

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's written evidence to the JCHR's Inquiry on Freedom of Expression in Universities

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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 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

<http://www.liberty-human-rights.org.uk/policy/>

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1. Liberty welcomes the opportunity to submit evidence to the JCHR's inquiry into freedom of expression in universities. This submission will focus on Liberty's concern about the impact of the statutory Prevent duty and accompanying guidance on the right to freedom of expression in higher education.

The statutory Prevent duty in universities

2. The creation of a statutory Prevent framework was a source of considerable criticism during the parliamentary passage of the Counter-Terrorism and Security Act 2015 (the 2015 Act). Statutory requirements were variously described as an "*elaborate infrastructure or superstructure*";¹ the employment of a "*top-down approach*";² a movement "*from co-operation to co-option*";³ "*too restrictive and prescriptive*";⁴ "*impractical*";⁵ "*too blunt an instrument*";⁶ and a form of regulation "*likely to provoke what [the Government] seek to prevent*".⁷ 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.*"⁸ 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.⁹

Monitoring and enforcement

3. Under the statutory Prevent model, the duty of universities to "*have due regard to the need to prevent people from being drawn into terrorism*", is monitored on an ongoing basis, with relevant higher education bodies (RHEB) 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).*"¹⁰ Currently, the Higher Education Funding Council for England (HEFCE) has responsibility for monitoring compliance with the statutory

¹ Baroness Hamwee, Lords Hansard: 4 Feb 2015: Column 666.

² Baroness Hussein-Ece, Lords Hansard: 28 Jan 2015: Column 213.

³ Baroness Lister of Burtersett, Lords Hansard: 28 Jan 2015: Column 225.

⁴ Baroness Buscombe, Lords Hansard: 28 Jan 2015: Column: 231.

⁵ The Lord Bishop of Chester, Lords Hansard: 28 Jan 2015: Column 248

⁶ Lord Pannick, Lords Hansard: 28 Jan 2015: Column: 239.

⁷ Baroness O'Neil of Bengrave, Lords Hansard: 28 Jan 2015: Column 249.

⁸ Baroness Manningham-Buller, Lords Hansard: 28 Jan 2015: Column 242.

⁹ 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>.

¹⁰ Section 32(2).

Prevent duty. Guidance published in August 2017, specifies that all RHEBs are required to submit an annual report summarising any relevant evidence which demonstrates their continuing active and effective implementation of the Prevent duty.¹¹ The outcome of assessments is reported directly to Government.

4. The Higher Education and Research Act 2017 established a new Office for Students (OfS). Once fully operational in April 2018, the OfS will replace HEFCE, including in relation to its Prevent monitoring functions. The OfS will be a powerful new body with the capacity to award or remove university status and impose monetary penalties on universities.¹² If satisfied that a particular body has failed to discharge its duty, the Secretary of State may intervene and give enforcement directions to that body.¹³ The Government can further apply to have a direction enforced by mandatory order.¹⁴

The Prevent guidance

5. The impact of coercive government regulation of our academic institutions is most obvious when viewed in conjunction with problematic Home Office guidance. The 2015 Act requires RHEB to have regard to guidance issued by the Secretary of State. The definition of “*extremism*” reproduced in the Government’s revised Prevent guidance is astonishingly loose and broad including: “*vocal or active opposition to fundamental British values*” such as democracy or individual liberty.¹⁵ Current university-specific guidance for higher education institutions suggests:

...when deciding whether or not to host a particular speaker, RHEB should consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. **In these circumstances the event should not be allowed to proceed except where RHEBs are entirely convinced that such risk can be fully mitigated without cancellation of the event.**¹⁶

¹¹ HEFCE, *Framework for the monitoring of the Prevent duty in higher education in England*, August 2017, paragraph 11.

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/527757/bis-16-292-ofs-case-for-creation.pdf

¹³ Section 30(1).

¹⁴ Section 30(2).

¹⁵ HM Government, *Revised Prevent Duty Guidance for England and Wales*, revised on 16th July, paragraph 7.

¹⁶ HM Government, *Prevent Duty Guidance: for higher education institutions in England and Wales*, 16th July 2015, paragraph 11.

