



Critiquing approaches to countering extremism and terrorism via Prevent

Abstract

This paper focuses on the current statutory Prevent strategy designed to counter extremism and disrupt pathways into terrorism, which applies to a range of public authorities, including schools and Universities. It will be argued that it has created polarisation of views to such an extent as to obscure its real impact: concerns as to its impact in stigmatising Muslims have been expressed inter alia by some Muslim activist groups, and as referrals rise of persons belonging to or influenced by far-right groups, complaints of stifling of political expression from such groups may become more prevalent. But at the same time Prevent has been presented by government sources as designed to be complementary to pre-existing or parallel approaches to safeguarding those vulnerable to radicalisation, and its role in promoting critical thinking and pluralism has also received support from some commentators. It will be contended that Prevent has the potential to support persons at risk of being drawn into terrorism, but that its workings need to be communicated much more transparently to those it potentially affects, combatting the exaggerations of certain anti-Prevent lobby groups, and thereby seeking to avoid the creation of counter-productive effects, as may occur as a result of the independent review of Prevent in 2019-20. In conclusion, it will be argued that the counter-productive risks of fostering extremism entailed in relying on this preventive measure need not outweigh the benefits, but that the Prevent Guidance needs revision, and the strategy should be subject to continued and enhanced scrutiny, designed to ensure its restrained, but effective, use.

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1. Introduction

The recently increased threat posed by terrorism to Western democracies comes largely from changing and evolving Islamic terrorism,¹ but increasingly, in 2017-19, it has also come from

¹ See eg David Anderson QC, former independent reviewer of terrorist legislation, 'Attacks in London and Manchester March-June 2017 Independent Assessment of MI5 and Police reviews' (December 2017) 1.4: <https://www.mi5.gov.uk/news/publication-of-david-anderson-qc%E2%80%99s-report-on-the-terrorist-attacks-of-march-june-2017> (accessed 5.4.19), and in relation to the Europe Union generally, TE SAT, *European Union Terrorism Situation and Trend Report* (Europol 2017) chap 3. The Home Secretary said in June 2018: 'While the so-called caliphate is a thing of the past, Daesh continues to plan and inspire attacks both here and abroad as well as recruiting British citizens to fight': Sajid Javid, 'Home Secretary announces new counter-terrorism strategy' 4th June 2018; see at <https://www.gov.uk/government/speeches/home-secretary-announces-new-counter-terrorism-strategy> (accessed 5.4.19).

far-right groups.² The military destruction of the ‘Caliphate’ in 2019³ may lead to an increase in the number of returnees and to calls from ISIS remnants to mount attacks in the West. In 2017, when five terrorist attacks occurred in the UK, the threat level was raised twice to the highest level, ‘critical’; at present it remains at ‘severe’.⁴ In the context of that continued threat, the rise post-2005 in so-called ‘home-grown’⁵ terrorism, relying more on suicide strikes on soft targets by ‘self-starters’ rather than on larger operations,⁶ means that the search for effective preventive measures to use against nationals to seek to combat radicalisation remains a continuing concern. The Prevent strategy⁷ represents one such measure. If children and young people who may be susceptible to radicalising influences experience intervention at an early stage, the number of persons presenting a threat of engaging in terrorism⁸ later on may eventually diminish, if Prevent-based interventions are successful. Prevent represents a controversial culmination of those counter-terror measures adopted post 9/11, and

² Assistant Commissioner of the Metropolitan Police, Mark Rowley, stated that four extreme-right terror plots were disrupted in 2017 and 10 Islamist-inspired plots had been foiled since March 2017: D Sandford *the Guardian* 26.2.18. See also Home Office, ‘Individuals referred to and supported through the Prevent Programme, April 2016 to March 2017’ 27th March 2018, 1.4; see further note 153 below. As at March 31st 2018 thirteen percent of terrorist offences related to individuals with far-right ideologies, and the proportion of individuals holding far-right ideologies was recorded to have almost doubled since 2015: ‘Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search, Great Britain, financial year ending 31 March 2017’, Statistical Bulletin, 14th June 2018, 5.2. See also D Anderson’s 2015 Report, paras 2.4-2.9 as to the threat from non-Islamic terrorism. The Home Secretary said on 5.6.18: ‘Extreme right-wing terrorism is also an increasing threat. This was tragically demonstrated by the Finsbury Park attack (19.6.17) and by the shocking murder of Jo Cox (16th.16)’. It was noted that by December 2017 seven extreme right-wing plots had been foiled since the Westminster attack in March 2017: D Anderson, ‘Attacks in London and Manchester March-June 2017 Independent Assessment of MI5 and Police reviews’ (Web ISBN [978-1-78655-598-4]) at 1.4 and fn 6. In 2016 the extreme right-wing terrorist group National Action was proscribed. In 2017 their aliases Scottish Dawn and the National Socialist Anti-Capitalist Action group were also banned. See further J Muis and T Immerzeel 65(6) *Current Sociology* 909-930 ‘Causes and consequences of the rise of populist radical right parties and movements in Europe’.

³ The terrorist organisation referred to as ISIS was predominantly based in Syria and Iraq. The final defeat of the ‘Caliphate’ was formally declared on 23.3.19: see ‘IS ‘caliphate’ defeated but jihadist group remains a threat’ BBC News 23.3.19.

⁴ So in 2019 it remains at the second highest level possible. See also CONTEST: the United Kingdom’s Strategy for Countering Terrorism, 4 June 2018, CM 9608: the security and intelligence agencies in 2018 handled over 500 live operations, and have 3,000 ‘subjects of interest’; a further 20,000 people have previously been investigated, and are viewed as still possibly posing a threat: para 60.

⁵ In particular, the attacks in 2017 were perpetrated by English citizens: the 22nd March Westminster Bridge attack, which caused the deaths of 5 people, the Manchester Arena bombing on 22nd May which resulted in 22 deaths, the London Bridge attack on 3rd June, killing eight people and the 19th June Finsbury Park Mosque attack, resulting in one death. See also D Anderson, ‘Attacks in London and Manchester March-June 2017: Independent Assessment of MI5 and Police reviews’ (December 2017). The terrorist threat was summarised in 2015 in CONTEST The United Kingdom’s Strategy for Countering Terrorism: ‘Annual Report for 2015’ Cm 9310 July 2016, which referred in para 1.4 to about 850 British citizens who had travelled to Syria and Iraq, of whom around half had returned; see now Home Department, CONTEST: The United Kingdom’s Strategy for Countering Terrorism Cm 9608, 4th June 2018 chap 1.

⁶ As occurred in Paris in November 2015. See Home Department, CONTEST, *ibid*, paras 53-66; see also the Home Affairs Committee “Counter-terrorism” Seventeenth Report, HC 231, 30th April 2014; CONTEST: the United Kingdom’s Strategy for Countering Terrorism, Annual Report Cm 8583, March 2013, p. 8; April 2014, Cm 8848, at 15. See generally Alejandro Beutel, *Radicalization and Home-grown Terrorism in Western Muslim Communities*, Minaret of Freedom Institute, 30.8.07 and M. Sageman, *Leaderless Jihad* (Philadelphia: University of Pennsylvania Press, 2008).

⁷ See note 17 and text to note 19 below.

⁸ Over the past 5 years, the law enforcement and intelligence agencies have foiled more than 25 Islamist-linked plots: Intelligence and Security Committee, ‘Annual Report 2016-17’ HC 655, December 2017, paras 22-23.

incrementally strengthened in response to the changing threat, which are aimed at addressing the prevention of terrorist attacks rather than at responding to them.

The Prevent strategy has some aims in common with other preventive measures,⁹ designed to control the activities of those considered likely¹⁰ to engage in terrorist-related activity, but Prevent reaches far further back into possible pre-action territory since it is aimed at seeking to prevent persons from ever engaging in such activity.¹¹ While a notion of a simplistic pathway of exposure to extremism followed, almost inevitably, by radicalisation and engagement in terrorist activity should be rejected, it is fair to find that such a process can usually be identified retrospectively, after a terrorist act has occurred or a plot foiled. Most states, however, are not prepared to expose their citizens to the risk of such acts and therefore have to come to decisions as to the point on the pathway at which interventions should occur; the UK has determined on an earlier point on the pathway than others in introducing Prevent.

But reliance on Prevent as a response to the recent high and shifting threat level has been criticised as creating stigmatisation of Muslims, damage to social cohesion, and as representing a striking recent increase in securitisation in the UK.¹² As far-right Prevent referrals rise, criticism from far-right groups may also be expected.¹³ But at the same time Prevent has been

⁹ Both Prevent and TPIMs (see CTSA, s 20(1) amending the Terrorism Prevention and Investigation Measures Act 2011 (TPIMA), s 3(1)) feature routes to de-radicalisation programmes, so both intervene in a process of exposure to extremism, on- and off-line, potentially leading to radicalisation and engagement in terrorist activity.

¹⁰ Re TPIMs that is on the balance of probabilities: CTSA raised the standard of proof for TPIM imposition to the civil standard (CTSA, s 20(1) amending the Terrorism Prevention and Investigation Measures Act 2011 (TPIMA), s 3(1)).

¹¹ See further on this point in relation to Prevent generally, C. Walker and J. Rehman, “‘Prevent’ responses to jihadi extremism’ in V.V. Ramraj, M. Hor, and K. Roach, (eds) *Global Anti-terrorism Law and Policy* (CUP, 2012), esp 257-60.

¹² See generally on social stigma and Prevent: J. Taylor, “‘Suspect Categories,’ Alienation and Counterterrorism: Critically Assessing PREVENT in the UK” (2018) 1 *Terrorism and Political Violence* 1156; M-S Abbas, “Producing “Internal Suspect Bodies”: Divisive Effects of UK Counter-Terrorism Measures on Muslim Communities in Leeds and Bradford” (2018) 70(1) *British Journal of Sociology* 261, 275; F. Ragazzi, “Suspect Community or Suspect Category? The Impact of Counter-Terrorism as ‘Policed Multiculturalism’” (2016) 42(5) *Journal of Ethnic and Migration Studies* 724; Human Rights Watch (UK), “Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools” (July 2016), <http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf> (accessed 5.4.19); Home Affairs Committee, “Radicalisation: the counter-narrative and identifying the tipping point” (2016-17, HC 135) Supplementary written evidence submitted by David Anderson Q.C. para 13; F. Ragazzi, “Students as Suspects: The challenges of counter-radicalisation policies in education in the Council of Europe member states” (Council of Europe, March 2017), <https://rm.coe.int/16806ff1a9> (accessed 13 April 2019) p. 81; Rights Watch (UK), “Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools” (July 2016), p.37; Human Rights Council, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland” (A/HRC/35/28/Add.1, 24 May 2017), https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_28_Add.1_AU_V.docx (accessed 13 May 2019); Open Society Justice Initiative, “Eroding Trust: The UK’s PREVENT Counter-Extremism Strategy in Health and Education” (Open Society Foundations, 2016), p.23. The notion that UK counter-terrorism policy has created a suspect community is strongly disputed: S. Greer, “Anti-terrorist laws and the UK’s suspect Muslim community: A Reply to Pantazis and Pemberton” (2010) 50 *The British Journal of Criminology* 1171. For discussion of the anti-Prevent movement, see S. Greer, and L. Bell, ‘Counter-terrorist law in British universities: a review of the “Prevent” debate’ [2018] PL 84-105.

¹³ For reference to EDL criticism of Prevent see eg Jackson, P. and Feldman, M. (2011) ‘The EDL: Britain’s ‘New Far Right’ social movement’, p 32. Prevent referrals of suspected right-wing extremists rose steeply from 968 in 2016-17 to 1,312 in 2017-18; see Home Office, ‘Individuals referred to and supported through the Prevent Programme, April 2017 to March 2018’.

presented by government sources as having had an impact in steering persons away from pathways to engaging in terrorist acts¹⁴ and as designed to be complementary to pre-existing or parallel approaches to general safeguarding strategies.¹⁵ Prevent's role in promoting critical thinking and pluralism has also received some support.¹⁶ Thus, Prevent has created polarisation of views to such an extent as to obscure its real impact. In the context of those conflicting views, it will be considered how far Prevent as currently conceived and applied in practice appears to cohere in reality with the underlying aim of seeking to prevent people from being drawn into terrorism. In order to do so, its relationship with counter-extremism is explored below in the context of the educational sector.

2. The Prevent strategy

Prevent marked a new emphasis in counter-terrorist law and policy, a move from focusing mainly on early-stage terrorist activity, to creating additional interventions aimed at manifestations of extremism. Originally, the Prevent strategy¹⁷ under the then Labour government referred to the need to disrupt *violent* extremism which was designed to draw people into terrorism.¹⁸ Prevent was strengthened in 2015 when aspects of the strategy were placed on a statutory basis under Part 5 Counter-terrorism and Security Act 2015 (CTSA). The aim underlying Part 5 s26, which in very general and imprecise terms merely requires a 'public authority' 'in the exercise of its functions, [to] have due regard to the need to prevent people from being drawn into terrorism'(the Prevent duty), is clearly to rely on certain bodies to seek to disrupt pathways into terrorism. The duty covers specified authorities;¹⁹ following the accompanying Prevent Guidance,²⁰ discussed below, the duty is to be carried out by countering and addressing manifestations of radicalization and extremism. The accompanying Guidance,

¹⁴ See note 137 below.

