



LIBERTY
PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Briefing on the Higher Education and Research Bill:
an independent review of Prevent**

March 2017

About Rights Watch (UK)

Rights Watch (UK) (formerly British Irish Rights Watch) (hereafter “RW(UK)”) is a registered charity which works to promote just and accountable security, drawing on over twenty-five years’ experience working in the field of counter-terrorism policy in the UK, particularly in the context of the Northern Ireland conflict. RW(UK) has received wide acclaim for its work, including the Parliamentary Assembly of the Council of Europe (PACE) Human Rights Prize. In July 2016 it published a landmark report on Prevent entitled, “Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools,” concluding that the strategy suffers from a number of systemic design flaws with serious resulting human rights implications, and that the strategy should be subject to independent review.

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About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK’s leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research. Liberty’s policy team 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.

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**SUGGESTED AMENDMENT TO THE HIGHER EDUCATION AND RESEARCH BILL:
INDEPENDENT REVIEW OF PREVENT IN HIGHER EDUCATION**

Insert the following new Clause—

“Independent review of the Prevent strategy in higher education institutions

- (1) Before the end of the period of three months beginning on the day on which this Act is passed, the Secretary of State must appoint an independent reviewer to—
- (a) conduct an independent review of the operation and effectiveness of the Prevent strategy in relevant higher education institutions; and
 - (b) submit a report to the Secretary of State on the findings of the review.
- (2) The report must address, though may not be limited to, the following matters—
- (a) the operation and effectiveness of the Prevent strategy in higher education institutions;
 - (b) the interaction of Prevent with—
 - (i) other legal duties on higher education institutions; and
 - (ii) the criminal law.
 - (c) existing arrangements for the inspection and monitoring of higher education institutions' compliance with the Prevent duty; and
 - (d) the nature and extent of training provided to staff working in higher education institutions.
- (4) The independent reviewer may invite evidence from civil society groups and others with expertise in, or experience of, Prevent.
- (5) An individual must not be appointed to the role of independent reviewer if that individual—
- (a) has a close association with Her Majesty's Government; or
 - (b) has concurrent obligations as a Government appointed reviewer.
- (6) The reviewer must have access to security sensitive information on the same basis as the reviewer appointed under section 36 of the Terrorism Act 2006.
- (7) In appointing the reviewer, the Secretary of State must have regard to the need to ensure the reviewer has the relevant qualifications, including legal qualifications, to carry out his functions.
- (8) The Secretary of State, after consultation with the independent reviewer, must provide the reviewer with such staff as are sufficient to ensure that the reviewer is able properly to carry out his functions.

- (9) The Secretary of State must pay to the reviewer-
- (a) expenses incurred in carrying out his functions under this section; and
 - (b) such allowances as the Secretary of State determines.
- (10) The Secretary of State must lay before each House of Parliament a copy of the report received under subsection 1(b).
- (11) In this section: “Prevent” means the Prevent strand of Her Majesty's Government's counter-terrorism strategy CONTEST, including the statutory Prevent structure; “statutory Prevent structure” means the provisions set out at Part 5 of the Counter-Terrorism and Security Act 2015.

Effect

1. This amendment would require the Secretary of State for Education to appoint an independent person to review the operation of the Government's Prevent strategy insofar as it applies to higher education institutions. The reviewer would be required to consider a non-exhaustive list of aspects of the Prevent regime. The considerations listed at 2(a)–(d) represent areas of particular concern in relation to the operation of Prevent, including concerns about training highlighted by the Home Affairs Select Committee¹ and concerns about the interaction of Prevent with other legal obligations on universities, including human rights protections set out in the Human Rights Act 1998 and the requirements of the public sector equality duty.²
2. To qualify for the role of independent reviewer, the suggested amendment requires that an individual be independent of government. It also requires that they do not already have a function as a government appointed reviewer. The Government must have regard to the need to appoint somebody suitably qualified to the role. To conduct a review which fully considers the operation of Prevent it may be necessary for the independent reviewer to consider security sensitive information. The amendment would allow the new reviewer to access sensitive information on the same basis as the current Reviewer of Terrorism Legislation, Max Hill QC. There is provision for the independent reviewer to invite submissions from those with expertise and experience of Prevent.

¹ House of Commons Home Affairs Committee, ‘Radicalisation: the counter-narrative and identifying the tipping point: Eighth Report of Session 2016-17,’ (HC 135, 25 August 2016) (‘Home Affairs Committee Report’), [69].

² Equality Act 2010, s149.