6. Although this guidance does not have the force of law, when placed in the context of a heavy-handed statutory structure, it seems designed to prevent anything but the most anodyne of events from taking place in our universities. While many institutions have worked hard to uphold a commitment to the free and vibrant exchange of ideas, they are swimming against the tide of law and policy. Notwithstanding the inclusion in the 2015 Act of an important statutory requirement for RHEB to “*have particular regard to the need to ensure freedom of speech*”,¹⁷ some institutions have yielded to the pressure created by the statutory Prevent structure. In the process they have seriously compromised freedom of expression and increased feelings of discrimination and alienation amongst Muslim students. This worrying reality is illustrated in case-studies provided by Open Society Justice Initiative in a report published in October 2016.¹⁸

Huddersfield University: cancellation of a conference on Racism and Islamophobia¹⁹

At one stage in an extensive correspondence between the event organisers and the University, the latter warned that “*there is a risk that given the topics to be discussed, it may attract attendees which hold extremist views*”.²⁰ Much of the University’s documented concern about the event focused on the participation of a local human rights organisation critical of Prevent, but in no way supportive of violent extremism. The university suggested that particular conditions be met in light of the group’s participation and raised more general concerns about public and community participation in the event.

Cambridge University: cancellation of an Islam in Europe event²¹

Staff of two colleges involved with the organisation of an event due to be hosted by Cambridge University Islamic Society raised concerns about the involvement of a speaker a week before the event, arguing that universities were required, by a new law, to be more careful about the platform given to speakers.²² The speaker in question had appeared on media outlets in the UK and internationally. No attempt was made by the College representatives to facilitate the event whilst allowing for any unpleasant or extreme views which might have been expressed to be countered.

¹⁷ Section 31. It also requires RHEB to *have “particular regard to the importance of academic freedom”*.

¹⁸ Open Society Justice Initiative, *Eroding Trust: The UK’s PREVENT Counter-Extremism Strategy in Health and Education*. Available at: <https://www.opensocietyfoundations.org/reports/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education>.

¹⁹ *Eroding Trust*, case study 12, p 91-95.

²⁰ *Eroding Trust*, p. 95.

²¹ *Eroding Trust*, case study 13, p. 95-97.

²² *Eroding Trust*, p. 96.

Statutory Channel requirements on universities

7. The 2015 Act further enshrined the police referral process for individuals deemed “*vulnerable to being drawn into terrorism*” in statute and required local authorities to create local panels, comprised of police and local authority representatives to oversee the delivery of individual Prevent plans.²³ The governing bodies of higher education institutions are specified partners of these panels.²⁴ As such they are required by the 2015 Act to co-operate with Channel panels, including by feeding them information.²⁵ They are also explicitly required to cooperate with police in the process of determining whether an individual should be referred to a Prevent panel.²⁶

8. Of all the sectors that refer individuals to Prevent, education counts as the single biggest source of referrals.²⁷ In the year ending March 2016, a third of all Prevent referrals were made by education providers, but only around 14 per cent were deemed suitable, through preliminary assessment, to be discussed at a Channel panel.²⁸ In other cases no further action was taken (over a third of cases), or students were referred to other services such as health and community provision, but having experienced the stigma and anxiety of a referral into a counter-terror programme. More worrying still is the fact that these statistics, which the government claims mark a new era of transparency, fail to include a breakdown of the ethnicity and religion of those subject to Prevent referrals. This data is crucial in a context where concerns about discrimination are widespread.

9. The removal of the statutory referral requirement on universities would not remove the responsibility of staff and institutions to co-operate with police to tackle suspected criminality as discussed below. Universities would further remain bound by a common law duty of care towards their students, by statutory health and safety obligations and by the public sector equality duty.²⁹ Examples of the impact of a statutory requirement which sees university staff co-opted into policing lawful speech and association are again provided by OSJI’s report *‘Eroding Trust’*.

²³ Counterterrorism and Security Act 2015, Part 5, Chapter 2.

²⁴ Schedule 7.

²⁵ In accordance with legal restrictions, subsection 38(3)-(4).

²⁶ Section 38(8).

²⁷ The Home Office, *Individuals referred to and supported through the Prevent Programme, April 2015 to March 2016*, released November 2017.

²⁸ *Ibid.*, paragraph 1.1.

²⁹ The Equality Act 2010, section 149. The public sector equality duty requires universities to, in the exercise of their functions, have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between people who share a protected characteristic and those who do not and foster good relations between people who share a protected characteristic and those who do not.

