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Citation: Fenwick, Helen and Fenwick, Daniel (2019) Prevent in Schools after the Trojan Horse Affair. In: Extremism, Free Speech and Counter Terrorism Law and Policy: International and Comparative Perspectives. Extremism and Democracy . Taylor & Francis, Abingdon, UK. ISBN 9781138545182

Published by: Taylor & Francis

URL: <https://www.crcpress.com/9781138545182>
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Prevent in Schools after the *Trojan Horse Affair*

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Introduction

This chapter will consider the impact of the Prevent strategy, placed on a statutory footing by Part 5 of the Counter-terrorism and Security Act 2015 (CTSA), on freedom of expression in schools.¹ The duty under Part 5 s26 requires schools² to have ‘due regard’ to the need to prevent people from being drawn into terrorism when carrying out their functions. Guidance fleshing out the statutory duty directs schools as to what steps they should take to fulfil this duty (s29(2) CTSA).³ This Guidance states that schools should have regard in particular to disrupting promoters of terrorism, to identify and support those at risk of being drawn to terrorism, and to prevent the promulgation to school pupils of extremist ideology that could be linked to drawing them into terrorism.⁴

The terms ‘terrorism’, ‘radicalisation’, ‘extremism’ are pivotal in the s26 duty and Prevent Guidance as they relate to the impact of the Prevent policy in schools. They therefore require elaboration and explanation. It could be argued that such terms are misused in UK law and policy, either because they are too broad or because their meaning is unclear. The term ‘radicalisation’ could be said to have a positive meaning in the sense of becoming an individual who seeks to criticise conventional assumptions and orthodox beliefs; thus ‘radicalisation’ could be said to be linked to the critical thinking taught in schools and Universities.⁵ In contrast, the Prevent definition of ‘radicalisation’ is much narrower, and where the term is used below it relies on that definition. It covers the process by which individuals are brought to, or come

¹ ‘Schools’ refers to institutions of primary and secondary education, as specified in the Education Act 1996 s2(2),(2A) including 6th forms that are part of state schools (ie maintained or academy schools). Institutions involved in ‘further education’ and ‘higher education,’ which are the subject to different statutory frameworks to those applying to primary and secondary educational institutions, are therefore beyond the scope of this chapter.

² Sched 6 CTSA.

³ HM Government, *The Revised Prevent Duty Guidance*, (Issued 12 March 2015, revised 16 July 2015); see at www.gov.uk/government/publications/prevent-duty-guidance (accessed 10.8.18).

⁴ Ibid [6].

⁵ Numerous commentators have highlighted the fact that many historic figures who are today viewed as important figures in the development of humanism and liberalism, such as Michael Servetus, were considered to be a danger to society due to their radical, heretical, views; see eg AC Grayling *Towards the Light: The Story of the Struggles for Liberty and Rights that Made the Modern West* (Bloomsbury 2007) pt 1.

to, support terrorist groups and ‘extremist ideology’ linked to terrorism.⁶ The definition reflects the typical use of the term in contemporary counter-terror theory and practice; given that it covers the rejection of the liberal-democratic values of contemporary Western society, it also, it is argued, therefore covers rejection of critical thinking associated with such values in relation to the assumptions underpinning the involvement of extreme religious or far-right groups or individuals in terrorist activity. Therefore, as expanded on below, the term is used in contradistinction to the discouragement of pluralistic, critical thinking in schools.⁷ But given the necessity of a link to terrorism, the mere expression of support for anti-Western values, without more, would not mean that radicalisation would be viewed as having occurred.

‘Terrorism’ is defined in s1 Terrorism Act 2000 to involve an act, or threaten an act, of serious violence to person or property, that creates a risk to life or health, that disrupts an electronic system, which is designed to ‘influence the government... or to intimidate the public or a section of the public’ and ‘is made for the purpose of advancing a political, religious, racial or ideological cause’.⁸ The breadth of the definition of terrorism may be criticised for encompassing actions or the threat of action designed to further liberal, democratic political or ideological causes that seek to influence totalitarian governments.⁹ However, if a pupil in school merely expressed support for, for example, establishing a Kurdish state in support of the PKK, without expressing a threat of action as covered by s 1, it is possible that this would not indicate that the pupil could be ‘drawn into terrorism’ for the purposes of Prevent, since such expression is not itself within the definition, despite the fact that in theory a terrorist offence could apply.¹⁰

The term ‘extremism’ used in the Guidance is, at face value, more problematic. Extremism is defined in the Guidance to include ‘vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of

⁶ See n 3 above.

⁷ See A Moffat, *Reclaiming Radical Ideas in Schools: Preparing Young Children for Life in Modern Britain* (Routledge 2017).

⁸ It should be noted that in *R (Miranda) v Secretary of State for the Home Department* [2016] EWCA Civ 6 at 51-55 the definition of terrorism was significantly refined when it was found that the acts listed in s1(2)(a) and (b) should be understood to contain a mental element of awareness of involvement in the damage/violence.

⁹ See eg A Greene, ‘Defining terrorism: one size fits all?’ (2017) 66(2) ICLQ 411, 415-19.