Briefing

3. In recent years in the United Kingdom, the government's focus on '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 to carry out the government's work, requiring teachers from the child care sector up to university level to identify apparent signs of extremism in their students, and to refer students to the government's de-radicalization programme, known as Channel.
4. The application of a statutory Prevent framework to higher education institutions was a source of considerable criticism during the parliamentary passage of the 2015 Act. Statutory requirements were variously described as an "*elaborate infrastructure or superstructure*";³ the employment of a "*top-down approach*";⁴ a movement "*from co-operation to co-option*";⁵ "*too restrictive and prescriptive*";⁶ "*impractical*";⁷ "*too blunt an instrument*";⁸ and a form of regulation "*likely to provoke what [the Government] seek to prevent*".⁹ Former Director of MI5, Baroness Manningham-Buller, powerfully summarised the core concern: "*Prevent needs to be conducted with sensitivity, proportionality and care, and I fear that making it statutory in universities will jeopardise all three.*"¹⁰ These concerns were mirrored by the JCHR as part of its legislative scrutiny of the 2015 Act:

*...because of the importance of freedom of speech and academic freedom in the context of university education, the entire framework which rests on the new 'prevent' duty is not appropriate for application to universities.*¹¹

5. Meanwhile guidance issued by the Government on the operation of Prevent in universities has threatened to seriously undermine the free exchange of ideas in our universities. The *Prevent Duty Guidance: for higher education in England and Wales* provides that speaking events should be cancelled unless the risk that the expression of

³ Baroness Hamwee, Lords Hansard: 4 Feb 2015: Column 666.

⁴ Baroness Hussein-Ece, Lords Hansard: 28 Jan 2015: Column 213.

⁵ Baroness Lister of Burtsett, Lords Hansard: 28 Jan 2015: Column 225.

⁶ Baroness Buscombe, Lords Hansard: 28 Jan 2015: Column: 231.

⁷ The Lord Bishop of Chester, Lords Hansard: 28 Jan 2015: Column 248

⁸ Lord Pannick, Lords Hansard: 28 Jan 2015: Column: 239.

⁹ Baroness O'Neil of Bengrave, Lords Hansard: 28 Jan 2015: Column 249.

¹⁰ Baroness Manningham-Buller, Lords Hansard: 28 Jan 2015: Column 242.

¹¹ JCHR, Legislative Scrutiny: Counter-Terrorism and Security Bill, Fifth Report of Session 2014–15, paragraph 6.11: <http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/86/86.pdf>.

views may draw an individual into terrorism can be “fully mitigated”.¹² The object of the guidance, when considered together with the already exacting statutory structure, seems to be to prevent anything but the most anodyne of events from taking place in our universities. In evidence to the Home Affairs Select Committee, 'Megan Dunn, the then President of the National Union of Students, referred to the statutory guidance on the Prevent duty in higher education, which suggests that institutions should only host speakers and events where they are 'entirely convinced that [the risk of drawing people into terrorism] can be fully mitigated without cancellation of the event.' She expressed concern that this standard of certainty is completely unrealistic. 'We are all working towards that aim,' she said. But, recognising the impossibly high burden of proof, she asked 'how can that [i.e. full mitigation of risk] possibly be proven?'¹³

6. Concerns about Prevent’s operations across a range of educational institutions, not just universities, have been raised by a number of individuals, organisations and bodies, including by the Independent Reviewer of Terrorism Legislation¹⁴, the Home Affairs Select Committee¹⁵, the Joint Committee on Human Rights¹⁶, the Women and Equalities Committee¹⁷, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association¹⁸, the UN Special Rapporteur on counter terrorism and human rights¹⁹, a host of academics²⁰, the National Union of Teachers²¹, the National Union of Students²², Muslim community groups.²³ Concerns have also been raised in the House of Lords,²⁴ by Conservative²⁵, Labour²⁶ and Liberal Democrat²⁷ Members of Parliament

¹² Insofar as Government guidance is consistent with statutory duties public authorities are usually required to follow its clear requirements. See *R v Islington LBC ex p Rixon* [1996] 32 BMLR (Para 140).

¹³ *Ibid.*, paragraph 68.

¹⁴ <http://www.standard.co.uk/news/uk/david-anderson-qc-prevent-strategy-can-work-against-radicalisation-if-it-is-trusted-a3467901.html>

¹⁵ <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/135/135.pdf>

¹⁶ <https://www.publications.parliament.uk/pa/jt201617/jtselect/jtrights/105/105.pdf>

¹⁷ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2015/employment-opportunities-for-muslims-in-uk-report-published-16-17/>

¹⁸ <http://freeassembly.net/news/statement-united-kingdom-follow-up/>

¹⁹ https://www.justsecurity.org/wp-content/uploads/2016/04/Emmerson-UNHRC-Report-A-HRC-31-65_UneditedVersion.pdf

²⁰ <https://www.theguardian.com/politics/2016/sep/29/anti-radicalisation-strategy-lacks-evidence-base-in-science>

²¹ <https://www.theguardian.com/politics/2016/mar/28/teachers-nut-back-motion-calling-prevent-strategy-radicalisation-scrapped>

²² <https://www.theguardian.com/education/2015/sep/02/nus-fights-back-against-governments-chilling-counter-radicalisation-strategy>

²³ <https://www.mcb.org.uk/wp-content/uploads/2015/10/20150803-Case-studies-about-Prevent.pdf>

²⁴ <https://hansard.parliament.uk/lords/2016-10-26/debates/D21E35A2-D38C-4D46-9201-A9FE5643FF2D/PreventStrategy>

and, by the Green Party.²⁸ In light of widespread criticism and concern, Rights Watch UK and Liberty urge Peers to support amendment 154, in the name of Lord Dubs, calling for an independent review of the operation of Prevent in higher education. More broadly we urge Peers to call for a review of the operation of the wider strategy.