¹⁵ See eg 'The Prevent Duty: Advice for Schools and Childcare Providers', (June 2015) p5, focusing on safeguarding in general, covering a range of harms including protection from radicalisation. See also the Office for Students' Report 'Prevent monitoring accountability and data returns 2017-18: Evaluation report', OfS 2019.22, 21.6.19, covering the 2018-19 academic year, which refers at [8] to the success of HEIs in embedding Prevent 'in their wider welfare policies and procedures'.

¹⁶ See S. Greer, and L. Bell, 'Counter-terrorist law in British universities: a review of the "Prevent" debate' [2018] PL 84-105, at 98.

¹⁷ It is one of the four pillars of CONTEST, the government's overall strategy for countering the terrorist threat to the UK post-9/11. Alongside Prevent, the other strands of the CONTEST policy comprise Pursue (gathering intelligence to understand the terrorist threat, detecting and disrupting terrorist networks, working with partners abroad); Protect (improving border security, reducing vulnerability of key sites such as utilities and transport) and Prepare (focusing on the capacity to deal with the consequences of terrorist attacks and the continuous testing and evaluation of preparedness): *Countering International Terrorism: The United Kingdom's Strategy* (2006) Cm 6888 pp 1-2. It was renewed in June 2018: Home Office, CONTEST: the United Kingdom's Strategy for Countering Terrorism, Cm 9608 (certain aspects of the review were implemented in the Counter-terrorism and Border Security Act 2019).

¹⁸ It was adopted after the 7/7 terrorist attacks in London: *Countering International Terrorism: The United Kingdom's Strategy* (2006) Cm 6888 [3], [6]. At the time, and now under section 35(3) CTSA, "terrorism" has the meaning given to it by TA 2000 section 1.

¹⁹ Such an authority is one listed in Schedule 6 CTSA. Under s 26(3) the duty does not apply to certain functions of the authority; subsection (3) covers the possibility that specified authorities have a range of functions, or act in a variety of capacities, and that it is appropriate that the exercise of only some of those functions is subject to the duty, or that a specified authority is only subject to the duty when acting in a particular capacity.

²⁰ By section 29(2) CTSA specified authorities "must have regard to any such guidance in carrying out the s26 duty. Guidance has been promulgated: the Revised Prevent duty Guidance issued on 16 July 2015: <https://www.gov.uk/government/publications/prevent-duty-guidance>. It includes sector-specific Guidance, but separate Guidance/Advice documents aimed at different sectors have also been introduced – see notes 21 and 26.

but not Part 5, now also refers to ‘non-violent extremism’ or simply ‘extremism’.²¹ Extremism is not fully defined in the Guidance but is stated to include ‘vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.’²² It covers the harms of non-violent extremism, such as social division and the encouraging of isolation by some groups.²³ Thus the Prevent strategy, as captured in the Guidance, but not as derived expressly from the statutory wording, represents an attempt to enable intervention in a process of succumbing to extremism and radicalization which might eventually lead to engagement in terrorist-related activity.

3. Prevent in the Education Sector

Below, the operation of the Prevent duty and Guidance in Universities, colleges and schools is discussed, partly on the basis that the education sector has referred more persons, (referral is discussed below) under the duty than other sectors.²⁴ But also Prevent’s operation is especially significant in that sector, due to the importance of influences affecting children and young persons at formative stages of their lives. At the same time, in the Higher Education sector in particular the matter of protecting free speech has been a focus of concern long before the Prevent strategy was introduced, since Universities are places where free debate is of especial importance.²⁵ The significance of safeguarding over-18s is clearly not as high as it is for school pupils, especially young children; therefore tensions, or claimed tensions, between Prevent-related safeguarding schemes and free expression are highest in the University sector.

3.1 Universities and Further Education Institutions

The very broad provision of s26 CTSA is given a degree of form by the Guidance to Universities (HEIs) and to Further Education Institutions (FEIs) that the Secretary of State has issued under s29(1), to be read alongside the general Prevent Guidance.²⁶ Part 5 CTSA and the Guidance requires HEIs and FEIs to create and manage appropriate systems, monitored in

²¹ The Prevent Duty Guidance for Higher Education Institutions in England and Wales’ (16 July 2015) at [19] includes ‘not just violent extremism but also non-violent extremism’. The Prevent Duty: Advice for Schools and Childcare Providers (2015), pp5 and 8 refers to ‘extremist’ ideas with no qualification as to violence.

²² Revised Prevent Duty Guidance (2015), at [7].

²³ On the basis that it can create ‘an atmosphere conducive to terrorism and can popularise views which terrorists exploit’: see Revised Prevent Duty Guidance, [8]; see also sector-specific guidance (Police and Healthcare sectors) at [77] and [137]. See also Counter-Extremism Strategy (Cmd 9148), October 2015, para 7.

²⁴ In 2017 the education sector referred 32% of all individuals referred, a higher percentage than all other sectors: Home Office, ‘Individuals referred to and supported through the Prevent Programme, April 2016 to March 2017’ 27th March 2018 (at 1.1). Referrals from education rose slightly in 2017-18: the education sector referred 33% of all individuals referred: Home Office, ‘Individuals referred to and supported through the Prevent Programme, April 2017 to March 2018’ 13.12.18, para 1; see also ‘Prevent referrals from education rise 24%’: F Whittaker, 13.12.18: <https://schoolsweek.co.uk/prevent-referrals-from-education-rise-24/> (referring to that sector alone rather than to the percentages of persons referred from all sectors).

²⁵ See s 43 Education (No 2) Act 1986 s1: ‘Freedom of speech in universities, polytechnics and colleges’ providing that the institutions shall take ‘such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers’. See further I Cram and H Fenwick ‘Protecting free speech and academic freedom in Universities’ (2018) 81(5) MLR 825.

²⁶ See Prevent Duty Guidance for Higher Education Institutions, 2015, Revised Prevent Duty Guidance for Further Education Institutions in England and Wales’ 2015. They were brought into force on 18 September 2015 by statutory instrument dated 17 September 2015, following debate and approval by affirmative resolution of each House of Parliament.

Universities by the Office for Students (OfS),²⁷ to safeguard students and others from being drawn into terrorism.²⁸

3.1.1 External speakers

The Guidance to HEIs/FEIs focuses in particular on the possibility of restricting/managing extremist expression,²⁹ focusing in far more detail on external speakers/speaking events than it does on referrals.³⁰ In order to comply with the Prevent duty institutions ‘should have policies and procedures in place for management of events on campus’, covering staff, students and visiting speakers, which must clearly state what is required in order for an event to take place.³¹ In relation to campus speaking events (as distinct from teaching) the Guidance indicates that if the anticipated expression does not appear to be likely to infringe existing criminal provisions,³² the institution would still have to take account of the duty.³³

The vetting of external speakers by institutions under the s26(1) duty as fleshed out in the Guidance clearly has some impact on freedom of expression (protected *inter alia* under s31

²⁷ Ofsted, rather than the Office for Students, is responsible for monitoring the implementation of the Prevent duty by further education or sixth-form colleges: see [29] and [30] FEI Guidance. The Secretary of State was required to appoint an ‘appropriate body to monitor compliance with the Prevent duty’: ‘Prevent Duty Guidance for Higher Education Institutions’ at [31], and originally delegated to HEFCE responsibility for monitoring compliance of the Prevent duty for relevant English higher education providers, which came into effect on 21.8.15. In September 2016 HEFCE published an ‘Updated framework for the monitoring of the Prevent duty in higher education in England’ (HEFCE 2016/24), which covered implementation of the statutory duty and instructed HEIs to submit a short annual report every year, summarising any relevant evidence demonstrating their continuing active and effective implementation of the Prevent duty. HEFCE’s role was taken over by the Office for Students (OfS) in 2018 and HEFCE was abolished under s 81 Higher Education and Research Act 2017. The Office for Students was set up under Part 1 of the 2017 Act. In Wales, the Prevent duty is at present monitored by the Higher Education Funding Council for Wales (HEFCW). See as to OfS’s current monitoring framework, note 84 below.

²⁸ In particular, the HEI Prevent Guidance acknowledges that some students may be radicalised before arriving at University or may be radicalised off-campus. It states: ‘Some students may arrive at RHEBs (relevant higher education bodies) already committed to terrorism; others may become radicalised whilst attending a RHEB due to activity on campus; others may be radicalised whilst they are at a RHEB but because of activities which mainly take place off campus’: [2]. Decisions as to compliance with s26 are taken by the institution: [5]: ‘Compliance will only be achieved if these procedures and policies are properly followed and applied. This guidance does not prescribe what appropriate decisions would be - this will be up to institutions to determine, having considered all the factors of the case’.

²⁹ In HEIs and FEIs the Guidance promulgated makes it clear that the duty under s 26 applies to the expression of visiting speakers, students or staff where ‘extremist’ views could be expressed. See Revised Prevent Duty Guidance for Further Education Institutions, [5-9]; Prevent Duty guidance for Higher Education Institutions, [7-11], both to be read alongside the general ‘Revised Prevent Duty Guidance’ (2015), which includes further sector-specific guidance.

³⁰ Eg in the fairly brief HEI Prevent Guidance ‘External speakers and events’ are covered in paras 7-14, while referrals are mentioned briefly in para 22.

³¹ Universities are also responsible for relevant decisions of the student union or a student society: *ibid*, [6] and [7]. The Guidance applies to events on campus, but also to those off-campus but associated with the HEI: at [12] of the Guidance: ‘a mechanism [should be] in place for assessing the risks associated with any events which are RHEB affiliated, funded or branded but which take place off-campus, and ‘a mechanism [should be] in place for assessing the risks associated with any events which are RHEB affiliated, funded or branded but which take place off-campus’.

³² That could potentially require non-criminal curbs on expression going beyond the existing laws, which would include provisions on hate speech under the Public Order Act 1986, as amended, and provisions under the Terrorism Acts 2000 and 2006, as amended.

³³ See Prevent Duty HEI Guidance at [11] which refers to the Prevent duty, not to existing offences. See also the similar provision in the FEI Guidance, [8].

CTSA),³⁴ although it need not merely be assumed without more that the impact is detrimental. Under the Guidance, when institutions are deciding whether to host a speaker they should pay particular attention to the views being ‘expressed, or likely to be expressed’, by considering whether they ‘convey extremist views which may result in drawing people into terrorism’.³⁵ If the speaker appears to present a risk that such views may be expressed, the institution must cancel the event unless it is ‘*entirely* convinced that it can mitigate *fully* the risk without cancellation’, and if there is ‘any doubt’ as to full mitigation of the risk, the event should not be allowed to proceed.³⁶ Mitigation can occur if a speaker opposed to the views expressed also speaks at the same event, or an independent chair is appointed.³⁷

*Butt v Secretary of State for the Home Department*³⁸ clarified the matter of the demand in the Guidance as to cancelling an at-risk speaking event if any doubt as to mitigation has arisen. A potential speaker, Salman Butt, challenged his listing as an extremist; he had been named by the Extremism Analysis Unit of the Home Office, and then in a Downing Street press release, about the use of the Prevent duty to stop extremists radicalising students on University campuses.³⁹ He was listed as one of six speakers who had given talks on campuses, and in the release he was said to have views that violated British values ‘such as democracy, free speech, equality and the rule of law’, including supporting FGM. His human rights-based claim failed since the court at first instance found that he was not a ‘victim’ for Human Rights Act purposes since there was no evidence that he had been de-invited by a University relying on the Guidance due to his listing.⁴⁰ But although the court therefore rejected the claim, it went on to consider, hypothetically, the compatibility between Prevent and the protection for freedom of expression under Article 10(1) European Convention on Human Rights (ECHR).⁴¹ Article 10 can cover

³⁴ Section 31(2): ‘When carrying out the duty imposed by section 26(1), a specified authority to which this section applies (a) must have particular regard to the duty to ensure freedom of speech, if it is subject to that duty’. S31(3): ‘When issuing guidance under section 29 to specified authorities to which this section applies, the Secretary of State—(a) must have particular regard to the duty to ensure freedom of speech, in the case of authorities that are subject to that duty; (b) must have particular regard to the importance of academic freedom, in the case of authorities that are proprietors or governing bodies of qualifying institutions. This duty as applying to Universities in England and Wales is the statutory duty under section 43 of the Education (No.2) Act 1986, requiring that Universities take such steps as are reasonably practicable to ensure that lawful freedom of speech and expression is secured for all staff and students and for visiting speakers. “Academic freedom” means the freedom referred to in section 202(2)(a) of the Education Reform Act 1988.

³⁵ Prevent HEI and FEI Guidance documents, [11] and [8], respectively (in 2019 part of both paragraphs was accepted by the Home Office as having to be disapplied – see below, text to note 50).

³⁶ *ibid* (emphasis added).

³⁷ See HEI Prevent Duty Guidance, [11]; FEI Prevent Duty Guidance, [8].

³⁸ [2017] EWHC 1930 (Admin).

³⁹ He said he had received fewer invitations to speak from student societies than he would have expected and that he had declined others in order to spare the inviting institutions the embarrassment of being associated with a “hate speaker”. He also argued that the collection, recording and sharing of information relating to himself by the Unit was in breach of his privacy rights under Article 8 ECHR. (The Unit’s research allows the Home Office to flag events taking place in HE institutions (RHEBs) as events of concern. Where a speaker identified as extremist is known to be giving a talk, the Home Office will contact local “Prevent Duty Coordinators”, who will then liaise with their counterparts at RHEBs so that a risk assessment can be carried out.)