¹⁰ Offence of supporting a proscribed organisation – s 12 of TA 2000 (since the PKK is proscribed), or the offence of glorifying terrorism (s 1 TA 2006).

different faiths and beliefs.’¹¹ The duty to counter such ‘extremism’ in order to prevent pupils being radicalized, with the possibility of being drawn into terrorism,¹² clearly covers expression in schools that is directly an incitement to terrorism or to violence. It would cover praising the actions of terrorist groups or supporting terrorism, as amounting to the expression of violent extremism capable of creating the risk in question. Therefore it would be covered by both the Guidance and s26. But the wording of the Guidance 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.¹³ This chapter will consider therefore whether or how far the problematic of the term can be viewed as affecting the application of the Prevent policy in schools. The question is also raised whether the impact of the duty as reflected in the Guidance is compatible with or supports another fundamental British value – freedom of speech, as a common law value and as guaranteed by Article 10 ECHR.

This chapter will proceed as follows. Firstly it will consider the background to the introduction of the statutory Prevent duty, focussing on its links with the Trojan Horse affair.¹⁴ Secondly, it will examine and evaluate the content of the Prevent duty and Guidance to Schools. Thirdly it will consider the impact of enhanced safeguarding measures under Prevent as applied to pupils considered vulnerable to being radicalised, and fourthly it will consider the emphasis upon the

¹¹ See n 3 at [7]. It should be noted that the relationship between non-violent extremism and radicalisation is strongly disputed eg J Holmwood and T O’Toole, *Countering Extremism in British Schools?* (2018 Policy Press) 54-57. The authors are of the view that the term should be understood in light of the contemporary context of terrorist violence against the UK state and its citizens. We agree with Justice Ouseley’s finding in *Butt v Secretary of State for the Home Dept* [2017] EWHC 1930 (Admin) that the ‘radicalisation’ process by which an initially non-violent extremist could ultimately engage in terrorism involves a ‘framework of a sense of separateness, alienation, victimhood... at one with a rigid and pure version of religion or ideology’ (at [137]). However, it must be emphasised that the association between such a framework and the commission of terrorist acts is not a close one, the adoption of extremist ideology is only *one* indicator among many that an individual may commit such acts and that such an indicator must be treated with caution in order to avoid unjustifiably implicating a broader religious community see eg J Taylor, “‘Suspect Categories,’ Alienation and Counterterrorism: Critically Assessing PREVENT in the UK’ (2018) 1 *Terrorism and Political Violence* 1156. See on counter-terrorism law and social division generally: M-S Abbas, ‘Producing “Internal Suspect Bodies”: Divisive Effects of UK Counter-Terrorism Measures on Muslim Communities in Leeds and Bradford’ (2018) *British Journal of Sociology* 1; 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. See further below text to n 135.

¹² See I Cram and H Fenwick ‘Protecting free speech and academic freedom in Universities’ (2018) 81(5) *MLR* 825 (forthcoming) 835 for discussion and criticism of the linkage between radicalisation and participation in terrorism-related activity.

¹³ Note that the government has stated that the overall counter-extremism strategy was designed to help to address the harms of extremism - in particular the support or justification of violence: Home Office, *Counter-Extremism Strategy* (Cm 9148, 2015) para 7.

¹⁴ See P Clarke, ‘Report into allegations concerning Birmingham schools arising from the ‘Trojan Horse’ letter’ (HMSO 2014); J Holmwood and T O’Toole, *Countering Extremism in British Schools? The truth about the Birmingham Trojan Horse affair* (2018 Policy Press).

promotion of British values in schools as a counter to extremism. Fifthly it will consider the enforcement mechanisms accompanying Prevent. Sixthly it will consider other duties to promote free, pluralistic debate in schools, and finally it will come to conclusions as to the need to apply Prevent on a statutory basis in schools as – in part – a response to the Trojan Horse affair.

1. Background to the statutory Prevent duty as applied in schools; the Trojan Horse affair

The Prevent strategy is one of the four pillars of Contest, the government's overall strategy for countering the terrorist threat to the UK post-9/11.¹⁵ The Contest strategy prior to 2009, under the then Labour government, referred to the need to disrupt *violent* extremism which was designed to draw people into terrorism.¹⁶ It was adopted after the 7/7 terrorist attacks in London leading to the shift in the Contest strategy to address domestic terrorism.¹⁷ The underlying aim of this strategy as it related to schools was partially articulated previously by the Department for Children, Schools and Families in 2008.¹⁸ The expressed aim was to safeguard children from extremism on the basis that if, via classroom materials and teaching, they were exposed to an ideology linked to violent extremism while at school, and therefore at an impressionable age, it would be possible that such exposure might, to varying degrees depending on individual circumstances, have a radicalising impact on them.¹⁹ However, after 2008 the revised Contest strategy increasingly emphasised the role of non-violent extremism, or 'material and arguments which create a climate of intolerance and distrust in which violence as a tool of political discourse becomes acceptable,'²⁰ as an important initial stage in the process of individuals being drawn into terrorism.²¹

In 2011 the Liberal-Conservative Coalition government published a comprehensive Prevent strategy document which also emphasised the role of non-violent extremism in the initial

¹⁵ Home Office, *Countering International Terrorism: The United Kingdom's Strategy* (Cm 6888, 2006).

¹⁶ Ibid.

¹⁷ Ibid [3].