7. Parliament's Joint Committee on Human Rights²⁹ and others³⁰ have echoed this call for a full and transparent review of the application of the Prevent strategy to the educational setting. The former Reviewer of Terrorism Legislation, David Anderson QC, while supporting the Prevent strategy in principle, has noted that an independent review would be: *"peculiarly appropriate for an area in which potential conflicts between state power and civil liberties are acute, but information is tightly rationed"*.³¹
8. But the UK government has so far resisted these calls, with an internal Home Office review (which has not been publicly released) reportedly concluding that the Prevent strategy *'should be strengthened, not undermined'*.³² The UK government, without having subjected Prevent to the rigour of independent audit, nonetheless maintains its position that the Prevent strategy and Channel programme in their current form remain suitable for application in educational settings. RW(UK) and Liberty take the view that the serious problems identified with Prevent to date require a more thoughtful response. Accordingly, in this briefing RW(UK) and Liberty identify a number of issues of concern,

²⁵ Lucy Allen MP tabled a bill to repeal the Prevent duty as it applies to nurseries and primary schools: <http://www.shropshirestar.com/news/politics/2016/06/30/telford-mp-lucy-allan-tables-parliamentary-bill-over-school-counter-terrorism-measures/> See also comments of Jeremy Lefroy MP: <http://www.christianconcern.com/our-concerns/freedom-of-speech/parliamentary-committee-reveals-muddled-thinking-in-counter-extremism>

²⁶ See comments of Andy Burnham MP: <https://www.theguardian.com/politics/2016/jun/09/andy-burnham-calls-for-toxic-prevent-strategy-to-be-scrapped>; of Diane Abbott MP: http://www.huffingtonpost.co.uk/diane-abbott/prevent-strategy_b_12561086.html and of Jeremy Corbyn MP: <http://www.middleeasteye.net/news/labour-leader-corbyn-calls-reform-prevent-strategy-1547441159>

²⁷ See party position of the Liberal Democrats: <https://www.theguardian.com/politics/2016/sep/13/lib-dems-aim-to-scrap-counter-productive-prevent-strategy>

²⁸ <https://www.theguardian.com/law/2016/may/23/counter-extremism-bill-puts-our-rights-at-risk>

²⁹ See: House of Lords & House of Commons Joint Committee on Human Rights, 'Counter-Extremism: Second Report of Session 2016-17,' (HL Paper 39, HC 105, 22 July 2016), [36]-[50].

³⁰ Open Society Justice Initiative, 'Eroding Trust: The UK's Prevent Counter-Extremism Strategy in Health and Education' (2016) ('Open Society Report'), p19.

³¹ David Anderson QC, 'Prevent strategy can work against radicalisation... if it is trusted,' *Evening Standard* (16 February 2017), available at: <http://www.standard.co.uk/news/uk/david-anderson-qc-prevent-strategy-can-work-against-radicalisation-if-it-is-trusted-a3467901.html>

³² Alan Travis, 'Prevent strategy to be ramped up despite "big brother" concerns,' *The Guardian* (11 November 2016), available at: <https://www.theguardian.com/uk-news/2016/nov/11/prevent-strategy-uk-counter-radicalisation-widened-despite-criticism-concerns>.

which warrant further detailed consideration by way of an independent, evidence-led review.

PREVENT DESIGN FLAWS AND HUMAN RIGHTS IMPLICATIONS

The extension of Prevent to encompass non-violent extremism and the assumed link between non-violent extremism and terrorism

9. A central concept underpinning the Prevent strategy and Channel programme is that of ‘*extremism*.’ According to the Prevent strategy, *extremism* comprises:

‘vocal or active opposition to fundamental British values,³³ 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.’³⁴

10. As RW(UK) has set out in the ‘Preventing Education?’ report, it is noteworthy that the definition of ‘*extremism*’ is meaningfully different from that of ‘*terrorism*’ under section 1 of the Terrorism Act 2000³⁵ which, in keeping with the general international approach,³⁶ focuses on the taking of violent action to advance political or equivalent causes.³⁷ The Prevent strategy and Channel programme direct public authorities to assess the risk of a person becoming a terrorist (a person engaged in the advancement of causes by violent means) by their association with non-violent extremism (defined as a belief system at odds with apparent ‘*fundamental British values*’). The assessment assumes that *extremism* and *terrorism*, despite being different phenomena with different defining features, are reliably linked such that a person identified sufficiently early as an *extremist* may be prevented from becoming a *terrorist*. The Home Office disavows the widely discredited, conveyor belt theory, whereby it is said that a person travels on a linear path from so-called extremism to terrorism, but, as RW(UK) has observed,³⁸ the Prevent strategy explicitly adopts the metaphor of individuals travelling on a *path* from extremism

³³ 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), p9.