⁴⁰ It was also found that Dr Butt had no right to go on to any university premises for his own purposes and he had no right to be invited.

⁴¹ Article 10(1) provides: ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.’ Article 10(2) provides: ‘[t]he exercise of these freedoms... may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security... the prevention of disorder or crime... for the protection of the reputation or rights of others’.

extreme and controversial expression,⁴² so its ambit could encompass extremist expression contrary to British values as defined in the Prevent Guidance, such as expression intolerant of different faiths and beliefs.⁴³ So any interference with such expression linked to Prevent could fall within Article 10(1).

But the potential interference in *Butt* was found to be open to justification under Article 10(2). The inclusion of non-violent extremism in the Guidance was accepted by the court as potentially linked to a justified interference on the basis that '[t]he guidance is about the s26 duty; it is therefore about preventing people being drawn into terrorism [inter alia] through such extremism'⁴⁴ since it could create a 'framework of a sense of separateness, alienation, victimhood...at one with a rigid and pure version of religion or ideology' capable of justifying violence, which could aid in drawing persons into terrorism.⁴⁵ The judge's key point was that if certain speakers sought to convince Muslim students that they must adopt an anti-Western society stance, which would include legal change, that could draw some of them towards terrorism if they concluded that a peaceful means of bringing about such change might be ineffectual. On appeal the findings at first instance as regards Article 10 were not disturbed and it was not established that common law free speech demands had been violated in respect of Butt so as to found further action.⁴⁶

⁴² That includes shocking or controversial material: see *Handyside v UK* (1979-80) 1 EHRR 737; *VBK v Austria* (2008) 47 EHRR 5; in *Gough v DPP* [2013] EWHC 3267 (Admin) public nudity as a form of expression was found to be 'threatening, abusive, insulting or disorderly' under section 5 POA in the context of Article 10 ECHR, and while Article 10(1) was found to apply at Strasbourg, despite the controversial nature of the expression, the interference was found to be justified (*Gough v UK* (2014) ECHR 1156).

⁴³ See eg *Giniewski v France* (2007) 45 EHRR 23.

⁴⁴ *Butt* (2017) [137].

⁴⁵ *Ibid*, [136], [137]. The full argument under Article 10(2) proceeded as follows: the Court accepted that Prevent 'obviously' related to a legitimate function of government and the protection of the rights of others. The claimant argued that the Prevent Duty HEI Guidance was not 'prescribed by law,' under Article 10(2) since: it was not drafted with sufficient precision; it contained discretionary powers of uncertain scope; it lacked safeguards against abuse of those powers. These arguments were rejected, primarily because they misconstrued the nature of the HEI Prevent Duty Guidance, which must merely be 'taken into account' by a relevant decision-maker in an institution subject to the s26 duty: *Butt* [96], [98]. The claimant further argued that the Guidance was not a necessary measure in a democratic society because it was intended to 'prevent people being drawn into "non-violent extremism"', contending that there was insufficient evidence that such extremism contributed to drawing people into terrorism. Justice Ousley accepted that the forms of expression of such extremism were not susceptible to precise definition or to being clearly evidenced, and noted that the Secretary of State had not produced evidence of individual case-studies or statistics that demonstrated that individuals had been drawn into terrorism partly due to encountering non-violent extremist expression: [132], [134]. However, he found that due to the complexity of the issue, the emphasis placed on protecting fundamental freedoms in combatting non-violent extremism in the Guidance, the approval of Parliament for the Guidance, and the expertise of the Home Office in assessing the risks posed by non-violent extremism, the Court would require clear evidence, which had not been presented, that non-violent extremism could not draw people into terrorism. It was also found that the focus in government policy on combatting non-violent extremism post-2015 was rationally connected to the aim of protecting the rights of others, on the basis that even non-violent extremism could contribute to a terrorist threat non-violent extremism and *furthermore* created a risk of drawing others into terrorism, because '[t]he argument might lead others, persuaded by it of the merit of the aim, to reject the means' [138] - ie the non-violent means. That was linked to the reasons given by the government, as set out in the Command Paper on counter-terror strategy in 2015 (ie by justifying violence, promoting hatred and division and encouraging isolation): [119]-[120], [127], [129], [137]; see also Home Department, *Counter-Extremism Strategy* (Cmd 9148) in October 2015 para 7. Thus, action taken under the Guidance was found to be capable of satisfying the tests under Article 10(2), at [127-128], [140-152].

⁴⁶ The common law free speech claim was not fully argued before the Court. It had been argued on Butt's behalf that the fact that Butt had had standing to bring the claim should enable him to rely on s7 HRA despite the lack of impact of the Guidance on Butt, but the court rejected his argument: [180-182], finding that he was not a victim due to the effect of the relevant Guidance. The Court of Appeal accepted the submission from the Secretary of

The challenge to the lawfulness of the Guidance also failed at first instance, partly on the basis that it is merely expressed to be ‘guidance’, and s26 only requires that ‘due regard’ should be given to preventing persons being drawn into terrorism. *Butt* thus provided an important clarification of the relationship between the Guidance and the s26 duty: so long as the institution had sought to manage the risk associated with a speaker, it could, under s26, decide to allow the event to go ahead even if a doubt remained as to mitigation of the risk posed by an extremist speaker not directly advocating violence. It was found that Universities must ‘consider the degree to which they have mitigated the risks as fully as they realistically can...But that done, they are not in breach of their duties under ss29, 26 or 31 if they decide to proceed’.⁴⁷ It was noted that such a decision would not comply with the terms of the Guidance but that it is not law, in contrast to the duty under s31. It was further found that the Guidance was not unlawful in relation to the s26 duty since it was not found to ‘equate non-violent extremism with terrorism’.⁴⁸ The judge’s findings as to that issue were linked to the findings under Article 10(2) as to the necessity of including non-violent extremism.⁴⁹

But on appeal the claimant was successful in challenging the promulgation of the HEI Guidance on the basis that the bodies required to implement it were likely to misunderstand their duties due to the wording of part of one paragraph, 11. Since it states that a University must be ‘entirely convinced’ that the risk of a speaker drawing individuals into terrorism has been ‘fully mitigated’, the Court of Appeal found that it was ‘trenchant’ and unbalanced, expressing itself so specifically as to the process of selecting external speakers, that decision-makers who had ‘regard’ to it would be likely to disregard their s31(2)(a) free speech duty.⁵⁰ Contrary to the findings on the point at first instance, which were arguably more in tune with actual practice in Universities, it was therefore found that in promulgating that paragraph the Secretary of State had acted unlawfully under s29 CTSA. The Home Office has now accepted that the offending words in the relevant paragraphs in the HEI/FEI Guidance documents should be disappplied by the institutions,⁵¹ but it is argued that for clarity the documents themselves should be revised.

State that there has been no proper basis to disturb the conclusion of the Judge that Dr Butt has failed to demonstrate any concrete impact on him. Therefore by virtue of section 7(1) HRA he could not advance any claim for infringement of Article 10: [182]. It was found, however, that he did have standing at common law: [183] but the Court did not find a breach of his common law rights, referring to the same alleged flaws in the Guidance had already been identified [in the discussion of s31]. As regards the claim on grounds of privacy under Article 8 ECHR, the Court of Appeal found that the claim, on the ground that information had been gathered by the Unit as to his views, would fail, since it related to ‘information publicly available by search of the internet and social media’, as views the claimant had expressed publicly and which he wishes to continue to promote to students and others in order to encourage them to follow his way of thinking’: [110]. See also [145].

⁴⁷ [2017] EWHC 1930 (Admin), at [61].

⁴⁸ *Ibid*, at [30].

⁴⁹ See *Butt v Secretary of State for the Home Dept* [2017] EWHC 1930 (Admin) [30], [31]. Justice Ousley found, despite the disputed nature of the evidence, that a *possible* connection between non-violent extremism and drawing people into terrorism could be shown (the connection is discussed above in relation to the findings under Article 10(2)) which it would be appropriate for decision-makers to consider. These findings clearly also apply to curbs on expression under the Prevent Guidance relating to FEIs.

⁵⁰ *R (Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256, [176], [177]. (Compare with [68] at first instance.) The reference to free speech duties referred in particular to such obligations under s31 CTSA.

⁵¹ See the Home Office web-site, which from 10.4.19 referred institutions to the Court of Appeal judgment so that they could ensure that they disregarded the offending words in [11] of the HEI Prevent Guidance and in [8] of the FEI Prevent Guidance.

Butt made it clear that there is flexibility as to the interpretation of the Prevent duty in practice, and there is some evidence that a flexible approach is being taken in universities. HEFCE found in 2017 that providers had responded ‘by putting in place consistent systems...to carry out ‘due diligence’ on external speakers before events are approved, and to identify any risk of unlawful speech which should [be disallowed]...or any risks which might need to be managed to allow an event to proceed safely’.⁵² The assumption was not that events would readily need to be cancelled; that finding was also borne out and backed by specific figures in the June 2019 OfS Report on this matter.⁵³

A challenge on different facts under the HRA is clearly possible: a speaker able to point to a specific rescinding of an invitation to speak in a University (or FEI) apparently linked to the Prevent duty (it could instead be based on public order or safe-guarding grounds or the equality duty under the Equality Act 2010) would be more likely to be able to demonstrate that he/she was a ‘victim’ of the alleged breach of Article 10 under s 7 HRA. But a *breach* of Article 10 might be difficult to establish in relation to measures adopted under Prevent in the institutions under Article 10(2); moreover the scope of Article 10(1) is curtailed by Article 17,⁵⁴ which has the purpose of preventing exploitation of the ECHR guarantees, by individuals/groups seeking to destroy the liberal values⁵⁵ which those rights reflect and defend. Due in part to the effects of Article 17, speech that attacks various groups, including Muslims and non-Muslims, promoting division and discrimination, has been found to fall outside the protection of Article 10 by the Strasbourg Court.⁵⁶ It is likely therefore that disputing the necessity of following

⁵² ‘Implementation of the Prevent duty in the Higher Education sector in England: 2015-16’ 2017/01. HEFCE found: ‘We saw evidence of strong processes for assessing the risks around events organised by students and staff, which ensured that events identified as ‘high-risk’ could be escalated to an appropriately senior level for a decision to be taken on what mitigation might be needed’ [32].

⁵³ HEFCE found in 2017 that the response of HEIs to HEFCE’s monitoring role had been positive as risk-based and proportionate (80% of respondents took that view): ‘Evaluation of monitoring of the Prevent duty in higher education in England’, HEFCE, 1.8.17 (Ref. 2017/12), at [37], referring to the production of Codes of Practice and to training, not to referrals or bars on certain external speakers. The 2019 OfS Report (note 15 above) found that in the 2018-19 academic year 59,574 events and speakers were approved; 2,153 were approved with conditions/mitigations; 314 were referred to the highest decision-maker in the provider’s process; 54 events and speaker requests were rejected. Thus only 0.9% of the total number of event requests made under the external speaker request process were rejected (p10, [41]).

⁵⁴ It provides that there is no ‘right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms’ of the ECHR.

⁵⁵ It tends to have particular applicability to the civic rights of Articles 8-11: see ECommHR, *Otto EFA Remer v Germany* App No 25096/94, judgment of 6 September 1995; *Witzsch v Germany*, App No 41448/98, judgment of 20 April 1999; *Garaudy v France* App No 65831/01, judgment of 24 June 2003. In *Pavel Ivanov v Russia* App No 35222/04, judgment of 20 February 2007 a speaker who had attacked Jews was found to be unable to rely on Article 10 since he fell within Article 17 – at [1]. In *M’Bala M’Bala v France* App No 25239/13, judgment of 10 November 2015, the Court found that a French comedian’s show was a demonstration of hatred, anti-Semitism and support for Holocaust denial. The Court considered that even if the performance was meant to be satirical it did not fall within the protection of Article 10, under Article 17 – at [39]; see also *Belkacem v Belgium* (application no. 34367/14) ECHR 253 (2017) 20.07.2017 (Press release). For discussion see: David Keane ‘Attacking Hate Speech under Article 17 of the European Convention on Human Rights’ (2007) 25 (4) NQHR 641-663.

⁵⁶ An illustration of its use arose in the case of *Norwood v UK* (2005) 40 EHRR SE11 in which the applicant, a regional organiser for the far-right British National Party, displayed an anti-Muslim poster soon after the 9/11 attacks with a photograph of the Twin Towers in flames and the words “Islam out of Britain—Protect the British People” as part of a BNP-endorsed anti-Islam agenda: *ibid*, [111]. Application of Article 17 meant that he failed in his claim of a breach of Article 10 due to his conviction for an offence under s5 Public Order Act 1986: the Strasbourg Court declared the application inadmissible, relying on Article 17, despite accepting that the poster was neither a call to violence nor likely to inspire a violent reaction in the area (*ibid*, [113-14]) because it amounted to a ‘general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism [and was] incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social

Prevent in educational institutions under Article 10 in future would be difficult for an applicant likely to promote such discrimination, unless it was apparent that the institution had relied literally on the specific words in the Guidance impugned by the Court of Appeal in *Butt*. So, despite concerns expressed by some groups/bodies as to a general chilling effect created by Prevent and the Guidance in free speech terms,⁵⁷ especially as regards the inclusion of non-violent extremism, that concern is unlikely to be captured as a violation of the Article 10 rights of any specific individual.⁵⁸ Nor is the HEI Guidance, now that part of para 11 is to be disregarded, likely to be found to be unlawful.

