

6 December 2019

By email

Attn: Chris Felton
Prevent Independent Review
Home Office
Email: indpreventreview@homeoffice.gov.uk

Dear Mr. Felton,

The Open Society Justice Initiative (“Justice Initiative”) submits this letter in advance of the deadline for submitting evidence for the Independent Review of Prevent (“the Review”).¹ We will not respond to the questionnaire that comprises the Review’s call for evidence because we believe the Review (including the questionnaire) is fundamentally flawed.

The Justice Initiative has particular expertise on issues relating to counterterrorism and human rights. In 2016, we published a human rights assessment of Prevent in a report entitled *Eroding Trust: the UK’s Prevent Counter Extremism Strategy in Health and Education*.² That report, attached herewith and available on our website, includes a detailed legal analysis of Prevent under international human rights law and relevant domestic legal provisions as well as seventeen case studies. It concluded that Prevent creates a serious risk of human rights violations in the health and education sectors. It also concluded that Prevent is counterproductive—it damages trust between teachers and students, between doctors and patients, and between law enforcement and members of the UK’s Muslim community, whose support is an essential element of counterterrorism efforts. The report recommended, *inter alia*, that the UK government establish an independent public inquiry—with civil society participation—into the Prevent strategy and associated rights violations.

However, as described below, the Independent Reviewer’s lack of independence, the Review’s narrow terms of reference, and the limited call for evidence render the Review wholly inadequate. These defects fatally undermine the credibility of the

¹ The Justice Initiative uses litigation and other forms of legal advocacy to empower people, defend the rule of law, and advance human rights, with particular expertise in the field of human rights and counter terrorism. It operates around the world as part of the Open Society Foundations’ international offices. In the UK, the Justice Initiative is a part of the Open Society Foundations London, a not-for-profit company limited by guarantee incorporated in England and Wales.

² The full report of *Eroding Trust* is available at <https://www.justiceinitiative.org/publications/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education>.

Review and its ability to consider the evidence and analysis of Prevent’s numerous structural flaws, several of which are further detailed below.

Flaws in the Independent Review of Prevent

As the Justice Initiative previously explained in an August 2019 public statement issued jointly with other civil society organisations, Lord Carlile cannot be considered independent or impartial in light of his close ties with and publicly declared support for Prevent.³ His lack of independence is evident from (i) his position on the Home Office Prevent Oversight Board charged with “driving delivery” of Prevent; (ii) his publicly declared “considered and strong support” for Prevent; (iii) his May 2019 public declaration that “the appointment of a Prevent reviewer [is] completely unnecessary, based on fictitious or complete lack of evidence”; and (iv) his 2018 admission in the House of Lords that he may be “somewhat biased towards [Prevent]” because he “played a part in it”.⁴ For these reasons, the government has not complied with its statutory obligation under section 20(8) of the Counter-Terrorism and Border Security Act 2019 to make arrangements for an independent review of Prevent.

The Review’s narrow terms of reference preclude an assessment of past delivery of Prevent. This further confirms that the Review is not genuinely directed at learning the lessons needed to drive reform. Review of the past delivery of Prevent, particularly since the Prevent statutory duty took effect in 2015, is essential for identifying the flaws in the strategy and determining solutions.

The Review’s call for evidence also confirms that the Review is deficient. By limiting each answer to no more than 2000 characters, the online questionnaire makes clear that it is not willing to consider detailed, in-depth submissions. In addition, the questionnaire does not allow submissions to address meaningfully the design flaws or the human rights impact of Prevent. Instead, it limits submissions to responses to a narrow set of questions relating to Prevent’s effectiveness at meeting certain stated objectives. These objectives are: to “tackle the causes of radicalisation and respond to the ideological challenge of terrorism; safeguard and support those most at risk of radicalisation through early intervention, identifying them and offering support; [and] enable those who have already engaged in terrorism to disengage and rehabilitate”.⁵ The questionnaire wrongly presupposes that concepts such as “radicalisation” and “the ideological challenge of terrorism” are themselves universally accepted and empirically sound.

Significantly, Professor John Horgan, a former advisor to the Federal Bureau of Investigation and a prominent counter-terrorism expert, has observed:

The idea that radicalization causes terrorism is perhaps the greatest myth alive today in terrorism research ... [First], the overwhelming

³ Public Statement on the Appointment of Lord Carlile of Berriew as Independent Reviewer of Prevent, 18 August 2019, <https://www.justiceinitiative.org/uploads/d10e280e-9c61-4ffc-ab36-f03792fcb150/public-statement-on-lord-carlile-August-18-2018---FINAL.pdf>.

⁴ Ibid.

⁵ Independent review of Prevent: terms of reference (16 September 2019), <https://www.homeofficesurveys.homeoffice.gov.uk/s/CQGMR/>.

majority of people who hold radical beliefs do not engage in violence. And second, there is increasing evidence that people who engage in terrorism don't necessarily hold radical beliefs [...] [I]t's time to end our preoccupation with radicalization.⁶

Similarly, Sir David Omand, the architect of the original version of Prevent, told the Justice Initiative that a Security Service study of pathways to radicalisation based on studying individuals known to law enforcement in connection with terrorist offences concluded that:

there was no discernible pattern that could be of operational use to separate those who might be vulnerable to radicalisation from those of similar backgrounds who would not be. [...] Each case has unique characteristics.⁷

By not considering the empirical basis for these fundamental concepts underpinning the Prevent strategy, the Review ignores the most problematic flaws in the strategy.