³⁴ HM Government, Prevent Strategy (Cm 8092, June 2011) (‘Prevent Strategy’), Annex A.

³⁵ Terrorism Act 2000, s1(1)-(4). See also: *R v Gul* [2014] AC 1260 (UKSC), [29] (Lords Neuberger and Lord Judge); and *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).

³⁶ See: UN Security Council Resolution 1566/2004, UN Doc. S/RES/1566 (2004), [3].

³⁷ Preventing Education, [27]-[28].

³⁸ Preventing Education, [31]-[33].

to terrorism. Such an approach has been roundly criticized as theoretically unsound by a range of experts including the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism³⁹ and reports of MI5's own internal research.⁴⁰

11. So far as it has been revealed, RW(UK) understands that the theoretical basis for the government's asserted link between extremism on the one hand and terrorism on the other is a study conducted by the National Offender Management Service, known as the Extremism Risk Guidelines (ERG22+) study ('the ERG Study'). The ERG Study, drawing on an evidence base of interviews with around 20 individuals incarcerated for terrorism-related offences (but, as RW(UK) understands it, no control group), purports to identify 22 general risk factors which are stated to predict or inform the likelihood of an individual being drawn into extremism and/or terrorism. The ERG Study has never been publicly released, and the only publicly-available discussion of it is the reference in a journal article published in the *Journal of Threat Assessment and Management* in 2015.⁴¹ A series of questions with respect to the ERG Study remain unanswered, including the extent of peer review of the data involved and the sample size employed. Despite requests from civil society (RW(UK) included), academia, and the press for the release of the ERG Study,⁴² the government has refused, and the study remains classified, accessible, as RW(UK) understands it, to only a limited group of vetted academics.

12. Given how fundamental the assumed link between purported indicators of extremism and participation in terrorism is for the architecture of the Prevent strategy as a whole, it is unacceptable that the sole evidence base for that link – the ERG Study – has been withheld from independent examination. RW(UK) and Liberty consider that, as part of any independent review of the Prevent strategy, the methodology, reasoning, and conclusions of the ERG Study need to be examined, and questions asked as to how it is that such a limited evidence base has come to form the foundation of such a wide-ranging government policy, predicated as it is, on a heavily criticised and highly controversial assumption that extremism is a reliable precursor of terrorism.

³⁹ Ben Emmerson QC, 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].

⁴⁰ 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>

⁴¹ Monica Lloyd and Christopher Dean, 'The Development of Structured Guidelines for Assessing Risk in Extremist Offenders' (2015) 2(1) *Journal of Threat Assessment and Management* 40.

⁴² See: Alice Ross, 'Academics criticise anti-radicalisation strategy in open letter,' *The Guardian* (9 September 2016), available at: <https://www.theguardian.com/uk-news/2016/sep/29/academics-criticise-prevent-anti-radicalisation-strategy-open-letter>.

The interaction of Prevent with: (i) other legal duties on educational institutions; and (ii) the criminal law

13. Another fundamental issue relevant to the introduction of the Prevent strategy in higher educational institutions (and also, relatedly, in schools and nurseries) is the assumption that existing legal frameworks, including already widely drawn criminal law offences (including inchoate offences) relating to terrorism, together with statutory health and safety, equality and safeguarding frameworks are somehow inadequate, necessitating the separate and additional Prevent strategy. The assumption that the existing range of criminal law offences and welfare related duties of education providers are inadequate is pervasive, but has not been examined with sufficient rigour by the Government. Any independent review should consider the range of existing legal duties and whether Prevent is warranted in light of those other existing legal frameworks.

The manner in which personal information is dealt with by authorities involved in the Prevent strategy and Channel programme

14. 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. Article 8 of the European Convention on Human Rights⁴³ provides that everyone *'has the right to respect for his private and family life, his home, and his correspondence,'*⁴⁴ and the equivalent Article 17 of the International Covenant on Civil and Political Rights,⁴⁵ ensures that *'[n]o one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence...'*⁴⁶ With respect to the specific rights of children (enlivened where Prevent is at work in the school environment), the Convention on the Rights of the Child confirms that children enjoy the right to privacy in the same terms.⁴⁷

15. The most important legal framework in the UK governing how personal information is handled in the interests of protecting personal rights to privacy is that established by the Data Protection Act 1998 ('DPA'). The DPA, implementing in large part the EU Data

⁴³ 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').