Regardless of specific Article 10 claims, Prevent does not appear to have had a significant impact in inhibiting expression in Universities: a Report on campus speech from the Joint Committee on Human Rights in 2018⁵⁹ received no clear evidence that any campus speaking events had been cancelled solely due to the operation of the Prevent duty, while the 2019 OfS Report found that only a tiny percentage of event requests had been rejected.⁶⁰ A duty,

peace and non-discrimination'. A further illustration is provided by the case of *Belkacem v Belgium* Application no. 34367/14: ECHR 253 (2017) 20.07.2017 (Press release). A Salafist preacher, leader of Sharia4Belgium, again failed in his Article 10 claim due to Article 17 after being convicted for offences relating to incitement and discrimination in the wake of Salafi-inspired Islamist terrorism in Belgium. The applicant's complaint under Article 10 was declared inadmissible, because 'defending Sharia while calling for violence to establish it could be regarded as "hate speech", and...each Contracting State was entitled to oppose political movements based on religious fundamentalism': *ibid*, [2-3]. The approach to Article 17 in *Norwood* and *Belkacem* indicates that applicants (such as external speakers in universities facing an interference with expression due to Prevent) would be unlikely to be able to rely successfully on Article 10 if they were associated with, attached to, or representative of groups opposed to the liberal values that underpin the ECHR, such as the BNP in *Norwood* or Sharia4Belgium in *Belkacem*.

⁵⁷ See for detailed criticisms of alleged lack of compliance of Prevent with Article 10 ECHR eg: Human Rights Watch (UK), "Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools" (July 2016), <http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf> (accessed 5.4.19); Human Rights Council, "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland", A/HRC/35/28/Add.1, 24 May 2017, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_28_Add.1_AU_V.docx (accessed 5.4.19); Human Rights Council "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism" A/HRC/31/65, 22 February 2016, https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session31/documents/a.hrc.31.65_auv.docx (accessed 5.4.19); Francesco Ragazzi, "The challenges of counter-radicalisation policies in education in the Council of Europe member states" (Council of Europe, March 2017), <https://rm.coe.int/16806ff1a9> (accessed 5.4.19).

⁵⁸ See further I Cram and H Fenwick 'Protecting free speech and academic freedom in Universities' (2018) 81(5) MLR 825.

⁵⁹ *Freedom of Speech in Universities* (4th Report of Session 2017-19) 27.3.18: <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/589.pdf> (accessed 5.4.19). It covered the impact of Prevent, but that was far from its sole concern.

⁶⁰ *ibid* [70]. For the OfS Report inter alia covering this matter, see note 53 above; the % was 0.9. However, the Director of Liberty (see <https://www.theguardian.com/uk-news/2019/jun/27/uks-prevent-strategy-biggest-threat-to-free-speech-on-campus> (accessed 4.7.19)) has claimed that Prevent is a serious threat to free speech on campus, noting (in reliance on the 2019 OfS Report) that 'nearly 60,000 events and speakers were considered under the Prevent duty last year, with more than 2,100 approved with conditions attached'. However, the reporting of her claim in the Guardian did not mention that only 54 event requests were rejected, or that prior to Prevent many HEIs had in place free speech Codes under section 43(3) Education (No 2) Act 1986 (now usually also referring to the Prevent duty) requiring approval to hold speaking events (see eg the University of Cambridge free speech Code). The Codes were and are intended inter alia to avoid breaches of the peace or to ensure that homophobic, sexist and racist language is not tolerated, reflecting their duties to promote equality. Further, the Director reportedly made the assumption that the consideration and approval of events stigmatised black or Muslim students, but the OfS Report made no reference to the ideology likely to be favoured at the events. The claim made

moreover, which is capable of fostering pluralistic debate rather than allowing the expression unchallenged⁶¹ of narrow, racially, culturally or religiously supremacist⁶² views is, it could be argued, more likely to promote free speech values than undermine them.⁶³ Given that one way of satisfying the Prevent Guidance is to ensure that ‘balancing’ speech occurs at the same event, Prevent may be said to be capable of fostering a ‘more speech’ solution to the matter of ‘extremist’ speech on campus,⁶⁴ but University authorities need to ensure that balancing speech is in fact in place.⁶⁵

3.1.2 Referrals

by the Director cannot be substantiated on this evidence since the % of events considered for approval in 2018-19 would have to be compared with the % considered in an academic year prior to Prevent to determine Prevent’s impact. As a separate matter it should be noted that some isolated instances of concerns expressed as to certain texts in Universities due to Prevent have been reported: see eg E Courea, the Guardian 11.11.18, ‘University alerts students to danger of left-wing essay’.

⁶¹ See: <http://henryjacksonsociety.org/wp-content/uploads/2017/09/Extreme-Speakers-and-Events-in-the-2016-17-Academic-Year-Final.pdf> (last accessed 5.4.19), at p 4 - R Black ‘Extreme Speakers and Events: in the 2016-17 Academic Year’ 28.9.17; ‘Extreme or Intolerant Speakers on London Campuses between September 2015 and January 2016’ Student Rights project, authored by *The Henry Jackson Society*: http://www.studentrights.org.uk/article/2373/extreme_or_intolerant_speakers_on_london_campuses_between_september_2015_and_january_2016 (last accessed 5.4.19). See also note 73 below.

⁶² The term ‘supremacist’ is defined in this work as a view held by a cultural/religiously or racially defined isolationist/separatist group, that it should seize power due to its intrinsic superiority to other groups, and/or to separate itself from other groups. For example, Anders Breivic, a Christian European supremacist terrorist who killed 77 Norwegians, declared European independence to be his aim ‘2083 – A European Declaration of Independence’ (2011) <https://publicintelligence.net/anders-behring-breiviks-complete-manifesto-2083-a-european-declaration-of-independence/> (accessed 4.4.19); similarly Brenton Harrison Tarrant, a white supremacist terrorist who killed 51 people in a mosque in New Zealand, published a manifesto calling for a separate white European ethno-state: Tom Embury-Dennis, “Brenton Tarrant: New Zealand terror suspect was personal trainer who espoused Islamophobic tropes and called Trump a ‘symbol of white identity’” *the Independent*, 15 March 2019, <https://www.independent.co.uk/news/world/australasia/brenton-tarrant-new-zealand-shooter-terror-trump-mosque-islamophobia-a8824331.html> (accessed 4.5.19). This usage of the term ‘supremacist’ corresponds with academic literature on the radical right, see eg Lorraine Bowman-Grieve ‘Exploring “Stormfront”: A Virtual Community of the Radical Right’ (2009) 32(11) *Studies in Conflict & Terrorism* 989. The term supremacism is commonly associated with white supremacism, but there is no reason why it cannot be applied to Muslim supremacist groups (sometimes referred to as Islamist-supremacist groups). The ideology of Al Qaeda, for instance, amounts to a form of Muslim supremacism, due to its emphasis upon the doctrines of loyalty and enmity, offensive Jihad, and adherence to Sharia boundaries between Muslims and non-Muslims, which amounts to a belief that Muslims must seize power on a basis similar to that associated with white supremacist ideology (see on Al-Qaeda doctrine - Raymond Ibrahim, *The Al Qaeda reader* (Broadway Books, 2007) p 121). It should be noted that supremacist cultural/religious groups typically have a far narrower conception of the members of their group than their language would suggest; for example, Al Qaeda seeks to defend ‘all Muslims’ from non-Muslims, but it believes that other Muslim sub-groups, such as Shia, are merely ‘purportedly’ Muslim (*ibid*, 179).

⁶³ See for discussion eg Cammaerts, Bart (2009) ‘Radical pluralism and free speech in online public spaces: the case of North Belgian extreme right discourses’ 12 (6) *International journal of cultural studies*, pp. 555-575.

⁶⁴ If a future Article 10 claim arises in future, that point would be relevant in determining whether an interference complained of went beyond what was necessary under Article 10(2) (was a disproportionate interference). It would be significant that, while interference with speech of political or moral import requires a ‘particularly weighty justification’ under Article 10(2) (*ibid* [112]), the Guidance, and s26, does not require censorship of such speech, or create criminal or civil sanctions if extremist speakers speak in an institution. The inclusion of the ‘balancing’ speech requirement would diminish the likelihood of a finding that a measure had gone further than necessary in terms of the demands of proportionality under Article 10(2).

⁶⁵ See note 73 below.

The Guidance also covers the possibility of referrals of students to the Channel programme (a non-compulsory programme⁶⁶ that can refer persons for de-radicalisation) if they are deemed to be at risk of being drawn into terrorism;⁶⁷ the risk relates not just to ‘violent extremism but also to non-violent extremism’.⁶⁸ A University has no express legal duty to refer anyone to the programme, but the HEI/FEI Guidance assumes that relevant staff can make referrals and the Channel panel can consider such referral amongst a range of options, although Channel referrals for support are rare.⁶⁹

3.1.3 The impact of Prevent as countering pathways to terrorism

The evidence so far derived from monitoring of HEIs gives some support to the contention that as Prevent beds in in Universities it has been received positively, at least in terms of self-assessments by HEIs.⁷⁰ If a University or FEI is deemed not to be abiding by its Prevent duty,⁷¹ methods of enforcement are available, but have not yet been deployed,⁷² although it has been

⁶⁶ So it can be contrasted with the desistance and disengagement programme (DDP), Britain’s first compulsory deradicalisation programme; see CONTEST: the United Kingdom’s Strategy for Countering Terrorism, 4 June 2018, CM 9608, p40.

⁶⁷ Prevent HEI Guidance, [22]: ‘We would expect appropriate members of staff to have an understanding of the factors that make people support terrorist ideologies or engage in terrorist-related activity. Such staff should have sufficient training to be able to recognise vulnerability to being drawn into terrorism, and be aware of what action to take in response. This will include an understanding of when to make referrals to the Channel programme and where to get additional advice and support’. See also Prevent FEI Guidance, [11], [21].

⁶⁸ Prevent HEI Guidance [19] and [22] and Prevent FEI Guidance [1] and [21].

⁶⁹ See the 2019 OfS Report, note 15 above, which found that in 2018-19 83,419 Welfare cases were referred for support (covering all welfare issues, such as mental health). 174 Prevent-related welfare cases were escalated to the Prevent lead. There were only 15 referrals to Channel from the HEI sector (p9 at [35]), a tiny % of all referrals, and a lower number than in the previous year (24). The Home Office reported that in 2015-16 only 381 out of a total of 7,631 Prevent referrals from all sources (5%) received support for de-radicalisation: Home Office, ‘Individuals referred to and supported through the Prevent Programme, April 2015 to March 2016’ para 1.1. Of the 6,093 individuals referred in 2016/17 (the figure refers to all referrals; 32% were from the education sector), ‘2,199 (36%) left the process requiring no further action, 2,748 (45%) were signposted to alternative services and 1,146 (19%) were deemed suitable, through preliminary assessment, to be discussed at a Channel panel. 332 people received Channel support following a Channel panel. See Home Office Statistical Bulletin 06/18 - ‘Individuals referred to and supported through the Prevent Programme, April 2016 to March 2017’ 27.3.18. In 2017/18, a total of 7,318 individuals were subject to a referral, of which 394 received support from Channel for de-radicalisation (see further note 24 above and notes 74 and 137 below).

⁷⁰ In 2017 HEFCE found that the vast majority of universities had responded positively and effectively to the statutory duty. Institutions put their policies in place in 2016 and submitted their ‘Prevent action plans’ to HEFCE in January and April 2016, providing self-assessments of their level of preparedness to comply with their new duties. For the response of the OfS – as HEFCE’s replacement - to HEIs’ implementation of the Prevent duty (2018), see note 85.

⁷¹ It is noted that Ofsted found in 2016 that some FE providers were struggling to discharge their Prevent duties: ‘How well are Further Education and Skills Providers implementing the Prevent duty?’ *Ofsted*, 4 August 2016.