¹⁸ See Department for Schools, Children and Families, 'Learning Together to be Safe' (London, 2008); see at http://dera.ioe.ac.uk/8396/1/DCSF-Learning%20Together_bkmk.pdf (accessed 10.8.18).

¹⁹ Ibid 3.

²⁰ Cabinet Office, *The National Security Strategy of the United Kingdom: Update 2009 security for the Next Generation* (Cm 7590, 2009) para 6.36.

²¹ Ibid.

phases of radicalisation.²² In 2012 the Home Affairs Select Committee identified problems of radicalisation in prisons, religious institutions, via the internet and in prisons, which had featured in the backgrounds of current and former Islamic terrorists.²³ In 2013 the Prime Minister's anti-extremism taskforce, created after the murder of Drummer Lee Rigby by two Islamic extremists,²⁴ recommended that the Prevent strategy should be made a legal requirement in 'certain areas of the country where extremism is of particular concern' to enable Local authorities to carry out their role in delivering 'Prevent'.²⁵ It was against this background of an increasing emphasis in the Prevent strategy upon the need to address both non-violent extremism, and the initial phases of radicalisation, that the Trojan Horse affair occurred.

Prior to that affair, and shortly after the Liberal-Conservative Coalition government took office, the issue of radicalisation in educational settings, and the appearance of a lack of an effective response to those concerns, was vividly illustrated when an undercover reporter for Channel 4 released footage from the Darul Uloom school in Birmingham.²⁶ This showed a student speaker addressing younger students – under the supervision of staff – in a speech which reproduced extremist ideology, describing British society in general as evil and singling out certain groups, such as Hindus, for ridicule.²⁷ This, and similar revelations concerning Islamist groups operating in universities,²⁸ in addition to the involvement of an assistant teacher, Mohammed Sidique Khan, in the 7/7 attacks, created pressure on the Department of Education (DfE) and Ofsted to do more to address extremism in schools.²⁹

The Channel 4 revelations about radicalisation in educational settings provided the context to the even more dramatic allegations arising from the Trojan Horse affair in 2014. This affair began when an anonymous letter was sent to the Leader of Birmingham City Council

²² Home Office, *Prevent Strategy* (Cm 8092, 2011) 5.35-5.37; see at www.gov.uk/government/publications/prevent-strategy-2011 (accessed 10.8.18).

²³ Home Affairs Select Committee, *Roots of violent radicalisation* (HC 2010–12, 1466-I) chap 3.

²⁴ Prime Minister's Taskforce on Tackling Radicalisation and extremism, 'Tackling extremism in the UK' (Dec 2013); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/263181/ETF_FINAL.pdf (accessed 10.8.18).

²⁵ *Ibid* para 4.1.

²⁶ R Butt, 'Lessons in Hate and Violence: the same old story' *the Guardian* (17 February 2011); see at www.theguardian.com/commentisfree/belief/2011/feb/17/lessons-in-hate-and-violence-muslim-extremism (accessed 10.8.18).

²⁷ Birmingham Post, 'Hate preacher expelled from Birmingham Islamic school featured on TV documentary' (14 February 2011); see at www.birminghampost.co.uk/news/local-news/hate-preacher-expelled-birmingham-islamic-3923609 (accessed 10.8.18).

²⁸ E Husain, *The Islamist* (Penguin 2007), and Maajid Nawaz, *Radical* (Lyons Press 2012).

²⁹ Home Office, *Prevent Strategy* (Cm 8092, 2011) para 10.30.

describing a process of five steps by which a number of schools in Birmingham could be ‘taken over’ in order to ensure that they were run on strict Islamic principles. The steps included the use of pressure from activist groups of parents, and especially from governors, to pressurise staff to align the organisation of the school, including teaching, with such principles. It also set out methods of coercing staff and Head teachers into resigning from the schools in question if they were unsympathetic to the imposition of such principles. The letter set out a blue-print for similar take-overs in other schools.³⁰ It purported to be from one Islamist to another outlining a conspiracy to take over schools in the ways described, but that was never established and it may have been merely a ruse³¹ adopted to draw the issues to the attention of the Council,³² although the Council strongly denied this.³³

Birmingham City Council informed the police, who decided to take the matter no further; however, the Department of Education ultimately received a copy of the letter from the police (via the Home Office). The letter drew attention to concerns that had already been raised with the Department of Education by senior teachers in Birmingham schools, such as head teacher Mr Tim Boyes,³⁴ and – when the DfE received the letter – a national campaigning organisation put the DfE in contact with further whistle-blowers at Park View school.³⁵ The contents of the letter, and the concerns raised by the whistle-blowers, resulted in various inquiries with various remits. There were two investigations concerning the substance of the allegations made in the Trojan Horse letter by the Education Commissioner Peter Clarke (the Clarke Report) appointed

³⁰ I Kershaw, ‘Investigation report Trojan Horse letter’ (Eversheds Northern Education 2014); www.birmingham.gov.uk/download/downloads/id/1579/investigation_report_trojan_horse_letter_the_kershaw_report.pdf (accessed 10.8.18).

³¹ Islamist activist group MEND, formerly iENGAGE, describes the letter as a hoax and has held events which link the letter to general stigmatisation of Muslims in education: MEND, ‘Trojan Horse – The Facts’ (The Bordersley Centre, Birmingham, 3 November 2017).