⁴⁴ ECHR, Article 8(1).

⁴⁵ UN General Assembly, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR'). See also: UN Human Rights Committee, General Comment 16, UN Doc. HRI/GEN/1/Rev.9 (8 April 1988).

⁴⁶ ICCPR, Article 17(1).

⁴⁷ UN General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 ('CRC'), Article 16.

Protection Directive,⁴⁸ creates a series of rules binding upon any person who processes (whether that be through collection, collation, or distribution) another's '*personal data*.' Under the DPA, any person processing '*personal data*' is obliged to comply with certain '*data protection principles*,' including the requirement that data are processed in a manner which is fair and lawful. An aspect of this principle of fair processing is 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.

16. The European Court of Human Rights has decided that, where personal data is collected in secret, the minimum requirement is that there is a detailed legal framework which governs who may lawfully consult files containing that data, the nature of the files, the procedures that must be followed for access, and the use to which the information may be put.⁴⁹ In the same vein, the UN Human Rights Committee has 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*.'⁵⁰

17. Compliance of any government system of data collection and retention with the right to privacy and with the data protection principles for which the Data Protection Act 1998 provides requires, at a minimum, that those who operate the system are governed by a legal framework regulating their discretion and the use to which relevant data may be put, and requires that individuals whose data is collected have effective mechanisms for finding out what it is that public authorities have recorded about them, and how that information will be used.

18. Relevant Prevent and Channel policy guidance demonstrates that the government acknowledges the intersection of data protection and privacy rights with government action in this field. The Prevent Duty Guidance states in this regard that:

'The Prevent programme must not involve any covert activity against people or communities. But specified authorities may need to share personal information to ensure, for example that a person at risk of radicalisation is given appropriate

⁴⁸ 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, 23.11.1995, p31.

⁴⁹ *Rotaru v Romania* [57]ff.

⁵⁰ UN Human Rights Committee, General Comment 16, [10].

*support (for example on the Channel programme). Information sharing must be assessed on a case-by-case basis and is governed by legislation.*⁵¹

19. Further, the Prevent Duty Guidance directs public authorities to take account of the requirements of the DPA and human rights law, and also to ensure that any steps taken with respect to personal information have a basis in law.⁵² And while the 2015 Act imposes an obligation upon panel partners to co-operate with Channel panels,⁵³ section 38(4) of the 2015 Act provides that such an obligation should not be construed as requiring or authorizing *‘the making of ... a disclosure that would contravene the [DPA].’*⁵⁴ The Channel Duty guidance confirms that point.⁵⁵
20. But RW(UK) and Liberty are concerned that, despite those broad policy statements of compliance with data protection and privacy rights, the operation of the Prevent strategy and the Channel programme on the ground does not demonstrate due respect for personal information and privacy. From the case studies considered by RW(UK) in its 2016 report, which was confined to a consideration of the operation of Prevent in schools, it appears that local authorities, schools, and/or police authorities may in fact be operating some system of data collection and sharing which records a child’s interaction with the Prevent strategy and/or Channel programme (whether by way of formal referral or informally, by way of a police visit to a child’s home).⁵⁶ RW(UK) holds significant concerns as to the rigour and compliance of such a system of data collection (whether formal or informal) with both the specific requirements of the DPA and the general demands of the right to privacy.
21. Information provided to RW(UK) in interviews raises serious concerns as to the manner in which police, schools, and local authorities are dealing with personal information (such as details of a child’s religious views and their experience of coming into contact with Prevent officers). The RW(UK) report ‘Preventing Education?’ set out troubling instances where information has been gathered on children (without prior notification to, or consent from, either parent or child) and passed to police, with the police representing that the

⁵¹ HM Government, Revised Prevent Duty Guidance for England and Wales (16 July 2015) (‘Prevent Duty Guidance’), [21].

⁵² Prevent Duty Guidance, [22].

⁵³ Counter-Terrorism and Security Act 2015, s38.

⁵⁴ Counter-Terrorism and Security Act 2015, s38(4)(a).

⁵⁵ HM Government, Channel Duty Guidance: Protecting Vulnerable People From Being Drawn into Terrorism (2015), [43].

⁵⁶ Preventing Education, [96]-[98] and [113]-[115].

information will be retained in some form of record potentially indefinitely.⁵⁷ Those reports suggest that some system of data collection and sharing is operating among public authorities which deal with students and Prevent, and on the information available it is difficult to see how such a system, which contains no prior notification or consent, and is described by those operating it in amorphous terms as potentially indefinite, could possibly be operating in a manner which complies with the data protection principles under the DPA, or with human rights law more generally.