⁷² As regards the monitoring role of OfS, see note 84 below. The 2019 OfS Report, note 15 above, found that 307 providers had shown compliance with the Prevent duty; 1 needed further action and 1 had not demonstrated due regard to it (p8 at [31]). If the Secretary of State is satisfied that a University has not discharged the section 26 duty she could give it directions to enforce the performance of the duty (under section 30). It is expressly contemplated that compliance with the Guidance is expected and will be monitored by the Home Office (PDG [23]-[28]). Section 30(2) CTSA provides that such directions may be enforced by a mandatory order of the court. In publicly-funded FEIs governance is reviewed by Ofsted, and if inadequate ultimately dissolution of the institution could occur: HMG ‘Prevent Guidance for Further Education Institutions in England and Wales’ (2015), [29],[30]; as regards ‘local authority providers, this would result in the Further Education or Sixth Form College Commissioner making an immediate assessment. This could lead to governance and leadership change, restructuring or even dissolution under the Secretary of State’s reserve powers’. In respect of non-publicly-funded institutions their contract could be terminated by the Skills Funding Agency.

claimed that the duty is having a variable impact, since extremist speakers, including some from the far-right, reportedly still readily obtain a platform in some HEIs without accompanying balancing expression.⁷³ The evidence from OfS in 2019 indicates that it would not be correct to conclude that Universities have engaged in mass targeting or stigmatisation of Muslim students: referrals are very few in number,⁷⁴ a number concern non-Muslims,⁷⁵ and the majority have not led to any action being taken.⁷⁶ Rather, there is some evidence that some HEIs have implemented Prevent since 2015 in a tokenistic fashion, merely paying lip-service to it (but this evidence conflicts with the findings of OfS in June 2019). It has been reported that extremist speakers, known to attack Shia/Sufi Muslims, Jews, advocate punishments or death for homosexuals, condone the beating of women, and hatred of the West, still have the opportunity to persuade some students as to the acceptability of such stances,⁷⁷ although they are views associated with banned groups such as Al Muhajiroun or, in some respects, with the far-right proscribed group, National Action. Clearly, that would not be problematic in Prevent terms if the evidence demonstrated that such speakers would be unlikely to have any impact on students who were exposed to such speech, in the sense of predisposing a few students to engagement in terrorist acts, or to supporting those carrying out such acts, at some point in their lives. But such evidence is not available and would be unlikely to be, given the persuasive function of speech. The speakers themselves, and authors of relevant psychological studies, do not appear to consider that their efforts to persuade students to adopt their world view are likely to be wholly in vain.⁷⁸ One such study found that speakers who articulated themes as to the irreconcilability between the Muslim and the British identity could confirm the psychology that leads to radicalisation.⁷⁹ Studies have not focused so far on the impact of far-right speakers

⁷³ See the Report by the Henry Jackson Society ‘Extreme Speakers and Events: In The 2017-18 Academic Year’ 21.1.19, by Emma Fox, which found that ‘Extremist hate preachers, pro-jihad activists, and avowed anti-Semites had virtually unfettered access to students’ (pp 4-12) without adherence to the balancing speech requirement (p99).

⁷⁴ See notes 69 and 24 above. The majority of education referrals were from the school sector: children under 15 accounted for 1,240 of referrals, while 963 were aged 15 to 20.

⁷⁵ In the whole education sector suspected Islamic extremism gave rise to the highest number of referrals, accounting for 922 referrals. A “mixed, unstable or unclear ideology” was the reason for 726 referrals, while right-wing extremism accounted for 202 and “other extremism” for 202 (see further note 69).

⁷⁶ See note 69. Of 2,462 referrals by all educational establishments in 2017-18, just 490 were discussed by Channel, the government’s support programme, and only 165 warranted support from Channel (see notes 69 and 24).

⁷⁷ See ‘Extreme Speakers and Events in the 2017-18 Academic Year’ (2019); the Report found that ‘radical Islamists’ were among the almost 100 speakers identified, and included, for example: Yahya al-Raaby who has called Shia Muslims “devils” and “*rafida*”; Yusuf Chambers who has advocated death for homosexuals; Muhammed Taqi Usmani who has claimed that Islam allows slavery under certain conditions, Moazzam Begg who has praised Al-Qaeda clerics, and Uthman Lateef who has reportedly expressed support for jihad and convicted terrorists, including Mohammed Hamid and Aafia Siddiqui. Reportedly, ‘there were 140 events featuring representatives of organisations linked to Haitham al-Haddad. Al-Haddad is one of Britain’s most notorious extremist preachers who has sanctioned forms of female genital mutilation, child marriage, death for apostates and adulterers, and said that men who beat their wives should not be questioned’. Reportedly, speakers at some events (from groups such as MEND) were unspecified in advance, and students would not necessarily be aware that they were associated with more well-known extremist figures (pp15-27). But this evidence conflicts with the self-assessments of HEIs made to OfS in 2019 – see note 60 above.

⁷⁸ See Max Taylor and John Horgan, “A Conceptual Framework for Addressing Psychological Process in the Development of the Terrorist,” *Terrorism and Political Violence* 18, no. 4 (2006), pp. 585– 601; Michael King et al. (2011) 23 *Terrorism and Political Violence* Issue 4 ‘the Radicalisation of home-grown jihadists: a review of theoretical models and social psychological evidence’. See also Michael Kenney in *The Islamic state in Britain* (CUP, 2018); he discusses the notion of ‘jihad of the tongue’ – ie the use of speech to promulgate jihadi ideas.

⁷⁹ See M King *ibid*, at 617-618.

on students, and such speakers are less likely to speak in HEIs,⁸⁰ but it would arguably be strange to find that they had *no* impact, and therefore no influence in aiding in the current rise of far-right terrorism.

3.1.4 Conclusions

Certain terms, including ‘non-violent extremism’, and ‘British values’, remain largely undefined in the general Prevent Guidance although, as mentioned above, indications as to their meaning are given. The imprecise phraseology of the Guidance documents may not only be creating leeway which the anti-Prevent lobby can exploit, but also providing a space that some HEIs can rely on in order to give the impression of adhering to their Prevent duty, while in reality making little attempt to do so in any meaningful fashion.⁸¹ It arguably follows that the HEI/FEI Guidance and the general Guidance require urgent revision, not only to excise the offending paragraph 11 in the HEI Guidance (and the equivalent paragraph in the FEI Guidance, 8), but to define a number of terms much more precisely, relying in part, it is suggested, on the findings as to the links between those terms and s26 explored at first instance in *Butt*.

In conclusion, it is difficult to find, on the evidence currently available, that the s26 duty is having a clear impact in some HEIs in countering extremist speech reflecting or supporting ideas also expressed by persons/groups who have mounted or sought to mount terrorist attacks in Europe. While FEIs and HEIs claim to be adhering to their Prevent duties in respect of external speakers/events, independent evidence as to de-inviting such speakers, or as to ensuring that ‘balancing’ speech occurs at certain speaking events, is not at present being published via the Office for Students (since it relies on HEIs’ self-assessments), Ofsted or other government sources, making it hard, if not impossible, to judge how far the institutions are in reality complying with Prevent. It is also difficult to assess accurately the extent of the enmeshing of their safe-guarding, equality, free speech and Prevent duties, meaning that it is hard to judge whether a specific restriction or management of expression can be specifically identified as Prevent-related.

Clearly, HEIs are in a difficult position: if they implement Prevent more robustly they face criticism from some Muslim groups and some commentators.⁸² If they fail to do so, they are likely to be criticised in parts of the media⁸³ and, much more importantly, may be making some contribution to supporting the continuance of the current terrorist threat level. But, as indicated,

⁸⁰ See the findings from the Report by the Henry Jackson Society ‘Extreme Speakers and Events: In The 2017-18 Academic Year’ 21.1.19, by Emma Fox (<https://henryjacksonsociety.org/publications/university-extreme-speakers-2017-18-edition/>), which found that certain far-right speakers and known anti-semites had spoken on campus in 2017-18.

⁸¹ See the findings from the 2019 Report, *ibid*, which included the finding that universities’ protocols for upholding the Government’s Prevent strategy are “not fit for purpose”. It also warned of an “industrial-scale failure by universities to apply their Prevent duties” and highlighted the apparent disparities between Universities’ obligations under the law and the reality on the ground. It identified SOAS as the University which had hosted the most events promoted to students featuring extremist groups or speakers. It found that SOAS had repeatedly disputed that it is in breach of its Prevent duties, but it saw 70 events promoted by student groups featuring extremist groups or speakers – 43 of which took place in 2017-18. It finds that SOAS hosted over four times as many events including extremist elements as its closest rivals: King’s College London, Birmingham, and Queen Mary University.

⁸² See note 12 above. See also the comments from Liberty’s Director, note 60 above.

⁸³ See ‘Extremism and hate preachers on the rise at campuses, universities warned’ C Turner, *The Telegraph*, 21.1.19.

the responsibility for ensuring that they are complying with Prevent lies with the Office for Students, which promulgated a more intensive monitoring system in late 2018, based on looking more closely at those HEIs appearing to be most at risk of failing to comply.⁸⁴ It remains to be seen whether this more intensive scheme will prove effective, but its approach, merely based on consideration of self-assessments by HEIs,⁸⁵ with no commissioning of independent research into at-risk speaking events, or into allegations of radicalisation linked to some student societies in certain HEIs, fails to provide at present a clear basis for placing full confidence in its work.

3.2. Schools

Part 5 CTSA covers schools, including registered private schools,⁸⁶ but the relevant Prevent guidance (the Department of Education (DfE) Prevent Advice)⁸⁷ differs very considerably from the dedicated HEI/FEI Prevent Guidance, although the s29 Prevent Duty Guidance (PDG) still applies, and includes sector-specific guidance addressed inter alia to schools. Significantly, aspects of the Prevent strategy have been embedded in other *statutory* safe-guarding duties of schools, whereas in FEIs/HEIs, while Prevent *is* seen as an aspect of safe-guarding students, that is on the basis of institutions' policies and Codes.⁸⁸ Both the PDG and Advice documents also refer to requirements that are consistent with, and overlap with, extensive existing duties applying specifically in schools. The entanglement of Prevent with existing duties is a clear feature of its operation in HEIs/FEIs, but it more extensive in relation to schools than it is in relation to those institutions.

3.2.1 Protection from 'extremism' and radicalisation

⁸⁴ The Office for Students (OfS) (12.9.18) stated: 'The new framework aims to reduce the burden on providers while giving robust assurance where there are concerns. It takes a more risk-based approach, underpinned by evidence, which prioritises focus on providers considered to be at higher risk of non-compliance with the duty and on new entrants to the higher education sector'. See at www.officeforstudents.org.uk/publications/prevent-duty-framework-for-monitoring-in-higher-education-in-england-2018-19-onwards/ (accessed 11.6.19). As regards the evidence base, the document stated: 'When assessing provider risk the OfS will draw on a range of sources of evidence', [87] but they did not include gathering independent evidence, eg in the form of inquiries/research into the activities of at-risk student societies. Other references to evidence-gathering (eg at [82]) do not appear to reference such inquiries. As regard reacting to apparent non-compliance with the Prevent duty: 'Where we are not satisfied that an RHEB is demonstrating 'due regard' to the Prevent duty this is likely to trigger a series of escalatory steps being taken as part of our non-compliance process [91]. If the OfS remained so unsatisfied, the HEI could be referred to the Home Office Prevent Oversight Board and if they 'deem it appropriate or necessary', the Home Secretary has the power to issue directions under section 30 CTSA [92]. See also the 2019 OfS Report, note 15 above.

⁸⁵ See 'Monitoring of the Prevent duty: 2016-17 progress report and future development' (OfS 2018.27), 11 July 2018, which reviewed implementation of the Prevent duty based on providers' annual returns for 2016-17 (https://www.officeforstudents.org.uk/media/160fe2df-d737-419c-8071-19fa2dab0ee4/ofs2018__27.pdf). It found that 97% of HEIs, based on their own returns, were complying with the Prevent duty, a finding that prompted the 2019 Report by Emma Fox (note 81 above) to term OfS's Prevent monitoring 'not fit for purpose'.

⁸⁶ CTSA 2015 Sched 6 'Education, child care etc... (d) an independent school registered under section 158 of the Education Act 2002'.

⁸⁷ The Prevent duty: Departmental advice for schools and childcare providers (June 2015). See also Department of Education, 'Preventing extremism in the education and children's services sectors', updated 23 December 2015. The Advice addressed to schools directs them to consider the Home Office Prevent Guidance and gives brief explanations as to the meaning of the Prevent duty.

⁸⁸ Typically, such safe-guarding policies apply to at-risk adults at any time when they are engaging in University-run activities; given that Prevent tends to be covered as an aspect of such policies, the categories of at-risk adults would appear to include those who are vulnerable to radicalisation or viewed as having already been radicalised.

The PDG to which schools must have ‘due regard’, under s29(2) CTSA, states in the directions to the schools’ sector that they should ‘have robust safe-guarding policies in place’ to identify and intervene in respect of those at risk of being drawn to terrorism, including support for ‘extremist ideas that are part of terrorist ideology’, covering non-violent extremism.⁸⁹ Under the PDG non-sector specific guidance schools as public authorities should address the risk of radicalisation,⁹⁰ while under both the PDG and the DfE Advice the definition of ‘radicalisation’ covers the process by which individuals are brought to, or come to, participate in terrorism, but in the schools’ context it is expressly linked to safeguarding.⁹¹ The Advice stresses that schools must prevent the dissemination to school pupils of extremist ideology that could be linked to drawing them into terrorism,⁹² and there must be ‘clear procedures in place for protecting children at risk of radicalisation’,⁹³ which can be part of existing safeguarding policies. Building resilience to radicalisation by promoting ‘British values’ is also a key aspect of the DfE’s approach to counter-extremism and the Prevent duty,⁹⁴ and the PDG adverts to this connection.⁹⁵ The DfE’s Advice on the Prevent duty links ‘resilience to radicalisation’ to the duty of schools in following the national curriculum, to promote the ‘spiritual, moral, social and cultural development’ of pupils under s78 Education Act (EA) 2002.⁹⁶ The DfE Advice on the fulfilment of the s78 duty includes more explicit references to the promotion of ‘British values’, referencing Prevent,⁹⁷ although the Prevent Guidance itself does not expressly demand such promotion. Academies⁹⁸ and private independent Schools have a similar duty, set out in s157 EA 2002, which is further specified in the Education (Independent School Standards) Regulations 2014,⁹⁹ and also includes furthering ‘tolerance and harmony between different cultural traditions’.¹⁰⁰ The PDG also refers to the existing duties to further ‘community cohesion’¹⁰¹ and to promote equality.¹⁰²

The Prevent duty is generally regarded as a safeguarding concern distinct from the promotion of British values,¹⁰³ and for the overwhelming majority of schools that is the case, but if a school tolerates ‘extremism’ in the form of vocal opposition to fundamental British values it

⁸⁹ The ‘Revised Prevent Duty Guidance’ promulgated under s29 CTSA (2015): at [64],[67],[68].