Prevent's Structural flaws

A few of Prevent's many structural flaws, described more fully in the Justice Initiative's report, are identified below:

The concept of "pre-criminal" space: Official public descriptions of Prevent and Channel repeatedly claim that these programmes operate in a "pre-criminal" space to target individuals with a view to stopping them from committing terrorist crimes in the future. However, as a practical matter, it is virtually impossible to predict whether an individual is going to commit a terrorist crime in the future. Instead, targeting individuals for scrutiny under Prevent before they have engaged in any unlawful activity potentially violates law-abiding individuals' rights to free expression and privacy, among other rights. Lord Macdonald, former Director of Public Prosecutions, has observed:

many, perhaps most, of the behaviours targeted by Prevent, are behaviours that are not in themselves criminal in any way ...[this] intensifies the strength of surveillance and government reach into people's everyday lawful lives – and indeed into whole areas of their everyday lawful discourse.⁸

Targeting of "non-violent extremism": Prevent's targeting of "non-violent extremism" lacks scientific basis and creates the potential for systemic human rights abuses. 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 In addition, Prevent

⁶ *Eroding Trust*, p. 37.

⁷ *Eroding Trust*, p. 37.

⁸ *Eroding Trust*, p. 34

⁹ *Eroding Trust*, p. 36 (citing British government documents revealing "a clear assessment that individuals do not progress through non-violent extremist groups to violent groups"); Andrew Gilligan, Hizb ut Tahrir is not a gateway to terrorism, claims Whitehall report, *The*

defines “extremism” as “the active opposition to fundamental British values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs.” On the basis of this overly broad and vague definition, Prevent requires schools, universities, and NHS trusts, among other “specified authorities” subject to the Prevent duty, to assess the risk of schoolchildren, patients and others being drawn into terrorism and report them to the Channel programme where necessary. This needlessly exposes schoolchildren referred to Prevent to an intensely frightening and stigmatising experience while violating their rights, contrary to the UK’s obligations under the Convention on the Rights of the Child. In the medical context, it could further breach the duty of confidentiality that health professionals owe their patients.

Regarding the focus in the current version of Prevent on “non-violent extremism” and “British values”, Sir David Omand told the Justice Initiative:

My instinct is to be cautious about bringing in all these elements together. We did think [in the original version of Prevent, that] the priority was to prevent *violent* extremism. Once you get into being accused of policing different ways of living and “thought crime” over controversial areas such as foreign policy you enter a difficult area.¹⁰

Statutory Duty Incentivising Over-referrals: The Prevent statutory duty creates an incentive to over-refer individuals to Prevent and/or Channel authorities. Indeed, from the start of July 2015 (when the duty took effect for most bodies in England and Wales) until the end of June 2016, the number of Channel referrals increased over the preceding year by 75 percent. The incentive to over-refer individuals to Prevent is exacerbated by the adverse consequences associated with non-compliance with the Prevent duty and the lack of adverse consequences for making erroneous referrals. Alex Kenny, a national executive member of the National Union of Teachers (NUT), told the Justice Initiative:

[Prevent is] leading to cases of overreaction by schools because of the way schools are judged. [...] Schools are afraid of being seen to be doing the wrong thing. They are afraid of getting caught out by not reporting something that further down the line it may turn out they should have reported. Small things, rather than being dealt with by the school, are being reported to the police.¹¹

Similarly, Sir David Omand told the Justice Initiative:

My instinct would have been not to go down the statutory route. . . . And with the statutory duty you could get into issues over conflict with the duty to uphold free speech in universities. Whereas if you rely on a voluntary system, people can use their common sense when something

Telegraph, 25 July 2010, <http://www.telegraph.co.uk/journalists/andrew-gilligan/7908262/Hizb-ut-Tahrir-is-not-a-gateway-to-terrorism-claims-Whitehall-report.html>.

¹⁰ *Eroding Trust*, p. 36 (emphasis added).

¹¹ *Eroding Trust*, p. 41-42.

deserves to be drawn to the attention of the authorities. . . If, for example, you impose a legal duty on teachers to report signs of radical thinking amongst their students then teachers may feel obliged to report to the authorities, and thus start an official process over every minor adolescent rebellious outburst, matters that really could be better handled by them on the spot.¹²

Conclusion

The Justice Initiative submits that the appointment of Lord Carlile as Independent Reviewer, and the terms of reference he has established for the Review, are insufficient to meet Parliament's demand for a fully independent and comprehensive review of Prevent. Accordingly, we will not complete the online questionnaire that comprises the Review's call for evidence. Instead, we submit our 2016 report, *Eroding Trust*, in full and urge that the evidence and analysis presented therein be considered. Failure to do so would further undermine the credibility of this already compromised process.

Yours sincerely,



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Attachment: Open Society Justice Initiative, *Eroding Trust: the UK's Prevent Counter Extremism Strategy in Health and Education* (2016)

¹² *Eroding Trust*, p. 42.