LIBERTY’S RESPONSE TO THE CONSULTATION ON A NEW LEGAL DUTY TO SUPPORT A MULTI-AGENCY APPROACH TO PREVENTING AND TACKLING SERIOUS VIOLENCE

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ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty’s policy papers are available at libertyhumanrights.org.uk/policy.

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INTRODUCTION

1. Liberty is grateful for the opportunity to respond to the Home Office’s consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence. Liberty recognises that serious violence is a pressing human rights issue that is, properly, a high priority for the Government. We also welcome the Government’s recognition – articulated both in the Serious Violence Strategy and this consultation paper – that the response to serious violence should not be the exclusive domain of law enforcement, and that tackling the root causes is a critical element of an effective and sustainable approach.

2. The proposed public health duty, however, raises a breadth of human rights concerns. Without careful attention to the need to take steps to prevent serious violence whilst upholding basic principles such as confidentiality, non-discrimination and the presumption of innocence, there is significant scope for people’s civil liberties to be breached.

3. A duty of this nature is highly likely to encourage or require public sector workers – such as teachers, youth workers or healthcare professionals – to gather the sensitive personal data of individuals to whom they provide care, and share it with a range of authorities, including the police and criminal justice institutions, often without a person’s knowledge or consent. This risks draining trust in frontline professionals charged with providing care, which may mean people do not seek help when they need it.

4. Referrals pursuant to a public health duty may justify heightened State intrusion in people’s everyday lives, potentially fostering discrimination in access to services, leading to heightened use of police powers, or justifying the imposition of civil orders that effectively criminalise innocuous activities.

5. Further, Liberty is concerned that the proposals merely cast a range of social issues as factors to identify risk in individuals, rather than seeking to genuinely identify and address the underlying structural factors that shape individual actions.
6. The bulk of this submission outlines concerns in regard to the Government’s preferred proposal – option one – which would establish a public health duty. Liberty does not adopt a view on the merits of the second and third option outlined in the consultation paper. We recognise the value of multi-agency working, but would stress that robust safeguards should be put in place to ensure that such working does not fall foul of the risks identified in relation to the public health duty.

**OPTION ONE: A PUBLIC HEALTH DUTY**

7. The Government’s preferred proposal would see the creation of a new statutory duty on bodies such as healthcare authorities, youth services, local authorities and education providers to have ‘due regard to prevention and tackling of serious violence’. This is termed the ‘public health duty’. Details of the scope of the proposed duty, including what steps authorities subject to it would be required to take in order to discharge it and what specific responsibilities would fall to frontline staff, are sparse. The consultation paper notes that the contours of the duty would be determined by guidance that the Government has not yet published. However, it appears to be modelled, in structure and logic, on the statutory Prevent duty, which obligates a list of specified authorities to have ‘due regard to the need to prevent people from being drawn into terrorism’ in the exercise of their functions.¹ In practice, this means that teachers, doctors, nurses and social workers are trained to report people they suspect are vulnerable to ‘extremism’.

8. The Prevent duty is highly controversial.² It has been widely criticised as a blunt, top-down framework that is structured to co-opt, rather than cooperate with, communities and service providers.³ Concerns about the operation of the statutory duty have been raised by a broad cross-section of individuals, organisations and bodies, including both

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¹ Section 26, Counter-Terrorism and Security Act 2015.
of the most recent Independent Reviewers of Terrorism Legislation,\(^4\) the Joint Committee of Human Rights,\(^5\) the Home Affairs Select Committee,\(^6\) the National Union of Teachers,\(^7\) the Royal College Of Psychiatrists,\(^8\) Muslim community groups\(^9\) and politicians across party lines.\(^{10}\)

9. Putting the Prevent duty on a statutory footing in 2015 incentivised a significant spike in referrals of individuals to the authorities.\(^{11}\) This gave rise to a host of unintended consequences – damaging relationships of trust between frontline professionals and the people under their care, alienating the communities the Strategy seeks to engage, and chilling the exercise of fundamental rights.\(^{12}\) Rushing to replicate this heavy-handed approach would be fundamentally misconceived, particularly given that the Government recently established an independent review of the Prevent strategy in response to these criticisms, which will be tasked with producing a report on the operation of Prevent within the next 15 months.\(^{13}\)

