying data from April 2007 until 21 March 2014).
35. Aziz Huq, Tom Tyler and Stephen Schulhofer, Mechanisms for Eliciting Cooperation in Counterterrorism Policing: Evidence from the United Kingdom, *Journal of Empirical Legal Studies*, Vol. 8, Issue 4, December 2011 (empirical study demonstrating that the perceived fairness in police tactics (procedural justice) is a significant predictor of cooperation in counterterrorism by British Muslims).
36. Interview with Sir David Omand, London, 30 March 2016.

Since the London bombings of July 7, 2005, the threat of terrorist violence in the United Kingdom has not abated. In the face of increased public fears about homegrown terrorism, the UK government has responded with a counter-extremism strategy known as Prevent.

From its inception in 2003, the scope of the Prevent strategy has repeatedly been expanded, and its obligations enhanced. In 2015, the strategy imposed a legal duty on schools, colleges, universities, and health bodies to pay “due regard to the need to prevent people from being drawn into terrorism”—effectively requiring teachers, doctors, nurses, and other caregivers to report to the authorities any students and patients seen to be at risk of “extremism”.

Eroding Trust assesses the human rights impact of the United Kingdom’s current Prevent strategy in the health and education sectors. Through legal analysis and case studies, the report concludes that Prevent is flawed in both its design and application. Drawing on extensive interviews in towns and cities across Britain, it argues that Prevent is potentially undermining the battle against terrorism—by fueling distrust and feelings of alienation in Britain’s Muslim communities.