22. The key problem in coming to a full assessment, however, lies in the absence of reliable information as to the rules public authorities follow (if any) in collecting, collating, and sharing personal information relating to Prevent. The absence of a clear statutory basis in the 2015 Act for many of the actions taken pursuant to the Prevent strategy means that public authorities must be relying on other powers to carry out data collection, collation, and sharing. But aside from the generalized statements of principle contained in the Prevent Duty Guidance and Channel Duty Guidance, there is minimal publicly-available information as to what entitles educational institutions, local authorities, and police to collect personal information in this context, and how those activities are constrained.
23. Only a full and independent review in which the government is required to explain how data collection and sharing operates, how it is regulated, and what legal framework is in place to deal with potential breaches will be capable of allaying the legitimate concerns which have arisen regarding this aspect of the Prevent strategy and Channel programme.
24. If it remains the aim of the government to ensure that students, parents and communities can have faith in government policy in this field, the government needs to provide a clear and frank explanation of how it is complying with the law with respect to data collection and privacy in all educational settings in which Prevent is operating.

Existing arrangements for inspection and monitoring of compliance with Prevent in educational institutions

25. The statutory Prevent provisions set out in the Counter-Terrorism and Security Act 2015 did far more than impose a statutory duty on universities to “*have due regard to the need*

⁵⁷ Preventing Education, [96] and [113].

to prevent people from being drawn into terrorism”.⁵⁸ They created a coercive structure involving monitoring and enforcement of the Prevent duty in higher and further education institutions. Under the 2015 Act, performance of the duty is monitored on an ongoing basis, with relevant higher education bodies required to relay “any information that the monitoring authority may require for the purpose of monitoring that body’s performance in discharging the duty imposed by section 26(1).”⁵⁹ Currently, the Higher Education Funding Council for England (HEFCE) has responsibility for monitoring compliance with the statutory Prevent duty. In guidance published in November 2015, HEFCE required the publication of “detailed information” by universities and – at the Government’s imperative - also quickly established an assessment and reporting timetable for universities.⁶⁰ HEFCE’s guidance provides for the outcome of assessments to be reported directly to Government.⁶¹ The present Bill proposes to dissolve HEFCE and replace it with the Office for Students (OfS) and a new research council “UK Research and Innovation”. The Government envisages the OfS – a powerful new body with the capacity to award or remove university status and impose monetary penalties on universities - will take on responsibility for monitoring Prevent compliance.⁶²

26. Meanwhile in schools, the schools inspection body, the Office for Standards in Education, Children’s Services and Skills (‘Ofsted’) has incorporated assessment of compliance with Prevent into its Common Inspection Framework,⁶³ which sets out the parameters for Ofsted’s regular inspections of schools in England.⁶⁴ Ofsted also monitors and evaluates how well schools and educational institutions in the *further education and skills* sector implement the Prevent duty.

27. Under the Common Inspection Framework, Ofsted inspectors are now required to:

‘make a judgment on the effectiveness of leadership and management by evaluating the extent to which leaders, managers and governors ... actively promote British values [and] make sure that safeguarding arrangements to protection children, young

⁵⁸ Higher Education and Research Bill, provisions around registration, deregistration and monetary penalties set out in Part 1.

⁵⁹ Section 32(2).

⁶⁰ HEFCE, *The Prevent duty: Monitoring framework for the higher education sector*, November 2015: http://www.hefce.ac.uk/media/HEFCE,2014/Content/Pubs/2015/201532/HEFCE_2015_32.pdf.

⁶¹ http://www.hefce.ac.uk/media/HEFCE,2014/Content/Pubs/2015/201532/HEFCE_2015_32.pdf

⁶² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/527757/bis-16-292-ofs-case-for-creation.pdf

⁶³ Ofsted, *The Common Inspection Framework: Education, Skills and Early Years* (August 2015) (‘Common Inspection Framework’).

⁶⁴ Pursuant to its statutory duties under the Education Act 2005, Education and Skills Act 2008, Education and Inspections Act 2006, and the Childcare Act 2006.

*people and learners meet all statutory and other government requirements, promote their welfare and prevent radicalisation and extremism.*⁶⁵

28. In mid 2016 Ofsted released a report evaluating how well institutions in the further education and skills sector were implementing the Prevent duty in its first academic year of application,⁶⁶ no such evaluation has been undertaken or published with respect to the schools sector (despite the Prevent duty having been extended to the schools sector on 1 July 2015, some two and a half months before it was extended to further and higher education institutions). Accordingly, there is no transparent way to assess how Ofsted is treating the decisions taken by various schools, and the consistency (or otherwise) of inspection practices or criteria adopted across the country.
29. RW(UK) and Liberty consider that an independent review of the operation of the Prevent strategy in relation to universities, schools or other educational settings will need to entail an examination of how bodies such as HEFCE (or a replacement body) and Ofsted are treating their inspection powers, and whether a system of monitoring compliance with Prevent by educational institutions might lead to over-referral by institutions concerned not to be found wanting by oversight bodies.