³² Kershaw, ‘Investigation report,’ n 30 above; R Adams, ‘Is the Trojan horse row just a witch hunt triggered by a hoax?’ *the Guardian* (8 June 2014); see at www.theguardian.com/education/2014/jun/08/trojan-horse-extremism-political-storm-michael-gove-ofsted (accessed 10.8.18).

³³ Birmingham Mail, ‘Birmingham Council insists Trojan Horse did happen and promises to challenge those who deny it’ (3 November 2017); see at www.birminghammail.co.uk/news/midlands-news/birmingham-council-insists-trojan-horse-13852775 (accessed 10.8.18).

³⁴ Education Committee, ‘Extremism in Schools: the Trojan Horse Affair’ (HC 2014-2015, 473) 13. See also R Garner, ‘Trojan Horse: Headteacher received death threats for speaking out against homophobia’ *the Independent* (3 May 2015); see at www.independent.co.uk/news/education/schools/trojan-horse-headteacher-received-death-threats-for-speaking-out-against-homophobia-1022271.html (accessed 10.8.18).

³⁵ P Clarke, ‘Report into allegations concerning Birmingham schools arising from the ‘Trojan Horse’ letter’ (HMSO 2014) para 2.5.

by the Department of Education,³⁶ and the Report of Ian Kershaw, appointed by Birmingham City Council.³⁷

The Kershaw review leading to the Report had a remit which included investigation into the substance of the allegations made in the letter. It found that there was evidence of pressure to change the ethos of schools to be run on strict Islamic principles,³⁸ but did not find enough evidence to sustain the claim that there was a ‘systematic plot’ to take over schools as envisaged by the letter.³⁹ The Clarke Report’s remit was more generally to: establish what had occurred in the schools of concern, focusing on governance; to gather evidence going beyond the specific Trojan Horse issues, to include the issue of safeguarding generally, and to ‘understand the implications for the school system’, both in Birmingham and nationally.⁴⁰ The Clarke Report echoed the Kershaw Report’s conclusion as regards pressure being applied to change the character, ethos and staff in some Birmingham schools.⁴¹ It found that ‘there are a number of people, associated with each other and in positions of influence in schools and governing bodies, who espouse, endorse or fail to challenge extremist views.’⁴² In particular, it found evidence of hard-line or extremist views among certain staff associated with the Park View Educational Trust, and indications that this had influenced the delivery of Personal, Social and Health Education, so that discussion about extremist practices, such as female genital mutilation and the Prevent duty, were omitted or were taught from a narrow Islamic perspective, as were elements of sex and relationship education.⁴³

The Report further found that certain governors and teachers were promoting, via lessons, materials, and external speakers, an Islamic ideology which if ‘left unchecked...would confine school children within an intolerant, inward-looking monoculture that would severely inhibit their participation in the life of modern Britain’.⁴⁴ It was also found that the curriculum was limited in some schools, that gender segregation was imposed in some lessons,⁴⁵ and that

³⁶ Ibid para 1.1.

³⁷ Kershaw, ‘Investigation report,’ n 30.

³⁸ Ibid para 22.

³⁹ Ibid.

⁴⁰ P Clarke, ‘Report into allegations concerning Birmingham schools arising from the ‘Trojan Horse’ letter’ (HMSO 2014) para 1.1

⁴¹ Ibid paras 1.1, 11.1.

⁴² Ibid.

⁴³ Ibid para 4.16.

⁴⁴ Ibid para 5.1.

⁴⁵ Ibid para 4.43.

extremist speakers had been brought in to speak in School assemblies.⁴⁶ The Report also accepted that there had been abuses of power in the Schools and that some governing bodies had been able to change the ethos of the school.⁴⁷ Finally, it also found that measures had been taken to disguise the extent of the changes from sources of accountability, such as the DfE, Birmingham Local Education Authority, Ofsted or staff or parent whistle-blowers. They included the discrediting of critical head-teachers, staff or governors, and the obscuring of practices such as narrowing the curriculum, so that parents and inspectors were not aware of their occurrence or extent.⁴⁸

The Clarke Report also considered the extension of an invitation to Shaykh Shady Al-Suleiman to speak at an assembly about exam revision.⁴⁹ The invitation was challenged in the Clarke report on the basis that senior staff either were, or should have been, aware of his politicised ultra-orthodox Sunni views, which had reportedly included supporting the Mujahideen (who oppose the West generally and specifically in Afghanistan), as well as defending Sharia punishments for homosexuality and adultery.⁵⁰ The lack of a policy vetting individuals such as Shaykh Shady, and other institutional failings resulting in his invitation, were cited in the Ofsted Report for Park View subsequent to the inquiry.⁵¹ It was found inter alia that its vetting policy was inadequate, which resulted in an intervention that included the replacement of senior staff in management positions.⁵² The individuals involved were also subject to sanctions, and Tahir Alam in particular was barred from acting as a governor (although proceedings against senior teaching staff largely collapsed due to mismanagement of the evidence).⁵³

⁴⁶ Ibid para 7.25, 'Speakers were found to include the following individuals: Shaykh Yusuf Estes – a speaker who has caused controversy in the past for reportedly advocating wife beating and the killing of homosexuals. Shaykh Shady al-Suleiman – a preacher who has reportedly called on God to 'destroy the enemies of Islam'; Al-Suleiman has also asked God to 'give victory to the Muslims in Afghanistan and Chechnya', to 'give victory to all the Mujahideen all over the world' and to 'prepare us for the jihad'; Ustadh Hamza Tzortis – a speaker who has reportedly said that Muslims 'reject the idea of freedom of speech and even the idea of freedom'.