⁹⁰ Ibid, [6].

⁹¹ DfE Prevent duty Advice, p 6 and Revised Prevent Duty Guidance, p 21. See further Home Office, *Prevent Strategy*, Cm.8092, 2011, Annex A, and Department for Education, “Keeping children safe in education: Statutory guidance for schools and colleges” (2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/741314/Keeping_Children_Safe_in_Education__3_September_2018_14.09.18.pdf (accessed 20 May 2019), pp.82-83.

⁹² “The Prevent duty: Departmental advice for schools and childcare providers” (June 2015) pp 5-6.

⁹³ At pp 5-6.

⁹⁴ Ibid, p. 8.

⁹⁵ Home Office, “The Revised Prevent Duty Guidance” (2015), para 58.

⁹⁶ Applying to maintained schools. See also the Independent School Standards Regulations 2014 Sched 1 para 5(2) (private independent schools and academies), also discussed in the text.

⁹⁷ See DfE, “Promoting fundamental British values as part of SMSC in schools” (November 2014).

⁹⁸ As defined in the Academies Act 2010 - ie schools independent of LEAs with a funding agreement with the DfE.

⁹⁹ SI 3283/2014, Sched 1 para 5.

¹⁰⁰ Ibid, Sched 1 para 5(v).

¹⁰¹ Education and Inspections Act 2006 s38 (maintained schools); Independent School Standards Regulations 2014 Sched 1 para 5(b)(v). Home Office, “The Revised Prevent Duty Guidance” (2015), para 58.

¹⁰² Section 149 Equality Act (PDG, *ibid*, para 12).

¹⁰³ See Select Committee on Citizenship and Civic Engagement, “Oral Evidence” (Evidence Session 1, 6 September 2017), <https://www.parliament.uk/documents/lords-committees/Citizenship-civic-engagement/Oral-Evidence-Volume.pdf> (accessed 31 May 2019), p.19, per Hardip Begol.

could contribute to a risk of ‘radicalisation’, contrary to the duty. As the PDG¹⁰⁴ and the DfE’s Advice¹⁰⁵ makes clear, a duty not to undermine ‘British values’ in schools is implicit in a number of education-related statutory duties. In particular, maintained schools, academies and private independent schools must not engage in ‘political indoctrination’¹⁰⁶ or the promotion of ‘partisan political views’¹⁰⁷ and have a duty to ensure a balanced treatment of such issues.¹⁰⁸ Maintained faith schools¹⁰⁹ are also subject to these requirements, and those under s78 or s157 EA 2002, but the content of communal worship and religious instruction is understood to conform to the values of the school’s adopted religion and is overseen separately after consultation with the governing body (s5(7) and s48 Education Act 2005). As a result of these duties, the narrowing of the curriculum in schools generally to favour only one political narrative is prohibited, and the favouring of a religious narrative is only permitted in exceptional circumstances.¹¹⁰

3.2.2 Enforcement

If maintained schools funded by the local authority fail to remedy breaches of the Prevent duty, and other duties relating to safeguarding, that failure is primarily overseen by Ofsted,¹¹¹ and could result in intervention measures, such as school closure or the imposition of special measures.¹¹² In respect of academies funded by central government, failure to remedy such breaches could result in the withdrawal of the funding agreement. Privately funded schools can choose to be inspected by Ofsted or by an independent inspectorate, and such inspections can trigger formal enforcement measures, including de-registration. But unregistered schools can avoid Prevent; it is estimated that there over 350 unregistered schools in the UK, some of which have links to groups associated with supporting terrorism.¹¹³

¹⁰⁴ See Home Office, “The Revised Prevent Duty Guidance” (2015), para 64.

¹⁰⁵ “The Prevent duty: Departmental advice for schools and childcare providers”, p.8.

¹⁰⁶ Education Act 1996 s406 (maintained schools).

¹⁰⁷ Independent School Standards Regulations 2014 Shed 1 para 5(c) (private independent schools and academies).

¹⁰⁸ Independent School Standards Regulations 2014 Shed 1 para 5(d) (private independent schools and academies) and Education Act 1996 s407 (maintained schools).

¹⁰⁹ Designated under s69(3) School Standards and Framework Act 1998 as having a religious character.

¹¹⁰ See eg Ofsted, “School inspection handbook” (Ref: 150066, 2018), pp.42-44.

¹¹¹ Ofsted has used powers to conduct no-notice inspections, in order to reduce the likelihood that schools could present a false image of their practices: Academies Act 2010 ss2A and 2D. See Ofsted, ‘School inspection handbook section 5’ (Ofsted 2015) para 46 (section 8 Education Act 2005). These powers were a direct response to criticisms that Ofsted had failed to identify problems of extremism in certain Birmingham schools: Education Committee, ‘Seventh Report of Session 2014–15, Extremism in schools: the Trojan Horse affair’ HC 473, paras 30-41. Ofsted responded to the committee’s recommendations, saying that one reason for change was a ‘culture of fear and intimidation’ in such schools after the Trojan Horse affair: Committee of Education, ‘Extremism in schools: Ofsted Response to the Committee’s Seventh Report of Session 2014–15’. That was found to be the case in particular at Park View (one of the schools at the centre of the affair) which had previously been rated as ‘Outstanding’.

¹¹² Education and Inspections Act 2006 Part 4.

¹¹³ Unregistered schools could avoid the Prevent duty, but all ‘independent educational institutions’ must be registered under s96 Education and Skills Act 2008, and Ofsted has powers to inspect and close unregistered institutions: see Ofsted, ‘Handbook for Inspecting Unregistered Schools’ Ref no 60043, September 2017. Apparent home-schooling may be contributing to the number of children who attend unregistered schools, some of whom may be therefore at risk of radicalisation, but a register of home-schooled children has been proposed by the Education Secretary, Damian Hinds, partly due to the concern as to radicalisation, see: ‘Council register of home-schooled children proposed’, S Weale, the Guardian 2.4.19 (see the Home Education (Duties of Local Authorities) Bill 2017-19, which has been withdrawn). Neil Basu, deputy assistant commissioner of the

3.2.3 Referrals

The DfE Advice states that schools must have a ‘specific understanding of how to identify individual children who may be at risk [of radicalisation]...and what to do to support them’.¹¹⁴ The Guidance concerning safeguarding of pupils provides that the fulfilment of the s26 duty requires schools to have ‘robust safeguarding policies in place to identify children at risk’, to intervene as appropriate’ as well as to co-operate with relevant safeguarding and Prevent bodies.¹¹⁵ The relevant support may be to refer a pupil who demonstrates signs of radicalisation to the Channel programme,¹¹⁶ in order to counteract extremist influences linked to support for terrorism. In addition to the fulfilment of s26, such support is required to fulfil the statutory duties to put in place arrangements for the safeguarding and promotion of pupils’ welfare (where Prevent-related welfare issues arise) under s175 Education Act 2002, for maintained schools, and the Education (Independent School Standards) Regulations 2014 part 3, in relation to Academies and independent schools. Pupils can be referred to Channel due to an individual’s engagement ‘with a group, cause or ideology’ associated with terrorism, which is one of the three key ‘dimensions’ in the vulnerability assessment framework set out in the Channel guidance.¹¹⁷ However, the Advice for schools does not direct that referrals should be made purely on such a basis but – in common with safeguarding good practice - it is directed instead towards a pupil’s behaviour as a whole, and to the specific question of whether there are reasonable grounds to believe that he or she is vulnerable to being drawn into terrorism.¹¹⁸

There have been claims, some of which have been found to have been exaggerated, that there are large numbers of referrals, including many frivolous or mistaken ones.¹¹⁹ But filtering mechanisms to prevent such referrals are created by teachers,¹²⁰ designated Safeguarding Leads

Metropolitan police, has found that segregated, isolated communities, unregulated education and home schooling are a breeding ground for future terrorists’: see C Chaplin *Evening Standard* 5.9.17.

¹¹⁴ Prevent Duty: Advice for Schools and Childcare Providers, pp5-6. This duty is supplementary to the statutory duty under s11 Children Act 2004 which imposes a duty on schools to have regard to the need to safeguard and promote the welfare of children.

¹¹⁵ The Revised Prevent Duty Guidance, [67-69]. The Departmental Advice refers to the need to put ‘clear procedures in place for protecting children at risk of radicalisation’ (Prevent Duty: Advice for Schools and Childcare Providers, p.5). The bodies include Local Safeguarding Children Boards (LSCB) and Prevent co-ordinators (in areas which have been identified as Prevent Priority areas). See further eg Thomas Chisholm and Alice Coulter ‘Safeguarding and radicalisation’ (Kantar Public, Social Science in Government, August 2017) p 28.

¹¹⁶ Ibid, p6.

¹¹⁷ The other two are ‘intent to cause harm’ and ‘capability to cause harm’: Home Office, ‘Channel: Vulnerability assessment framework’ (2012) pp 1-4. The framework refers to such engagement factors as ‘needs, susceptibilities, motivations and contextual influences and together map the individual pathway into terrorism... [including] feelings of grievance and injustice...A need for identity, meaning and belonging...political or moral change’ (p2).

¹¹⁸ Prevent Duty: Departmental Advice for Schools and Childcare Providers (2015), p5.

¹¹⁹ See Louise Casey, ‘The Casey Review: A review into opportunity and integration’ (Department of Communities and Local Government 2016) at 152 *et seq*; she finds that a number of such claims have been deliberately exaggerated by the anti-Prevent lobby. See as an example, CAGE, The PREVENT strategy: A cradle to grave police-state (2013) 3.8-3.9.

¹²⁰ See eg *Understanding Tower Hamlets’ Prevent Guidance for Schools*, which states: ‘The Prevent Duty is concerned with all forms of grooming that could lead to violent extremism. Prevent is not about trying to silence strong voices or opinion. Instead it is concerned with preventing the translation of strongly held views into deliberate violence against others...[if] something is disclosed which makes them fear for the safety of the student, then the teacher should do exactly what they would in any other situation - speak to the Designated Safeguarding

(staff specifically concerned with various safeguarding matters),¹²¹ and by the constraint that a pupil must be referred to a local authority panel¹²² ‘only if there are reasonable grounds to believe that the individual is vulnerable to being drawn into terrorism’.¹²³ The recent figures for referrals in the education sector as a whole do not suggest that numerous referrals are made.¹²⁴

3.2.4 ‘Extremist’ Expression

The duty to counter ‘extremism’ in order to prevent pupils being drawn into terrorism clearly covers expression in schools that is directly an incitement to terrorism or to violence, so it would cover praising the actions of terrorist groups or supporting terrorism, covered by the PDG, the DfE Advice and s26. But, as discussed, the PDG also extends to opposing expression amounting to non-violent extremism; it could therefore lead to the curbing or suppression of forms of political expression in schools critical of ‘British values’, such as a commitment to the rule of law and fundamental liberties.¹²⁵ The Guidance, however, emphasises at the outset that ‘...children and young people [should be able to] understand and discuss sensitive topics, including terrorism and extremist ideas...part of terrorist ideology, and learn how to challenge these ideas’.¹²⁶ Nevertheless, concerns, not fully supported by the evidence, have been raised regarding the impact of the Prevent duty on expression in relation to the reporting/referring of pupils who express extremist views.¹²⁷

The Guidance refers specifically to the need for “clear protocols” on visiting external speakers to ensure that they are “appropriately supervised”¹²⁸ in order to manage the risk of radicalisation. As regards external speakers, as well as pupils, the findings in *Butt* would be relevant to any free speech claim; while the specific statutory duty under s31 CTSA to uphold freedom of speech in universities at issue in *Butt* is not applicable to schools, the Guidance nevertheless promotes freedom of expression and thought in conjunction with the Prevent

Lead in the school’. See also Joint Committee on Human Rights 2nd Report *Counter- Extremism* (2016-17) HL Paper 39, HC 105 at 15.

¹²¹ In relation to Prevent concerns, see Prevent Duty: Advice for Schools and Childcare Providers p7.

¹²² The Chief Officer of Police may refer pupils but section 20 of the Counter Terrorism and Border Security Act 2019 amends s36 CTSA, so that Local Authorities may also refer individuals to Channel, effective from 12 April 2019.

¹²³ CTSA 2015 s36(1)(3). See further NUT Prevent Guidance Section D, para 39.

¹²⁴ See notes 24 and 74 above, and note 137 below.

¹²⁵ The ‘Revised Prevent Duty Guidance’ [7].

¹²⁶ *Ibid*, para 64. The Departmental Advice on the Prevent Duty elaborates: ‘schools should provide a safe space in which children, young people and staff can understand the risks associated with terrorism and develop the knowledge and skills to be able to challenge extremist arguments’, p5. See also Department of Education, Policy Paper ‘Preventing extremism in the education and children’s services sectors’, updated 23 December 2015.