The nature and extent of training provided to staff implementing the Prevent duty

30. RW(UK) has set out, in the ‘Preventing Education?’ report, the widespread concerns among teachers and academics as to the nature and quality of the training provided to staff which aims to introduce them to the Prevent strategy and Channel programme. As the report notes, the Workshop to Raise Awareness of Prevent (‘WRAP’) training has been criticized as overly dramatic and unrealistic, lacking in clear instruction as to statutory requirements and government guidance, containing no systematic coverage of the human rights framework, and simply being too limited in time (typically consisting of a 90-minute video and online tutorial) to impart sufficient information on the complex topics of extremism and terrorism, and the asserted link between them.⁶⁷
31. Given the potential impact of actions taken under the Prevent strategy and Channel programme on students’ rights, as set out at length in the ‘Preventing Education?’

⁶⁵ Common Inspection Framework, [28]. The footnotes make it clear that these references are to the Prevent strategy and Prevent Duty Guidance.

⁶⁶ Ofsted, How Well Are Further Education and Skills Providers Implementing the “Prevent” Duty? (July 2016).

⁶⁷ Preventing Education, [8]-[10].

report,⁶⁸ it is imperative that staff tasked with making decisions as to whether or not action pursuant to the Prevent strategy is appropriate are provided with proper training. The alternative is that staff are left in the unenviable situation of being aware that they, under pain of an adverse report from monitoring authorities, are responsible for complying with the Prevent duty but are unsure as to how such compliance ought properly to be carried out. RW(UK) and Liberty are concerned that the inevitable consequence will be over-referral due to risk aversion, something which jeopardizes students' rights and education. RW(UK) and Liberty accordingly recommend that an independent review of the Prevent strategy and Channel programme must involve a searching assessment of the adequacy or otherwise of the training which is intended to underpin the implementation of Prevent by staff of educational institutions.

32. RW(UK) and Liberty also consider that any independent review should have regard to the expertise of individuals appointed to the role of Prevent Officers, and what criteria are used to hire individuals for the role, as well as what training they receive to equip them to identify individuals vulnerable to terrorism.

The burden of Prevent on affected communities, in particular the Muslim community

33. The most recent⁶⁹ statistics on Prevent referrals which note the religion of the referred individuals relate to the 2012-13 year. Those figures, provided by the Association of Chief Police Officers, indicate that 57.4% of all referrals that year were Muslim. No data is available on the religion of persons referred between 2011 and 2012, but figures relating to the operation of Prevent between its launch in April 2007 and December 2010 indicate that 67% of referrals in that period were Muslim.⁷⁰ That disproportionate incidence of Muslim referrals (Muslims making up 4.8% of the UK population in the most recent Census data),⁷¹ raises an inference that the Prevent duty is being given effect to

⁶⁸ Preventing Education, [35]-[73].

⁶⁹ Despite requests having been made under the Freedom of Information Act 2010, no more recent statistics of this type have been released.

⁷⁰ See Association of Chief Police Officers, Freedom of Information Request Reference Number: 000117/13, undated, available at: <http://site.npccms.coraider.com/documents/FoI%20publication/Disclosure%20Logs/Terrorism%200&%20Allied%20Matters%20FOI/2013/117%2013%20ACPO%20Response%20-%20Channel%20Project%20Referrals.pdf>

⁷¹ 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>

in a manner which discriminates on the basis of the referred individuals' religious identity (or perceived religious identity), contrary to a range of human rights protections.⁷²

34. While that inference is both reasonable on the available figures and deeply troubling from the perspective of human rights compliance, it is deeply concerning that those seeking to assess the impact of Prevent are reduced to drawing inferences from 5-year old figures which predate the statutory extension of the Prevent duty into the educational setting.
35. The absence of transparency and lack of data should be unacceptable in relation to any major government programme, but it is particularly problematic in the context of a controversial policy which is widely perceived as discriminatory and unfair.
36. Accordingly, RW(UK) and Liberty recommend that an independent review of the Prevent strategy and Channel programme must ensure that government provides comprehensive and up-to-date figures on the differential impact of referrals in educational settings under the Prevent strategy on affected minority communities, in particular, the Muslim community (if indeed there is such a differential impact).

Human rights implications of Prevent

37. The reports of Rights Watch (UK) and the Open Justice Society Initiative, as well as casework undertaken by Liberty and others on behalf of affected individuals, reveal how the policy, as well as being flawed in design, leads in practice to very real human rights violations. As applied in educational settings, it violates rights to education, freedom of expression, freedom of religion and belief, freedom from discrimination and privacy, and, finally, in the school and nursery settings, the special protections afforded to children by virtue of the Convention on the Rights of the Child. It is imperative that an independent review considers the many serious allegations of human rights violations that have been raised in relation to the strategy.

⁷² For example, ECHR, Articles 1 and 14; ICCPR, Articles 2 and 26; CRC, Article 2; and 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'), Article 2(2).