⁴⁷ Ibid para 4.3.

⁴⁸ Ibid para 4.20. See also Mr Khalid Mahmood HC Deb 2 Dec 2014, vol 603, col 248.

⁴⁹ P Clarke, 'Report into allegations concerning Birmingham schools arising from the 'Trojan Horse' letter' (HMSO 2014) 4.30.

⁵⁰ Ibid para 7.25.

⁵¹ Ofsted, 'Inspection Report for Park View Academy of Mathematics and Science on 5-6th March and 17-18th March 2014'; see at https://files.api.beta.ofsted.gov.uk/138059_3.PDF (accessed 10.8.18).

⁵² Ibid 1.

⁵³ See below n 190, n 60.

Some of the evidence in the Clarke Report was disputed at length by Park View Educational Trust,⁵⁴ as well as by certain academics,⁵⁵ and the necessarily anonymous nature of many of the whistleblowing allegations, has resulted in some speculation as to the veracity of the evidence cited in the report.⁵⁶ In a series of disciplinary hearings before the National College for Teaching and Leadership,⁵⁷ concerning certain of the teachers involved in the Trojan Horse affair, the evidential basis of some of the claims in the Clarke report were subject to additional scrutiny.⁵⁸ One reported example concerned a reference in the Report to a ‘lesson worksheet’ which stated that wives must consent to sex with their husbands;⁵⁹ on cross-examination of the witness as part of the hearing it was revealed that the document was not part of the course materials, or distributed by the teacher, but rather was from an internet source and distributed to the class in front of the teacher by students.⁶⁰

The Clarke Report resulted in a number of recommendations to the Department of Education (DfE). These included that it ‘should ensure that the governing body of every school extends the responsibilities of the teacher designated Child Protection Officer to include Prevent within his/her role... [and that the] mandatory... training undertaken by these responsible teachers should include the Prevent Strategy.’⁶¹ Another recommendation was that ‘Ofsted should consider whether the existing inspection framework and associated guidance is capable of detecting indicators of extremism and ensuring that the character of a school is not changed substantively without following the proper process.’⁶² The DfE under Michael Gove pre-empted these recommendations to an extent by announcing a consultation into the ‘active

⁵⁴ Park View Educational Trust, ‘Statement from Park View Educational Trust on Ofsted reports on Park View, Golden Hillock and Nansen schools’ (9 June 2014); see at www.mohammedamin.com/Community_issues/PVET/PVET-statement-9-6-2014-on-Ofsted-reports.pdf (accessed 10.8.18).

⁵⁵ See in particular J Holmwood and T O’Toole, *Countering Extremism in British Schools?* (2018 Policy Press) chap 8.

⁵⁶ *Ibid.*

⁵⁷ Now the Teaching Regulation Agency.

⁵⁸ *NCTL v Monzoor Hussain* decision of 1st March 2017; see at www.matrixlaw.co.uk/wp-content/uploads/2017/03/02.03.17.pdf (accessed 10.8.18), see further J Holmwood and T O’Toole, *Countering Extremism in British Schools?* (2018 Policy Press) 89.

⁵⁹ P Clarke, ‘Report into allegations concerning Birmingham schools arising from the ‘Trojan Horse’ letter’ (HMSO, 2014) para 4.20.

⁶⁰ *NCTL v Monzoor Hussain*, Transcript of Proceedings Day 4 22 October 2015 p 89, cited in *Countering Extremism in British Schools?* (2018 Policy Press) 223. As a result of these evidential irregularities the hearings collapsed, although dismissal of certain teachers involved in the ‘scandal’, such as Razwan Faraz, has subsequently been upheld: N Johnston, ‘Trojan horse teacher called gays “animals”’ *the Times* (13 August 2018) www.thetimes.co.uk/article/trojan-horse-teacher-called-gays-animals-kfbbzmv3k (accessed 13.8.18).

⁶¹ See n 49.

⁶² *Ibid.*

promotion of British values’ in schools which culminated in a report issued in November 2014, discussed further below.⁶³ The DfE also published a progress report, which suggested that ‘all the recommendations have been implemented or are on track.’⁶⁴ The result of the Trojan Horse inquiry into 21 Birmingham schools found two to be outstanding, but six schools, including Park View, were found to be failing and were put in special measures.⁶⁵

The findings of the Kershaw and Clarke Reports were published in July 2014 and were referred to in the debates on the Counter Terrorism and Security Bill in 2014.⁶⁶ The reference to schools as a designated authority to be subject to the legal duty to have due regard to Prevent was not, however, a direct response to their findings, but rather a response to the recommendations of the Prime Minister’s taskforce on Radicalisation and Extremism.⁶⁷ This taskforce recommended that the ‘government must do more to address extremism in locations where it can exert control, such as prisons, and increase oversight where it is needed, such as in some independent and religious schools’.⁶⁸ However, rather than a general legal duty to enforce Prevent, the Taskforce recommended a legal duty to enforce it that was specific to ‘areas of the country where extremism is of particular concern’.⁶⁹ These recommendations were interpreted in the 2014 Contest strategy to be ‘in line with’ the proposals for the new statutory duty placed on schools in the Counter Terrorism and Security Bill.⁷⁰ It is probable that this evolution in policy was the result of pressure on the Home Department, created by the high profile of the Trojan Horse affair, to demonstrate, in particular, that it was taking a strong stance on Prevent and was seeking to limit the discretion given to individual schools or local authorities to implement it. This pressure was created partly by the DfE under Michael Gove which had emphasised the importance of ‘promoting British values’ at the time of the Trojan Horse affair,