10. In regard to the proposed public health duty, Liberty is concerned that:

(i) the application of the proposed duty may provide a foundation for significant, and potentially disproportionate, intrusions into people’s private lives. In particular, the public health duty may be used in conjunction with civil orders which erode the presumption of innocence and lower the bar for criminalisation;

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\(^4\) [https://www.standard.co.uk/news/uk/david-anderson-qc-prevent-strategy-can-work-against-radicalisation-if-it-is-trusted-a3467901.html](https://www.standard.co.uk/news/uk/david-anderson-qc-prevent-strategy-can-work-against-radicalisation-if-it-is-trusted-a3467901.html)


\(^8\) [www.rcpsych.ac.uk%2Fpdf%2FPS04_16.pdf?usg=AOvVaw35OnM4jmgZz4jGwWdMfQyS](www.rcpsych.ac.uk%2Fpdf%2FPS04_16.pdf?usg=AOvVaw35OnM4jmgZz4jGwWdMfQyS)


(ii) there is a stark lack of clarity as regards the criteria authorities should use in order to identify people who are ‘at risk’. The indicators which may be deployed risk chilling freedom of expression and association, and facilitating the disproportionate targeting of minority communities;

(iii) the duty would enable and encourage extensive data gathering and sharing without safeguards to protect fundamental rights;

(iv) the duty may undermine existing professional obligations, and specifically in relation to safeguarding and confidentiality; and

(v) the scheme does not attempt to address the root causes of serious violence, despite acknowledging that a considered and effective response must do so.

A significant intrusion

11. Liberty is concerned that the application of the proposed duty may provide a foundation for significant intrusions into people’s lives, with serious implications for peoples’ human rights and civil liberties.

12. Police-led multi-agency frameworks already operate to identify people as ‘at risk’ of future participation in criminal activity. These provide an indication of the shape the proposed public health duty might take and the intrusions it may precipitate. For example, people flagged or formally referred to the authorities under the Prevent duty have been subject to intrusive questioning by colleagues or the police about their political opinions or religious beliefs.¹⁴ Liberty acted for a woman who was questioned by a uniformed officer when the primary school of her five and seven year old called the police, concerned about its obligations under the Prevent duty, because the children had been given plastic toy guns as presents.¹⁵

13. The increasing practice of public agencies categorising young people they suspect may be associated with gangs as ‘gang nominals’ is also instructive. This is institutionalised by the Metropolitan Police Service (MPS), for example, through a database termed the ‘Gangs Matrix’. Research has revealed that people included on

the MPS’s Gangs Matrix are subject to high levels of police scrutiny, with some interviewees describing being stopped by police several times a day, despite only minimal, uncorroborated and undisclosed evidence being required for them to be entered into the Matrix. Liberty is concerned that the proposed public health duty may facilitate intrusive surveillance and routine over-policing in a similar fashion. The effects of such unwarranted intrusion can be deep and enduring, and may foster a long-term sense of anger and hostility towards the police, ultimately undermining the aim of community safety for which it is deployed.

14. Moreover, the mere act of ‘labelling’ an individual – whether as an extremist, a gang member, or a future criminal – can be profoundly stigmatising, and leave people feeling isolated and marginalised. As Liberty has documented extensively, the rising use of automated risk profiling and predictive policing tools, which rely on profiling to allocate risk and ultimately inform public policy decisions, may exacerbate this dynamic, with significant consequences for labelled individuals, their families, and their social circles.

15. Liberty is further concerned that information passed to the police under this scheme may be used to identify those who are subjected to, or justify the imposition of, punitive civil orders, such as the newly established Knife Crime Prevention Orders (KCPOs). KCPOs allow the imposition of onerous conditions – which may seriously limit the exercise of fundamental rights by proscribing where someone may go, who they may see, when they can be out in public, what they may say or view online, and whether or not they can attend work or education – based on an extremely low standard of proof. Those who do not meet these conditions, or fail to notify the police of specified personal information, could face a prison sentence of two years. Enlisting public sector workers to gather information to impose constraints on people’s everyday activities, with criminal sanctions if those constraints are breached, would be a gross perversion of their role. It would likely

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9 Criminal Justice Alliance, No respect: Young BAME men, the police and stop and search. Available at: http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617-1.pdf
deter people from seeking help when they need it. Far from preventing crime, by lowering the bar for criminalisation, these orders will serve to fast-track more young people into the criminal justice system and erode basic procedural safeguards.