Mohammed Umar Farooq³⁰

Mohammed was studying for a Masters in Terrorism and Security Studies at Staffordshire University. When reading one of his course books, "Terrorism Studies: A Reader", in the library he was approached by two women, one of them a member of university staff, who asked Mohammed about his book and sought his views on ISIS and Sharia law. A security guard was then sent to check out Mohammed. The guard revealed that the university employee had reported that she suspected Mohammed to be "a radical terrorist".³¹ A University investigation into a complaint made by Mohammed initially rejected his allegations of racism and discrimination. Months later, the University did apologise, explaining that the Counterterrorism and Security Act 2015 imposed "a duty on the University to have due regard to the need to prevent individuals from being drawn into terrorism... this is a very broad duty, devoid of detail".³² The University argued that it could be challenging to distinguish "between the intellectual pursuit of radical ideas and radicalisation itself", referencing the lack of experience university employees have in this area.³³

The reach of the criminal law

10. The criminal law already includes ample and overlapping provision restricting support for or encouragement of criminal activity, including by speech and association, for example:

- The Serious Crime Act 2007 created three inchoate offences of intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed;³⁴
- The Terrorism Act 2000 criminalises membership of groups deemed to promote, encourage, or glorify terrorism, the support of any of these groups, and the wearing of their uniform;³⁵
- Terrorism Act 2006 criminalises the 'encouragement of terrorism' and acts preparatory to terrorism.³⁶

11. The Terrorism Act 2000 also criminalises failure to disclose information to the police where an individual knows or believes it could assist in the prevention of an act of terrorism

³⁰ *Eroding Trust*, case study 14, p. 97-99.

³¹ *Eroding Trust*, p. 98.

³² *Eroding Trust*, p. 98-99.

³³ *Eroding Trust*, p. 99.

³⁴ Sections 44-46.

³⁵ Sections 11-13.

³⁶ Section 1 and section 5 respectively.

or lead to the apprehension of a suspected terrorist. If university staff fail to report anything which amounts to acts preparatory to terrorism, they risk prosecution.³⁷ The requirements arise from the criminal law and would remain as a safeguard if the statutory Prevent duty was repealed.

12. A number of speech offences also exist criminalising hate speech and the expression of views liable to cause to cause harassment, alarm, distress. The Public Order Act 1986 criminalises using:

- Words or behaviour which are threatening, abusive or insulting which are intended or likely to stir up racial hatred;³⁸
- Threatening words or behaviour with the intention to stir up religious hatred;³⁹
- Threatening or abusive words or behaviour, or disorderly behaviour, liable to cause harassment, alarm or distress;⁴⁰ and
- Threatening, abusive or insulting words or behaviour, or disorderly behaviour, with the intent to cause harassment alarm or distress.⁴¹

There are also offences dealing with communications deemed indecent, offensive or menacing.⁴²

13. The net of the criminal law is cast extremely wide. There is no shortage of powers to ensure that genuinely dangerous individuals can be prevented from furthering a criminal agenda in our universities. The statutory Prevent duty exists outside of this broad criminal framework and risks closing down the legitimate communication of ideas considered extreme by public authorities and – through a coercive enforcement structure - ultimately central government. Aside from the adverse impact on free speech, there is a real risk that where unpleasant or illiberal views are excluded from university campuses, these views will be driven underground and the opportunity for effective challenge lost.

RECOMMENDATION: The statutory Prevent duty on universities should be repealed. The criminal law and the other legal requirements placed on universities are sufficient to protect against dangerous or harmful activity on campus.

³⁷ Section 38B.

³⁸ Section 18.

³⁹ Section 29B.

⁴⁰ Section 5.

⁴¹ Section 4A.

⁴² E.g. the Communications Act 2003, section 127.

The broader Prevent strategy

14. Liberty believes that prevention is a vital part of counter-terrorism work, but the Prevent strategy is misconceived. Since the introduction of the statutory duty there has been a widespread backlash amongst students and academic staff, with the legal requirements on universities widely perceived as discriminatory and counter-productive.