⁶³ Department for Education, ‘Promoting fundamental British values as part of SMSC in schools’ (November 2014); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380595/SMS_C_Guidance_Maintained_Schools.pdf (accessed 10.8.18).

⁶⁴ HC Deb, 29 January 2015, vol 591, col 1015.

⁶⁵ M Wilshaw, ‘Advice notes on academies and maintained schools in Birmingham’ 8th July 2016; see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535976/HMC_I_advice_note_to_the_Secretary_of_State_on_Birmingham_8_July_16.pdf (accessed 10.8.18).

⁶⁶ HC Deb 2 Dec 2014, vol 603, cols 248, 265.

⁶⁷ Prime Minister’s Taskforce on Tackling Radicalisation and extremism, ‘Tackling extremism in the UK’ (Dec 2013); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/263181/ETF_FINAL.pdf (accessed 10.8.18).

⁶⁸ Ibid 5.

⁶⁹ Ibid 4.

⁷⁰ Home Office, *Contest Annual report* (Cm 9048, 2014) para 2.34.

leading to a public fallout between Mr Gove and Theresa May.⁷¹ Another example of this pressure is evident in the debates on the Bill itself in the statement of Khalid Mahmood, a Birmingham MP who had been instrumental in supporting whistle-blowers in the Trojan Horse schools, who was critical of what he perceived as a lack of support from Birmingham City Council for his efforts.⁷²

2. The Prevent duty and regulatory framework in schools: introduction

The focus of the Prevent strategy under the previous Labour government was on violent extremism.⁷³ The current strategy, largely captured in s26 CTSA and the Prevent Duty Guidance, also covers the harms of non-violent extremism, such as social division and the encouraging of isolation.⁷⁴ The current strategy is based, as discussed above, on the identification of evidence of extremism in institutions, including the school system, as a particular concern, referring to the Trojan Horse affair and the Clarke report.⁷⁵ The key requirements of the Prevent duty are now set out in the revised Prevent duty Guidance,⁷⁶ and dedicated Guidance for schools.⁷⁷

The Guidance emphasises at the outset that ‘the Prevent duty is not intended to stop pupils debating controversial issues... [and] 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’.⁷⁸ Nevertheless, concerns have been raised regarding the impact of the Part 5 Prevent duty on expression in schools⁷⁹ in

⁷¹ R Adams, ‘Is the Trojan horse row just a witch hunt triggered by a hoax?’ *the Guardian* (8 June 2014); see at www.theguardian.com/education/2014/jun/08/trojan-horse-extremism-political-storm-michael-gove-ofsted (accessed 10.8.18); see also in relation to the link between Prevent and British values: S Miah, *Muslims, Schooling and Security: Trojan Horse, Prevent and Racial Politics* (Palgrave 2018) chap 5.

⁷² HC Deb 2 Dec 2014, vol 603, cols 248, 265.

⁷³ Home Office, *Countering International Terrorism: The United Kingdom’s Strategy* (Cm 6888, 2006) para 6.

⁷⁴ Home Office, *Counter-Extremism Strategy* (Cm 9148, 2015) para 7.

⁷⁵ P Clarke, ‘Report into allegations concerning Birmingham schools arising from the ‘Trojan Horse’ letter’ (HMSO 2014).

⁷⁶ HM Government, *The Revised Prevent Duty Guidance*, (Issued 12 March 2015, revised 16 July 2015); see at www.gov.uk/government/publications/prevent-duty-guidance (accessed 10.8.18).

⁷⁷ Department of Education, ‘The Prevent duty: Departmental advice for schools and childcare providers’ (June 2015); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/439598/prevent-duty-departmental-advice-v6.pdf. (accessed 10.8.18).

⁷⁸ *Ibid* 4.

⁷⁹ See J Mohammed and A Siddiqui, ‘The PREVENT strategy: A cradle to grave police-state’ (CAGE 2013); see at www.cage.ngo/prevent-strategy-cradle-grave-police-state (accessed 10.8.18).

relation to two key related areas: first, the reporting/referring of pupils who express extremist views, and secondly, methods of preventing such views being expressed by speakers in schools, and the promotion of ‘British values’. The legal/regulatory framework of Prevent relevant to both areas is discussed in turn in the two sections below.