16. Civil orders may implicate peoples’ right to private life20 (for example, should the duty trigger surveillance), freedom of expression21 (for example, where a person’s ability to use social media is curtailed) and freedom of assembly22 (for example, where a civil order is imposed limiting the places someone can travel or people they can see). While these rights may be limited in certain circumstances, in order to be lawful the restriction must be provided by law, necessary, and crucially, proportionate. Additionally, the imposition of quasi-criminal orders may intrude on people’s right to liberty,23 which can only be justified in an exhaustive list of circumstances, as well as the right to a fair trial24, including the presumption of innocence.

**Identifying ‘at risk’ individuals**

17. Should the proposed public health duty mirror the demands of the Prevent duty – requiring teachers, doctors, nurses and social workers to report people under their care who they suspect of being at risk of engaging in violence or criminality in the future – the consultation document does not indicate which criteria, if any, would be used to identify people who are ‘at risk’. The Serious Violence Strategy, to which the public health duty seeks to give effect, lists a wide variety of risk factors for serious violence, such as local deprivation, delinquent peers, low self-esteem, low-intelligence, domestic abuse, truancy, school exclusions and substance abuse.25 The list is incredibly broad, capturing a range of normal teenage behaviour and social demographics. The consultation document offers no guidance as to how specified

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20 Article 8, ECHR  
21 Article 10, ECHR  
22 Article 9, ECHR  
23 Article 5, ECHR  
24 Article 6, ECHR  
authorities should narrow their determination of which individuals are likely to participate in or fall victim to serious violence.

18. In the absence of clear criteria, and in light of the ‘risk factors’ identified in the Serious Violence Strategy, Liberty is concerned that assessments under the proposed duty may be predicated on crude generalisations or profiling, which, worse still, conflate vulnerability to violence with a perceived propensity to commit it.

19. Just as the Prevent duty has disproportionately targeted Muslims and minority ethnic communities, it is likely that these human rights harms would likely be felt most acutely by those already over-policed and over-represented in the criminal justice system, such as BAME or deprived communities. Liberty is concerned that the operation of a public health duty would be imbued with the assumptions and stereotypes that stubbornly persist in the policing of serious violence, contrary to the right to non-discrimination\(^{26}\) and the public sector equality duty.\(^{27}\)

20. The fact that black men and boys are disproportionately policed is widely acknowledged and clearly established in data, and the way in which serious violence is policed is heavily fuelled by racial stereotypes, many of which centre on the ill-defined and porous concept of the ‘gang’. The stark statistics on the MPS’s Gangs Matrix, revealed in a published last year by Amnesty International, lay bare the over-identification of BAME people as gang affiliated – 72 per cent of individuals on the Metropolitan Police’s Gangs Matrix are black, yet the Metropolitan Police Services own figures show that just 27 per cent of those responsible for serious youth violence are black.\(^{28}\) As one equality campaigner recently commented, ‘this is institutionally racist policing in its purest form’.\(^{29}\) Last year, the Mayor’s Office for Crime and Policing (MOPAC) acknowledged the disproportionality of the Gangs Matrix and called on the MPS to ‘comprehensively overhaul’ it, by implementing a list of recommendations and recommendations put forward by the Information

\(^{26}\) Article 14, European Convention on Human Rights
\(^{27}\) Section 149, Equality Act 2010
Commissioner’s Office (ICO). Liberty is concerned that assessments of indicators of risk of engagement in serious violence will lead to similarly racially disproportionate outcomes. Moreover, given that community deprivation and family socio-economic status are explicitly characterised as ‘risk factors’ of serious violence, this invites the targeting of lower income communities.