¹²⁷ See CAGE ‘The PREVENT strategy: A cradle to grave police-state’ (2013). A recent example from the anti-Prevent campaign group Preventwatch claimed that distress was occasioned by the initial stages of a speculative referral. The parents complained to the campaign group that they and their primary school age child were interviewed after their child had repeated some very offensive remarks about non-Muslims in school. He had initially informed his teachers that these remarks were made by his father, but it was later alleged by the parents that the remarks derived from a children’s television show (*Horrible Histories*). See “The School Trip Case” (August 27th 2018) <https://www.preventwatch.org/the-school-trip-case/> (accessed 10 April 2019). See further note 139. But claims as to a chilling effect on pupils’ expression due to referrals do not take account of the small number of referrals (note 69) or educationalists’ perception of that effect as found by Busher et al (note 152 below), p65.

¹²⁸ Home Office, “The Revised Prevent Duty Guidance” (16 July 2015), para 68.

duty.¹²⁹ The sentences complained of in *Butt* have no equivalents in the PDG and DfE Advice as they relate to schools, so a claim brought on a similar basis by a speaker deemed extremist by the Home Office, who might otherwise have been invited to speak in, for example, school assemblies, would be unlikely to succeed in a challenge to the Guidance.¹³⁰ But a number of significant Reports have considered the compliance of Prevent with Article 10 in the context of schools,¹³¹ some finding that the strategy does not fully comport with the values underlying the Article, although, clearly, taking account of Article 10(2) and Article 17, that does not mean that a specific Article 10 claim based on interference via Prevent with forms of extremist expression in schools would succeed.

4. Future of Prevent and Areas for Reform

The continuing Home Office commitment to Prevent, which has included the possibility of strengthening it post-2015, especially after the 2017 attacks,¹³² was reiterated by the current Home Secretary in 2018,¹³³ and it appears to be unlikely at present that it will be abandoned as a result of the 2019-20 independent review.¹³⁴ One purpose of the review appears to be to test claims made by various academics and other commentators as to stigmatisation of Muslims by Prevent.¹³⁵ Following the *Butt* case, since certain terms in the HEI Guidance are to be

¹²⁹ See references to promoting debate and critical thinking: ‘Revised Prevent Duty Guidance’ [64], and Prevent Duty: Advice for Schools and Childcare Providers, p5. Further, most schools will be ‘public authorities’ under s6 HRA and so are bound by Article 10 ECHR.

¹³⁰ The findings in *Butt* as to the necessity of the Guidance in terms of Article 10(2) would apply equally to FEIs, and more strongly to schools, given the greater vulnerability of school children, and their susceptibility to external persuasion, as compared to students.

¹³¹ See: Joint Committee on Human Rights “Legislative Scrutiny: Counter-extremism Bill”, HC 647, 9 March 2016; Human Rights Watch (UK), “Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools” (July 2016), <http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf> (accessed 5.4.19); Human Rights Council, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland”, A/HRC/35/28/Add.1, 24 May 2017, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_28_Add.1_AU_V.docx (accessed 5.4.19).

¹³² The Home Office had confirmed its intention to review Prevent in 2016; it was confirmed that a secret Whitehall internal review of Prevent was ordered in 2016 by Theresa May when she was Home Secretary: see A Travis, ‘Prevent strategy to be ramped up despite “big brother” concerns’ *the Guardian*, 11.11.16. After the terrorist attacks in Westminster on 22 March 2017, Manchester on 22 May 2017 and London on 3 June 2017, Theresa May as Prime Minister reaffirmed that the expected review would include ‘a major expansion of the Prevent anti-radicalisation programme’: A Travis, *the Guardian*, 23.3.17. After the terrorist attack in Manchester the (then) Home Secretary, Amber Rudd, reiterated the commitment to strengthening Prevent: see ‘Government’s anti-terror Prevent programme must be strengthened after Manchester attack, says former terror watchdog’ J Maidment, *The Telegraph*, 24.5.17.

¹³³ ‘The Prevent strategy will remain a vital part of our counter-terrorism work’ – Sajid Javid, ‘Home Secretary announces new counter-terrorism strategy’ 4th June 2018; see at <https://www.gov.uk/government/speeches/home-secretary-announces-new-counter-terrorism-strategy> (accessed 5.5.19).

¹³⁴ See <https://homeofficemedia.blog.gov.uk/2019/01/22/government-announces-independent-review-of-prevent/> 22.1.19. The review has a statutory basis under the Counter Terrorism and Border Security Act 2019 s20(8).

¹³⁵ See Public Bill Committee, ‘Counter-terrorism and Border Security Bill’ PBC (Bill 219) 2017–2019, p 135–136 per Nick Thomas-Symonds MP. See for claims eg: National Union of Students, ‘Experience of Muslim students 2017-18’ (March 2018) https://nusdigital.s3-eu-west-1.amazonaws.com/document/documents/41267/29d43267ae2f2f0906450a27487fcd36/The_Experience_of_Muslim_Students_in_2017-18.pdf (accessed 3.4.19); Open Society Justice Initiative, ‘Eroding Trust: The UK’s PREVENT Counter-Extremism Strategy in Health and Education’ (Open Society Foundations 2016); Muslim Engagement and Development, ‘MEND responds to the announcement by the Government of an Independent

disapplied, there does not seem to be a strong argument for abandoning Prevent on the basis of tensions with Article 10 ECHR, and the safeguards available also make it less likely that it could lead to a finding of a breach of Article 8 ECHR.¹³⁶ But it might be concluded instead that there is a case for abandoning Prevent on policy grounds on the basis that it might foster resentment and radicalisation. Given that this is a fairly early stage post-2015, evidence is only now emerging that it has had some impact in countering extremism and drawing persons away from supporting terrorism,¹³⁷ while at the same time activist groups have to an extent succeeded in portraying Prevent as a means of spying on and stigmatising Muslims, thereby fostering a grievance narrative among some groups. Therefore it has been suggested by some politicians¹³⁸ and academics¹³⁹ that it may have counter-productive effects, outweighing its benefits in combatting terrorism, since it could have aided in promoting radicalisation and lack of

review into PREVENT’ 24 January 2019, <https://www.mend.org.uk/news/mend-responds-announcement-government-independent-review-prevent/> (accessed 3.5.19); Human Rights Watch (UK), “Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools” (July 2016), <http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf> (accessed 5.4.19); Human Rights Council, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland”, A/HRC/35/28/Add.1, 24 May 2017, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_28_Add.1_AU_V.docx (accessed 13 May 2019).

¹³⁶ The right to respect for private and family life: Article 8(1): ‘Everyone has the right to respect for his private and family life, his home and his correspondence’. A breach is less likely, given constraints on data-sharing governed by the Data Protection Act, referenced at para 21 of the Revised Prevent Guidance, taking account of the qualified nature of Article 8 in para 2: “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” See also the findings as to Article 8 in the Court of Appeal in *Butt*, 2019, note 46 above.

¹³⁷ In all sectors, in 2016/17, a total of 6,093 individuals were referred to Prevent – see further note 69. 332 people received Channel support following a Channel panel; 79% of these left the process having been assessed as posing no further terrorist-related concerns. In 2017-18 ‘a total of 7,318 individuals were subject to a referral...of the 1,314 individuals discussed at a Channel panel, 920 (70%) did not receive Channel support, and 564 (61%) of these individuals were referred to other services. The remaining 394 individuals received Channel support following a Channel panel. Of these, 298 (76%) individuals have subsequently left the process, and 96 (24%) are currently still receiving Channel support. Of those who have left the Channel process, 251 (84%) did so with no further terrorism-related concerns’: Home Office Statistical Bulletin 31/18 - ‘Individuals referred to and supported through the Prevent Programme, April 2017 to March 2018’ 13.12.18, para 1.1. See the Joint Committee on Human Rights 2nd Report *Counter- Extremism* (2016-17) HL Paper 39, HC 105 paras 36-50. It found at [50]: ‘It is too early to reach any definitive conclusions on the success of the Prevent Duty in schools’. But for a recent example of Prevent’s workings in schools, see Home Office, ‘Prevent Peer Review Report Tower Hamlets’ (March 2018), https://www.towerhamlets.gov.uk/lgnl/community_and_living/community_safety__crime_preve/Prevent/Prevent_Peer_Review_Report.aspx (accessed 10.4.19), p 15: ‘There are many areas of good practice in the delivery of Prevent training in Tower Hamlets, but in particular the education work is an area of excellence’.

¹³⁸ See eg: Rupa Huq MP, Public Bill Committee, ‘Counter-terrorism and Border Security Bill’ PBC (Bill 219) 2017–2019 pp 136-139; Yasmin Qureshi MP, HC 1 February 2017, Vol 620, Col 362WH; Lucy Allan MP, HC 1 February 2017, Vol 620, 356WH-357WH. The Home Secretary referred to that possibility in June 2018 but did not consider that it should lead to the scheme’s abandonment: Sajid Javid, ‘Home Secretary announces new counter-terrorism strategy’ 4th June 2018; see at <https://www.gov.uk/government/speeches/home-secretary-announces-new-counter-terrorism-strategy> (accessed 5.6.19). See also Joint Committee on Human Rights 2nd Report *Counter- Extremism* (2016-17) HL Paper 39, HC 105 at 15.

¹³⁹ See eg: Arun Kundnani, ‘Spooked!: How not to prevent violent extremism’ (London: Institute of Race Relations 2009) 25-28; Arun Kundnani, *The Muslims are Coming!* (Versobooks, 2014); J Holmwood and T O’Toole, *Countering Extremism in British Schools?* (Policy Press, 2018).

cooperation with the police in some communities.¹⁴⁰ It could have the potential to create such effects in the sense that its impact could be, and has been, exaggerated to seek to sow fear and disaffection from the West in Muslim communities. As a non-trial-based preventive measure that has been viewed as targeting Muslim children and young people in particular, it is clearly controversial: an equivalent scheme has not been adopted in other Western European states.

However, the view has also gained traction that it is partly the *image* of Prevent¹⁴¹ promulgated by certain groups, rather than the reality, that has created some feelings of grievance. In particular, Louise Casey's Review in 2016¹⁴² described 'an active lobby opposed to Prevent'.¹⁴³ Greer has found that that active lobby appears to be unrepresentative of the majority of Muslims who are likely to reject extremism,¹⁴⁴ and who have on occasion sought very proactively to bring manifestations of extremism among other Muslims to the attention of the authorities.¹⁴⁵ Expressions of anger from some Muslims seeking to reject extremism as unrepresentative of their own communities, and as tarnishing their image as Muslims, are arguably silenced in the rush of some academics and some activist groups to attack Prevent.¹⁴⁶ The same may be said

¹⁴⁰ It has been suggested that it could affect the willingness of some in certain Muslim communities to co-operate with the police and aid efforts of the security services in countering terrorism by passing on information about radicalised persons: Intelligence and Security Committee, 'Annual Report 2016-17' HC 655, December 2017, para 40.

¹⁴¹ "The policy can be successful or not by the way it is perceived. That's why it should be very clear from a branding perspective that we're not only talking about Muslims, we're talking about all sorts of radicalisation": Ali Soufan, interviewed by E Saner, *the Guardian*, 8.6.18.

¹⁴² Louise Casey, 'The Casey Review: A review into opportunity and integration' (Department of Communities and Local Government 2016) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575973/The_Casey_Review_Report.pdf, (last accessed 4.6.19).

¹⁴³ She found that 'elements of this lobby...appear to have an agenda to turn British Muslims against Britain', whose activism to undermine Prevent she described as making British Muslims 'feel even more alienated and isolated – and therefore more vulnerable to extremists and radicalisers': the Casey Review (ibid, para 10.29 and para 10.31). She also found that the lobby had 'deliberately distorted and exaggerated cases' of Prevent delivery in an attempt to 'portray the programme at its worst'. It would follow that the strategy of that lobby is to promulgate Prevent myths, seeking to foster feelings of grievance, and then to utilize such grievances to seek to persuade politicians, academics and other policy-makers that Prevent should therefore be abandoned, given that its effects might be counter-productive.

¹⁴⁴ See S Greer 'Anti-terror laws and the UK's 'suspect community' (2010) 50 *British J Criminol* 1171-1190. In particular, he quotes John Denham (at 1176) who has said that 'the government did not believe that Muslim communities are "the problem" or that tolerance or acceptance of violent extremism is widespread', and that the official de-radicalization programme, Prevent, was intended 'to ensure Muslim communities have the resilience to tackle the small minority who would create the space for violent extremism. It could only work...because 'the vast majority of Muslims oppose violent extremism' (<http://www.communities.gov.uk/communities/prevent/newsupdates/#>). See also S. Greer, 'The myth of the 'securitized Muslim community': the social impact of post-9/11 counter-terrorist law and policy in the west' in G. Lennon and C. Walker (eds), *Routledge Handbook of Law and Terrorism* (London: Routledge, 2015), pp.400–415.

¹⁴⁵ See V Dodd, *the Guardian* 'Relative rang anti-terror hotline over concerns about Khuram Butt's extremist views' 4.6.19, and on 28.5.19: 'Family had reported London Bridge attacker to police, inquest hears'; see also J. Grierson, 'London Bridge attacker Khuram Butt had argued with anti-extremist Muslims', *the Guardian* 6 June 2017, <https://www.theguardian.com/uk-news/2017/jun/06/london-bridge-attacker-khuram-butt-had-argued-with-anti-extremist-muslims>.