In the second reading of the Counter Terrorism and Security Bill Khalid Mahmood MP (Labour), who had originally pressured Birmingham council over the Trojan Horse letter and the concerns raised, welcomed the new duty in Part 5.⁸⁰ He considered its most significant contribution to be that it could address the lack of official support that he had experienced in raising concerns about the pressure brought to bear on head teachers and staff to accept Salafi-aligned schooling.⁸¹ The need to do more to support schools and other public institutions to counter extremism was also emphasised by the government in its response to a number of critical Parliamentary Committee reports concerning the Trojan Horse affair, in particular that of the Education Committee, as well as in its response, after CTSA Part 5 had come into force, to a 2015 consultation on the Prevent Duty Guidance.⁸²

3. Countering extremism by enhanced safeguarding of pupils

The Prevent Duty Guidance states that schools are required to demonstrate that they are able ‘to assess the risk of children being drawn into terrorism, including support for extremist ideas that are part of terrorist ideology,’⁸³ while the DfE Guidance 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’.⁸⁴ The relevant support is to refer a pupil who

⁸⁰ HC Deb 2 Dec 2014, vol 603, col 246.

⁸¹ Ibid.

⁸² Department of Education, ‘Review into possible warnings to DfE relating to extremism in Birmingham schools’ (January 2015); see at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/396211/Review_into_possible_warnings_to_DfE_relati...w_into_possible_warnings_to_DfE_relati...to_extremism_in_Birmingham_schools.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/396211/Review_into_possible_warnings_to_DfE_relati...) (accessed 10.8.18); Secretary of State for Education, *Government response to the Education Select Committee report: Extremism in schools: the Trojan Horse affair* (Cm 9094, July 2015). ‘We are collaborating with the Home Office and Police to develop advice and material to support schools in meeting their new duty to prevent young people from being drawn into terrorism, as part of the Counter-Terrorism and Security Act 2015’ (ibid 1).

⁸³ HM Government, *The Revised Prevent Duty Guidance*, (Issued 12 March 2015, revised 16 July 2015); see at www.gov.uk/government/publications/prevent-duty-guidance (accessed 10.8.18) para 67.

⁸⁴ Department of Education, ‘The Prevent duty: Departmental advice for schools and childcare providers’ (June 2015); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/439598/prevent-duty-departmental-advice-v6.pdf. (accessed 10.8.18) 5. This duty is supplementary to the statutory duty under

demonstrates signs of radicalisation to the ‘Channel’ programme, which is a non-compulsory de-radicalisation programme⁸⁵ designed to counteract influences drawing individuals into terrorism. In addition to the fulfilment of s26, such support is required to fulfil statutory duties placed on school governors and Local Education Authorities (LEAs) to put in place arrangements for safeguarding and the promotion of pupils’ welfare under s175 Education Act 2002, for maintained schools, and the Education (Independent School Standards) Regulations 2014,⁸⁶ in relation to independent schools.

Claims that Prevent ‘criminalises’ the expression of certain viewpoints⁸⁷ are therefore obviously false, since Channel cannot lead to a criminal conviction and non-participation carries no criminal (or civil) penalty.⁸⁸ Similar claims that Prevent is simply a duty to report pupils to the police are not correct in legal terms. The relevant statutory duty is that imposed under s26 which makes no reference to referrals. The Departmental Guidance concerning safeguarding suggests that the fulfilment of the s26 duty requires schools to have ‘clear procedures in place for protecting children at risk of radicalisation’ as well as to co-operate with relevant safeguarding and Prevent bodies.⁸⁹ A failure to refer could indicate that an institution or individual had failed to have regard to the Prevent duty since it might – but need not – indicate that the clear procedures were not in place.⁹⁰ So a duty to refer could arise indirectly.

Furthermore, claims that there are large number of referrals, including many frivolous or mistaken ones,⁹¹ should be viewed in the light of the filtering mechanism provided by designated Safeguarding Leads (staff specifically concerned with safeguarding pupils 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.

⁸⁵ Ibid.

⁸⁶ SI 3283/2014.

⁸⁷ See eg J Mohammed, ‘Britain’s Counter Extremism Policies are Criminalising Muslim thought and expression’ (Public Spirit, October 2015); see at <http://www.publicspirit.org.uk/assets/Jahangir-Mohammed-Final.pdf> (accessed 10.8.18).

⁸⁸ Section 34 CTSA 2015.

⁸⁹ Local Safeguarding Children Boards (LSCB) and Prevent co-ordinators (in areas which have been identified as Prevent Priority areas).

⁹⁰ For the legal status of the Guidance see discussion of the *Butt* case, n 133 below, and associated text.

⁹¹ L Casey, ‘The Casey Review: A review into opportunity and integration’ (Department of Communities and Local Government, 2016); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575973/The_Casey_Review_Report.pdf (accessed 10.8.18) 152 *et seq*; J Mohammed and A Siddiqui, ‘The PREVENT strategy: A cradle to grave police-state’ (CAGE, 2013); see at <https://www.cage.ngo/prevent-strategy-cradle-grave-police-state> (accessed 10.8.18) paras 3.8-3.9.

Prevent),⁹² and the Chief of Police, who must refer a pupil to a local authority panel only if there are reasonable grounds to believe that the individual is vulnerable to being drawn into terrorism.⁹³ However, the involvement of the police is rightly seen as an intimidatory measure, especially given the ages of pupils who might be referred. Moreover, some risk-averse schools may have taken an over-cautious approach to the Guidance, possibly motivated by concern about negative publicity, which could chill the expression of some school pupils.⁹⁴ Uncertainty as to the demands of the Guidance in relation to the promotion of ‘British values’ (the term is discussed below) could also foster a risk-averse approach, although as Prevent ‘beds’ in, that risk appears to be diminishing.⁹⁵

It is argued that a further difficulty with the Prevent scheme concerns the extremely broad criteria for reference 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 (the other two being ‘intent to cause harm’ and ‘capability to cause harm’).⁹⁶ The guidance 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... A desire for political or moral change.’⁹⁷

⁹² ‘The Prevent duty: Departmental advice for schools and childcare providers,’ n 84 above, 5.