21. Recent policy and practice – such as the conviction of musicians for breaching gang injunctions, police trawling of music videos on social media to identify gang affiliates, or efforts to compel YouTube to remove music videos the police determine ‘glamourize’ gang lifestyles – demonstrate the risk that aspects of BAME or working class youth culture, or forms of expression which describe violence without inciting it, will be unjustifiably viewed as a marker of future participation in violence. A duty of this nature may, therefore, lead to the monitoring and censorship of the music people listen to or share online, the clothes they wear, the language they use, the places they go to, and the friends or family with whom they associate. Academic research evidences that the Prevent duty has generated a similar dynamic, prompting young Muslims to alter their behaviour, self-censoring or disengaging from campus life or their studies for fear of being labelled an extremist and stigmatised. Moreover, it may inhibit peoples’ ability to communicate freely about their experiences in pastoral settings for fear they will be reported to the police.

Data collection and sharing

22. Data collection and sharing form a central tenet of the vision outlined in the consultation document. In the interests of addressing the root causes of serious violence, the Government asserts its intention to ‘bring organisations together to
share information, data and intelligence’ to identify those most at risk of becoming affected by serious violence.\textsuperscript{35}

23. As a preliminary matter, it is important to distinguish between the collection and analysis of anonymised data in order to identify the problem and create an evidence base, on the one hand, and the collection of personal data to create intrusive risk profiles of individuals to justify actions that may intrude on their fundamental rights, on the other. In regard to the former, Liberty strongly advocates evidence-based policy-making and the systematic collection of properly anonymised data – with robust safeguards to limit the risk of de-anonymization – plays a role in providing a comprehensive evidence base for high-quality research and analytics to assess why serious violence occurs. In regard to the latter, Liberty is concerned that this will facilitate the collection, retention and sharing of large amounts of personal data, potentially without people’s consent, particularly if the guidance produced public health duty requires a referral process similar to that required under the Prevent duty.

24. The gathering of personal information – some of which may have been shared in confidence – and onward sharing with third parties under a nebulous public health duty, raises concerns about compliance with a number of data protection principles, including whether the purposes for which partner agencies use the data are compatible with the purposes for which it was obtained\textsuperscript{36} and data minimisation.\textsuperscript{37} Moreover, it is not clear whether an individual will be informed that their personal information has been shared,\textsuperscript{38} or if there will be any opportunity to challenge the accuracy of that information or any subsequent assessment that is made.\textsuperscript{39}

\begin{footnotesize}
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\item \textsuperscript{36} GDPR, Principle (b)
\item \textsuperscript{37} GDPR, Principle (c)
\item \textsuperscript{38} GDPR, Principle (a)
\item \textsuperscript{39} GDPR, Principle (d)
\end{itemize}
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25. While information sharing amongst authorities may be couched in terms of the protection of the individual or diversion from criminal activity, the MPS’s Gangs Matrix serves as a cautionary tale for how, in the absence of robust safeguards, multi-agency information sharing can lead to disadvantage and discrimination. Research indicates that in some cases, the sharing of, often unverified, information under the Matrix facilitated discrimination in the delivery of essential services, narrowing people’s opportunities in areas such as education and housing. Amnesty International also documented anecdotal reports of police resorting to a range of measures designed to put pressure on a young people they suspected of having links to gangs by targeting their family and housing situation, including by way of eviction threats.\(^{40}\) Following this, the ICO reviewed the Gangs Matrix, and found that there were ‘multiple and serious breaches of data protection laws’,\(^{41}\) concluding that ‘blanket sharing’ of sensitive, untested information with third parties led to the excessive processing of data, with an ‘intended impact on the rest of the public sector’.\(^{42}\)

**Undermining existing professional obligations**

26. Liberty is extremely concerned by the proposal that a multi-agency approach to preventing and tackling serious violence would involve building partnerships ‘unconstrained by organisational, professional or geographical boundaries’.\(^{43}\) Professional boundaries and the obligations to which they give rise – such as confidentiality and safeguarding duties – are essential to protect people’s dignity and privacy, fostering relationships of trust, and delivering high quality care. These duties are grounded in domestic\(^{44}\) and international law\(^{45}\), and articulated in

\(^{40}\) [https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf](https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf)


\(^{44}\) Section 1, Children’s Act 1989

professional standards and guidance.\textsuperscript{46} They are particularly acute where public authorities are making decisions in regard to children, where their best interests must be the paramount consideration, not sacrificed to other policy agendas, such as the prevention of crime. It is critical that multi-agency frameworks should not serve to short-circuit these safeguards, and that providing a partnership model should have regard for differing institutional missions and professional obligations of the various agencies engaged.