WHAT FORM AN INDEPENDENT REVIEW SHOULD TAKE

38. It must be acknowledged that, whatever dividends the government may insist the strategy has delivered, the Prevent strategy and Channel programme are widely perceived within civil society, and in particular within Muslim communities throughout the UK, as discriminatory and unjust. RW(UK)'s report 'Preventing Education?' noted the adverse opinions held by a range of stakeholders, including affected families, teachers, elected representatives, and even the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association.⁷³ And as the House of Commons Home Affairs Committee put it in its August 2016 report:

*'The concerns about Prevent amongst the communities most affected by it must be addressed. Otherwise it will continue to be viewed with suspicion by many, and by some as "toxic" ... [Prevent] is perceived to be a top-down "Big Brother" security operation.'*⁷⁴

39. No government strategy which seeks to engage with young people and change their behaviour, as Prevent does, can prosper without relationships built on trust and confidence that the government is acting in people's best interests. In the circumstances, RW(UK) and Liberty consider it necessary for, at a minimum, a rigorous independent review with which the government co-operates in full to be undertaken. RW(UK) and Liberty consider that the hallmarks of such a review must be independence, authority and transparency.

Independence and Authority

40. Where the crisis is one of trust in government, the solution cannot lie in the government merely undertaking to examine itself. RW(UK) and Liberty note with concern the internal Home Office review reportedly carried out in late 2016, the results of which have not been published. However searching such a review may be, communities already concerned as to the integrity of government action in relation to Prevent will naturally have little confidence that any of their concerns have been addressed, if, as in this instance, the review that is undertaken is not a public one.

⁷³ Preventing Education, [102]-[107].

⁷⁴ House of Commons Home Affairs Committee, 'Radicalisation: the counter-narrative and identifying the tipping point: Eighth Report of Session 2016-17,' (HC 135, 25 August 2016) ('Home Affairs Committee Report'), [55].

41. RW(UK) and Liberty consider that for any review of the operation of the Prevent strategy to be credible and capable of inspiring trust and confidence, it is imperative for that review to be independent and authoritative. Having a figure with senior legal experience carry out the role would inspire confidence that conclusions and insights are sound, while granting that figure access to classified and sensitive information would ensure that the results of the review are properly informed, such that conclusions are not compromised by incomplete inquiry. In addition to the power to assess information held by government, the independent reviewer should be empowered and expected to seek information from affected individuals, whether they be students subject to Prevent or Channel referrals or teaching staff subject to the Prevent duty under the 2015 Act. This breadth of evidence will counter a key difficulty in assessing the Prevent strategy currently, namely that information is often anecdotal and incomplete.
42. Further, ensuring that the reviewer is entirely independent of government removes the risk, or the perception, of bias in this sensitive field. Where there are such sharp divergences of opinion between government, civil society, and minority communities, in particular the Muslim community, about the merits and role of the Prevent strategy and Channel programme in countering terrorism, an independent and authoritative honest broker is needed, with the requisite legal experience to navigate the complex regulatory frameworks with which Prevent interacts and the capacity to analyse in detail the sensitive information relevant to the government's actions in this field.
43. RW(UK) and Liberty consider that, whatever the outcome of a review with these features, both government and civil society stand to benefit, since neither criticism nor endorsement of current approaches are reasonably open to collateral attack on grounds of partiality or imperfect information. RW(UK) and Liberty urge the government and Parliament to adopt a model of independent review of the Prevent strategy and Channel programme by an authoritative senior lawyer granted all necessary access to sensitive information held by government, and recalls the 2014 statement of David Anderson QC, the former Independent Reviewer of Terrorism Legislation summarizing the importance of that role:

'Any Government that invites review [on terms of independence and access to classified information] deserves respect simply for doing so. Approval from an Independent Reviewer is worth having, because that person has a full understanding both of the threat and of the measures taken to combat it. But criticism has the potential to be devastating, for the same reasons. By accepting review of this kind,

Ministers make it harder for themselves to use the age-old brush-off: “If you had seen what I have seen...” The Independent Reviewer has seen what they have seen and, unconstrained by the disciplines or loyalties of office, has every reason – unless he has gone rogue or gone native – to tell it as it is.’⁷⁵

Transparency

44. Similarly, RW(UK) and Liberty consider that rebuilding trust and confidence demands that the results of an independent review process are made public, subject, of course, to proper editing and/or redaction to maintain confidentiality and privacy (particularly in respect of the potential for inadvertent disclosure of personal information). In a slightly different context, the House of Commons Home Affairs Committee urged government to *‘be more transparent about what it is doing on the Prevent strategy, including by publicising its engagement activities, and providing updates on outcomes, through an easily accessible online portal.’⁷⁶*

⁷⁵ David Anderson QC, ‘The Independent Review of Terrorism Legislation,’ [2014] *Public Law* 403, 403.

⁷⁶ Home Affairs Committee Report, [56].