- Concern around the discriminatory impact of the scheme is reflected in an open letter, signed by 360 academics, which argues that Prevent “reinforces an ‘us’ and ‘them’ view of the world, divides communities, and sows mistrust of Muslims”.⁴³
- In passing a motion against the Prevent duty at its 2015 conference, the NUS concluded: “...[The Government] are attempting to monitor and control Muslim students, and attacking freedom of speech, organisation and discussion on campus more generally.”⁴⁴
- The University and College Union, UCU, responded to the statutory duty with a warning that: “Prevent, and the government's approach to fighting extremism, risk stifling our right to question and challenge ideas with which we disagree.... It risks silencing those who are most vulnerable, leaving them no space in which to express their opinions or be challenged safely. Due to the Islamophobic narrative surrounding 'extremism', it also risks certain communities being targeted unfairly.”⁴⁵
- The UN Rapporteur on Freedom of Peaceful Assembly and of Association, at the conclusion of his visit to the UK in April 2016, expressed concern that: “Prevent is having the opposite of its intended effect: by dividing, stigmatizing and alienating segments of the population, Prevent could end up promoting extremism, rather than countering it”.⁴⁶
- In an interview with Open Society Justice Initiative, Former Director of GCHQ and architect of the original Prevent strategy, Sir David Omand, argued that “The key

⁴³ Joint statement by academics and public figures on the government's implementation of PREVENT through the Counter-Terrorism and Security Act 2015, available at: <http://www.preventwatch.org/joint-statement-on-prevent/>.

⁴⁴ NUS conference 2015, Motion 517: Counter-Terrorism and Security Act. Available at: https://nusdigital.s3-eu-west-1.amazonaws.com/document/documents/15469/84ddb0975328cbf3209bda92be723d8f/CD13_NC2015_Final%20Resolutions%20DRAFT%201.pdf?AWSAccessKeyId=AKIAJKEA56ZWKFU6MHNQ&Expires=1480527222&Signature=ehTcWUHV%2Bd0JWcqhY3dDKsDUxvA%3D

⁴⁵ UCU and NASUWT statement on the Counter-Terrorism and Security Act 2015, available at: <https://www.ucu.org.uk/counterterrorismact>.

⁴⁶ Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United Kingdom, 21 April 2016. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19854&LangID=E#sthash.Nyaj5BKA.dpuf>.

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.”⁴⁷

- The Muslim Council of Britain, following extensive engagement with communities across the UK, reports: “a widespread concern that Muslims are singled out as potential extremists”, with particular concerns expressed about the requirement for Muslims to pass “subjective and discriminatory counter-extremism litmus tests, as a condition of engagement”.⁴⁸

15. The Government has shown a disappointing unwillingness to openly confront widespread concerns about the Prevent strategy. It reports that an internal review of the Prevent strategy has taken place and it concluded that Prevent should be “strengthened” to address 12 undisclosed issues.⁴⁹ In June the government suggested it would conduct a further review of the broader counter-terrorism strategy, but little is known about the scope of that review or whether it will have any or adequate independence.⁵⁰ Liberty supports the calls of the former Independent Reviewer of Terrorism Legislation, David Anderson QC, for an open and independent review of the strategy,⁵¹ a call recently reiterated by Citizens Commission on Islam, Participation and Public Life chaired by Dominic Grieve QC.⁵² An independent review should critically examine Prevent’s focus on non-violent extremism. Liberty and is not aware of any evidence to support the Government’s ‘conveyor belt’ theory that the expression of extreme or radical view leads to violent criminality. This is a concern drawn out by the JCHR, which concluded in its July 2016 report that: “it is by no means proven or agreed that religious conservatism, in itself, correlates with support for violent jihadism.”⁵³

RECOMMENDATION: The repeal of the statutory duty should be accompanied by an independent review of the broader Prevent strategy and in particular its focus on non-violent extremism.

⁴⁷ OSJI, *Eroding Trust: The UK’s Prevent Counter-Extremism Strategy in Health and Education*, Interview of Sir David Omand, London, 30 March 2016.

⁴⁸ Ibid.

⁴⁹ Lords Hansard, 26 October 2016: Volume 776, column 205.

⁵⁰ HM Government, *The Queen’s Speech and Associated Background Briefing on the Occasion of the Opening of Parliament on Wednesday 21 June 2017*. Page 51.

⁵¹ See e.g. David Anderson QC, Supplementary written evidence to the Home Affairs Committee *Countering Extremism Inquiry*, available at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/countering-extremism/written/27920.pdf>.

⁵² Citizens Commission on Islam, Participation and Public Life, *The Missing Muslims: Unlocking British Muslim Potential for the Benefit of All*, 2017. Recommendation 10, page 14.

⁵³ JCHR, *Counter-Extremism Second Report of Session 2016–17*, page 3.