27. Should the Government clarify that professionals engaged in any multi-agency public health approach should continue to apply their existing professional duties, Liberty is concerned that there may be instances in which the proposed public health duty may be inconsistent with, or distort, those established duties. In the context of healthcare, the common law duty of confidentiality, set out in the NHS Confidentiality Code of Practice, is founded on the principle that information confided should not be used or disclosed further, except with the data subject’s subsequent permission. The General Medical Council has published Confidentiality Guidance to inform healthcare professionals’ approach to their confidentiality obligations, and sets out the narrow exceptions to the principle of confidentiality, for example where it may be justified in the public interest “if failure to disclose may expose others to a risk of death or serious harm”.\textsuperscript{47} The broadly drawn proposed public health duty – having regard to the need to prevent or tackle serious violence – may lead to the sharing of information given in confidence where there is a less immediate or acute impetus than exposing others to a risk of death or serious harm.

28. Efforts to suspend or hollow out safeguarding and confidentiality duties will unravel relationships of trust between the teachers, doctors, nurses, social and youth workers who rely on trust to provide care. This has significant potential to undermine engagement with these services. For example, requiring healthcare professionals to disclose the personal information of patients who come to the emergency services with an injury they think is suspicious may deter people from

\textsuperscript{46}assets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F779401%2FWorking_Together_to_Safeguard-Children.pdf&usg=AOVvaw1YyZx7EJ78Q9Q74Jp0c
\textsuperscript{47}https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality
seeking life-saving care. As the Royal Council of Nurses’ acting Chief Executive and General Secretary commented in response to the Government’s proposals, the ‘first duty of healthcare workers is to treat and care for patients, and it’s important people aren’t deterring from seeking help for fear of being reported.’

Similarly, where students feel that they cannot confide in teachers or youth-workers, this may undermine their function as a safe space and, counter-productively, limit their ability to identify those children most in need of support.

**Failure to address root causes**

29. Liberty welcomes the acknowledgement in the consultation document that ‘tackling serious violence is not only a law enforcement issue’ and that ‘action should be guided by evidence of the problems and what works in tackling their root causes’.

However, we are concerned that the approach proposed by the Government merely casts a range of social issues identified in the Serious Violence Strategy – such as domestic abuse, local deprivation, and truancy – as factors to identify risk in individuals, rather than seeking to genuinely identify and address the underlying socio-structural factors that shape individual actions. For example, while high levels of poverty may be identified as a ‘root cause’ of serious violence, this approach simply characterises poverty as an individual indicator of likely future participation in criminality, rather than addressing poverty itself and the human rights violations that flow from it. Moreover, robust and open-textured community consultation should be a hallmark of a sustainable approach to addressing the root causes of serious violence. This may challenge the way policy-makers characterise and seek to address the causes, and help foster appropriate solutions that are more likely to be accepted by communities in the long term.

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OPTIONS TWO AND THREE: A NEW DUTY TO REVISE COMMUNITY SAFETY PARTNERSHIP AND A VOLUNTARY NON-LEGISLATIVE APPROACH

30. In regard to the second and third options outlined in the consultation paper, Liberty endorses the principle of a joined up and coherent strategy to address serious youth violence. However, we stress that safeguards should be put in place to ensure that whatever multi-agency approach is adopted fully complies with human rights and data protection law. In particular, safeguards should be put in place to ensure that they are not used to disproportionately interfere with people’s human rights and civil liberties, subordinate public services to the aims of law enforcement, erode existing professional duties, or deflect from identifying and genuinely addressing root causes of serious violence.

CONCLUSION

31. Liberty recognises that serious youth violence is a pressing human rights issue and that the Government rightly has an obligation to take effective steps to address it. Rushing to put a heavy-handed public health duty on a statutory footing would be a significant misstep on that path. It risks replicating the failures of the Prevent duty, including by chilling the exercise of fundamental rights, marginalising the communities it targets, and eroding trust in frontline services. It deflects from, rather than engages with, the root causes of serious violence, and ultimately risks significantly counter-productive outcomes. Multi-agency work may play a valuable role in formulating a coherent policy response to serious violence, but it must be rooted in basic principles like confidentiality, non-discrimination and the presumption of innocence.