¹⁴⁶ See eg: Mr Khalid Mahmood MP, HC Deb 2 Dec 2014, vol 589, cols 247-248; the MP Nusrat Ghani: 'Wahhabi Islam is not the faith of my parents and does not reflect the cultural richness of the Muslim communities of the subcontinent... Wahhabism has driven out many of the traditions that make my faith a spiritual rather than a political journey... It represents teachings that interpret Islam as a narrow stone age rulebook intolerant of modern society's norms': HC Deb, 23rd May 2016, Vol 611, Col 350-351; see also *Understanding Tower Hamlets'*

of the limited media or academic comment as to the deep concerns of some Muslim families or their representatives that their sons and daughters have not been protected from radicalisation, with grave consequences for them, at times in UK educational settings.¹⁴⁷ In that context, the Joint Committee on Human Rights concluded in 2018 that Prevent should not be abandoned, but that further efforts should be made to dispel Prevent myths and to make the workings of Prevent more transparent.¹⁴⁸ That view could be supported in the schools' context since Prevent's abandonment might make it more likely that the expression of far-right racist views could go unchallenged.¹⁴⁹ Further, lack of challenge to a narrowing of the curriculum in some Islamic schools, including in particular those with hard-line Sunni or Salafist leanings might also be more likely. Prevent's abandonment might facilitate promulgation of a limited and stunted educational experience for some pupils,¹⁵⁰ leaving them more isolated within

Prevent Guidance for Schools as to Muslim parents' concerns as to ISIS-linked radicalisation. See also in particular S Khan (with T McMahon), *the Battle for British Islam* (Saqi, 2016), chap 3.

¹⁴⁷ Examples include the following: it has been reported that Muslim parents were 'horrified' (<https://metro.co.uk/2018/03/03/handwritten-terror-attack-plans-isis-inspired-recruiter-planned-create-child-army-7357639/>) that in an Islamic school ISIS-supporter Umar Haque, who was able to act as a teacher, but with no teaching qualifications, had shown over 100 school children violent ISIS videos in an attempt to recruit them to mount terrorist attacks in London; reportedly, the children suffered severe psychological harm as a result: see J Grierson, 'Isis follower tried to create jihadist child army in east London' (2 March 2018): www.theguardian.com/uk-news/2018/mar/02/isis-follower-umar-haque-jihadist-child-army-east-london--radicalise (accessed 5.5.19). Similarly, Ishak Mostefaoui joined ISIS in Syria in 2014; he was badly injured there and his wife and son were killed; his father blamed his radicalisation leading to his decision to join ISIS on persons at Westminster University when he was a student there, given that he was brought up in 'a home opposed to extremism'. Friends of another student, Zakariyya Elogbani, also stated that he was radicalised at Westminster, left his studies, and was later captured in Syria by Kurdish forces in 2018: D Swann, D De Simone, D Sandford 'At least 7 from my University joined IS says captured fighter' BBC News 1.4.19. See also eg a letter from the lawyer representing Shamima Begum to *the Times* (31.5.19) complaining that 'Shamima was born, raised, groomed and radicalised here in the UK'.

¹⁴⁸ See Joint Committee on Human Rights *Freedom of Speech in Universities* (4th Report of Session 2017-19) 27.3.18; see at <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/589.pdf> (accessed 5.4.19), para 78. See also Joint Committee on Human Rights 2nd Report *Counter- Extremism* (2016-17) HL Paper 39, HC 105 paras 36-50, which found at [50]: 'The Government would be well-advised to ensure that referrals are made in a sensible and proportionate fashion. However, we also accept that it is very easy for dangerous myths to be spread about Prevent. The only way for these to be dispelled is for there to be rigorous and transparent reporting about the operation of the Prevent duty'. Some efforts in that direction are already apparent: after the *Butt* case at first instance the Home Office began to release statistics on Prevent and to make specific case-studies available, such as those used in WRAP training: Home Office, 'Individuals referred to and supported through the Prevent Programme, April 2016 to March 2017' 27th March 2018; Channel Workshop to Raise Awareness of Prevent guidance (WRAP); Prevent Awareness Training schools (educate against hate). See also Home Office, CONTEST, the United Kingdom's Strategy for Countering Terrorism, Cm 9608. In March 2018 [127]: 'we published, for the second time, statistics on individuals who receive support from the Channel programme. We plan to publish these statistics annually as part of wider efforts to increase the transparency of Prevent delivery'.

¹⁴⁹ See 'Primary pupils spouting race hate learned at home' M Bentham *Evening Standard* 22.3.19.

¹⁵⁰ For example, Tahir Alam, the Chair of the Governors at Park View School from 1997 to 2014, wrote a report representing the 'Muslim Council of Great Britain' in 2007 as a guide for schools termed 'Towards Greater Understanding: Meeting the Needs of Muslim Pupils in State Schools' which included the following: 'Muslims consider that most dance activities...are not consistent with the Islamic requirements for modesty as they may involve sexual connotations and messages when performed within mixed-gender groups or...in front of mixed audiences'...Muslims believe that God should not and cannot be represented in any form...girlfriend/boyfriend as well as homosexual relationships are not acceptable practices according to Islamic teachings...All forms of music that may include the use of obscene and blasphemous language...arouse lustful feelings, encourage the consumption of intoxicants and drugs or contain unethical and un-Islamic lyrics would be considered objectionable. Muslim pupils should not be expected to participate in drama or musical presentations associated with celebrating aspects of other religions, such as nativity plays or Diwali...In Islam the creation of three dimensional figurative imagery of humans is generally regarded as unacceptable because of the risk of idolatry (sic) practices...The school should avoid encouraging Muslim pupils from producing three dimensional imagery

Western society and less able to obtain employment and post-school qualifications, rendering some of them more vulnerable to radicalisation. Combined with other statutory duties of schools, including the equality duty, Prevent could aid in supporting the broadening of pupils' minds rather than the narrowing of them due to the imposition of a narrow curriculum based on a supremacist rejection of values other than those held by the group in question.

It is therefore argued that the risk of fostering extremism entailed in relying on measures on this model does not necessarily outweigh the benefits, as Greer and Bell have also found,¹⁵¹ but that Prevent should be subject to enhanced scrutiny designed to ensure its use only where strongly held views have the potential to translate into terrorist violence. But in practice it has been deployed with a degree of restraint, contrary to anti-Prevent claims,¹⁵² which has become more marked as familiarity with its use has developed. The increasing emphasis on the ability of Prevent to combat forms of extremism other than Islamist ones, and the recent decline in Islamist-related referrals,¹⁵³ should be communicated to the majority of Muslims who reject extremism. In general, the workings of Prevent need to be communicated much more transparently to those potentially affected by them,¹⁵⁴ combatting the exaggerations of various lobby groups,¹⁵⁵ and thereby minimising the creation of counter-productive effects, as may occur as a result of the independent review of Prevent in 2019-20. As a move in that direction, the Home Office figures for referrals in the education sector should be broken down into numbers relating to HEIs, FEIs, and schools; the 'other services', apart from Channel, to which persons are referred should be specified.¹⁵⁶ Transparency could also be achieved due to revision

of humans....When organising overnight trips involving Muslim pupils, mixed-gender groups should be avoided'. Tahir Alam's appeal against the banning order was recently rejected: 'Ruling on ex-chair of governors at "Trojan Horse" school kept under wraps' *TES*, 2nd January 2018; see at <https://www.tes.com/news/ruling-ex-chair-governors-trojan-horse-school-kept-under-wraps> (last accessed 5.4.19).

¹⁵¹ See S. Greer, and L. Bell, 'Counter-terrorist law in British universities: a review of the "Prevent" debate' [2018] PL 84-105: they found of the UCU campaign against Prevent: 'no credible evidence has yet been provided to substantiate any of the movement's confident, yet premature, predictions' (at 104).

¹⁵² See the OfS 2019 Report (note 15 above) which found that very few requests for speaking events were rejected in HEIs in 2018-19 (note 53), and the 2018 Report of the Joint Committee on Human Rights on Prevent in Universities (Fourth Report of Session 2017-19, HC 589, HL Paper 211): 'we did not find the wholesale censorship of debate in universities which media coverage has suggested' (p44). As regards schools, see J Busher, T Choudhury, P Thomas and G Harris, 'What the Prevent duty means for schools and colleges in England: An analysis of educationalists' experiences' (Centre for Peace, Trust and Social Relations Coventry University and Aziz Foundation, 2017): <http://azizfoundation.org.uk/wp-content/uploads/2017/07/What-the-Prevent-Duty-means-for-schools-and-colleges-in-England.pdf> (accessed 20.5.19); the project concluded: 'Most of the respondents did not perceive the Prevent duty to have had a "chilling effect" on discussion and debate...' (at 65).

¹⁵³ 'There was a 36% increase in the number of referrals for concerns related to right wing extremism in 2017/18(1,312) when compared with 2016/17 (968), continuing the upward trend seen since 2015/16. Referrals for concerns related to Islamist extremism decreased by 14% over the same time (2016/17, 3,704; 2017/18, 3,197), continuing the downward trend seen since 2015/16': Home Office, 'Individuals referred to and supported through the Prevent Programme, April 2017 to March 2018' 13.12.18, para 5.1. The role of Prevent in relation to far-right terrorism was recently emphasised by the government following the white/European supremacist attack on a mosque in New Zealand in which 51 people were killed: HC Deb, 18 March 2019, vol 656, col 793.

¹⁵⁴ As recommended by the Joint Committee on Human Rights in the University context: 'Freedom of Speech in Universities' HC 589, HL 111, 27 March 2018, para 78.

¹⁵⁵ See L Casey, The Casey Review (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575973/The_Casey_Review_Report.pdf, (last accessed 4.6.19)), 152 et seq.

¹⁵⁶ See the December 2018 figures, note 137 above. Of the 1,314 individuals deemed suitable through preliminary assessment to be discussed at a Channel panel in 2017/18 920 (70%) individuals did not receive Channel support. Of these 920, 564 (61%) were signposted to alternative services.

of the Guidance to both schools and HEIs with a view to defining a number of terms, including ‘extremism’, more precisely.

5. Conclusions

This paper ends on a fairly positive note, centred in part on the role played by human rights law in relation to Prevent. The interaction discussed between monitoring bodies, including OfS, the courts, public authorities and Parliament that has led since 2006 to the current iteration of the Prevent strategy may be said to have demonstrated eventually a degree of reconciliation between international human rights norms and reliance on this measure,¹⁵⁷ even at a time of a severe terrorist threat. A certain back and forth interplay between security concerns and acceptance of adherence to such norms under the HRA framework, has shown a general tendency towards control of Prevent-based powers, in itself linked to self-restraint in the exercise of those powers. That may be said in particular of the introduction of s31 CTSA, of the decision to allow an independent review of Prevent, in the restraint shown by educational institutions in deploying Prevent, and in the findings on appeal in *Butt* as to free expression. It may be concluded then that Prevent as operating in the education sector is able to make a contribution to security while working within a human rights framework. It is further concluded that the impact of Prevent, and the move to a more explicitly Prevent-aligned understanding of a number of existing statutory duties, has not resulted in mass stigmatisation or criminalisation of Muslims,¹⁵⁸ while in so far as Prevent supports the expression of a plurality of views in schools, Universities or Colleges, as opposed to promoting pupils’ or students’ isolation from such plurality, it is also likely to diminish their risk of being drawn towards terrorism.¹⁵⁹

However, at present the efficacy of Prevent’s contribution in practice to countering terrorist-linked extremism in the educational sector is in some doubt, especially in the HEI sector. This paper has documented a lot of *process* in educational institutions in terms of, for example, drawing up codes, but at present not a great deal of outcome in terms of diverting persons away from being drawn into terrorism. That may be because some such institutions are reluctant to deploy Prevent, meaning that at times there is a failure of intervention, even where it would be welcomed by friends or family of those targeted by radicalisers, as well as by wider society.¹⁶⁰ The various attacks on Prevent appear to have aided in fueling anger both on the far-right and among some Islamist groups, while governmental failings to ensure transparency have encouraged anti-Prevent stances. Such attacks have obscured examination of the true

¹⁵⁷ On this note David Anderson QC has found: ‘European human rights law does not so much hamper the fight against terrorism and extremism as underline the legitimacy of that fight’ (“Report on the Operation of the Terrorism Act 2000 and Part I of the Terrorism Act 2006”, 1.12.16), paras 11.11, 11.12.

¹⁵⁸ See the 2018 Report of the Joint Committee on Human Rights on Prevent in Universities: ‘The Committee strongly endorses’ the need for Prevent as a strategy for preventing the development of terrorism’ (p45, [8]). Its specific review of Prevent in Universities endorsed Prevent, and did not conclude that mass stigmatisation of Muslims on campus was occurring, but found: ‘the Committee said in 2016 that rigorous and transparent reporting is needed to dispel myths about Prevent and called for an independent review of the Prevent policy in its report on Counter Extremism. We repeat that recommendation...’ (p33, [78]). See also: the 2019 OfS Report, note 15 above; Busher et al (note 152), p 65.

¹⁵⁹ See text to note 45.

¹⁶⁰ For an extreme example, see note 147 as to the raising of a ‘child army’ in London by a Salafist activist acting as a teacher in an Islamic school. No Prevent-based intervention had occurred, despite an Ofsted inspection of the school prior to his arrest and conviction for a range of terrorism-related offences. See further eg Thomas Chisholm and Alice Coulter ‘Safeguarding and radicalisation’ (Kantar Public, Social Science in Government, August 2017) p 28, at 19. See also Greer note 151, and Fox, note 81.

connection between its deployment and the prospect of the diminution of the terrorist threat over the next ten years.