⁹³ CTSA 2015 s36(1)(3). National Union of Teachers, ‘Education and Extremism: Advice for Members’ (11 May 2015); see at www.teachers.org.uk/equality/equality-matters/education-and-extremism (accessed 10.8.18) para 39. Between April 2016 and March 2017 there were 1,078 Prevent referrals related to Islamist concerns from Education: Home Office, ‘Individuals referred to and supported through the Prevent Programme, April 2016 to March 2017’ (Home Office Statistical Bulletin, March 2018) Annex A; see at www.gov.uk/government/statistics/individuals-referred-to-and-supported-through-the-prevent-programme-april-2016-to-march-2017 (accessed 10.8.18) D.11.

⁹⁴ See in support: 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); see at <http://azizfoundation.org.uk/wp-content/uploads/2017/07/What-the-Prevent-Duty-means-for-schools-and-colleges-in-England.pdf> (accessed 10.8.18) para 4.4; Joint Committee on Human Rights, *Counter Extremism* (2016-17, HL Paper 39, HC 105) 15.

⁹⁵ See text to n 117. See also the recent study by Busher et al, *ibid* para 4.4. It found no widespread direct resistance or opposition to the duty, with staff confidence bolstered by the feeling that it is an extension of their existing safeguarding responsibilities.

⁹⁶ HM Government, ‘Channel: Vulnerability assessment framework’ (October 2012); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118187/vul-assessment.pdf (accessed 10.8.18).

⁹⁷ *Ibid*.

If these were factors for a referral taken in isolation then they would be extremely concerning in terms of the potential to interfere with debate in schools on issues of fundamental political and moral significance, and for the expression of individual identity. However, it is important to emphasise, contrary to the perception of prominent critics of Prevent,⁹⁸ that the Guidance does not direct that referrals should be made on such a basis, but – in common with safeguarding good practice⁹⁹ - is instead directed towards a pupil's behaviour as a whole, and to the specific question whether there are reasonable grounds to believe that he or she is vulnerable to being drawn into terrorism. Nevertheless, the Channel criteria, which are based on a model developed by forensic psychologists working in the probation context,¹⁰⁰ have been subject to criticism both by academics and civil society NGOs in terms of the quality of the model adopted and the research at its foundation.¹⁰¹ Greer and Bell, writing in support of Prevent in general in the university context, concede that it is 'not an exact science'.¹⁰² The breadth of the criteria lends some weight to the criticism that referrals could be made on the basis of ignorance of and antipathy to certain political viewpoints and religious convictions.¹⁰³

The primary means by which schools can demonstrate that they have fulfilled the safeguarding aspect of the Prevent duty as set out in the Guidance is 'at a minimum' to demonstrate that the Safeguarding Lead has undergone Prevent training so that Prevent procedures are implemented effectively.¹⁰⁴ The cornerstone of such training is the 'Workshop to Raise Awareness of Prevent' (WRAP) developed by the Home Office, based on research into specific examples of

⁹⁸ J Mohammed and A Siddiqui, 'The PREVENT strategy: A cradle to grave police-state' (CAGE, 2013); see at www.cage.ngo/prevent-strategy-cradle-grave-police-state (accessed 10.8.18) para 3.8.

⁹⁹ 'The Prevent duty: Departmental advice for schools and childcare providers,' n 84 above, 5.

¹⁰⁰ S Webster, J Kerr and C Tompkins, 'A Process Evaluation of the Structured Risk Guidance for Extremist Offenders' (HM Prison and Probation Service, 2017); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/661787/process-evaluation-srg-extremist-offender-report.pdf (accessed 10.8.18).

¹⁰¹ A Qureshi, 'The science of pre-crime: the secret "radicalisation" study underpinning Prevent' (CAGE, 2016); see at <https://cage.ngo/wp-content/uploads/2016/09/CAGE-Science-Pre-Crime-Report.pdf> (accessed 10.8.18).

¹⁰² S Greer and L Bell 'Counter-terrorist law in British universities: a review of the "prevent" debate' [2018] PL 84, 94. It should be noted that Greer's rejection of the notion that counter-terror laws and policies such as Prevent demonstrate that British Muslims are a 'suspect community' is controversial and has been strongly criticised: 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; C Pantazis and S Pemberton, 'Restating the case for the suspect community: A Reply to Greer' (2011) 51 *The British Journal of Criminology* 1054.

¹⁰³ See eg J Halliday and V Dodd, 'UK Anti-Radicalisation Prevent Strategy a "Toxic Brand,"' *the Guardian* (9 March 2015); see at <http://www.theguardian.com/uk-news/2015/mar/09/anti-radicalisation-prevent-strategy-a-toxic-brand> (accessed 10.8.18).

¹⁰⁴ 'The Prevent duty: Departmental advice for schools and childcare providers,' n 84 above, 5.

radicalised individuals who have gone on to commit terrorist acts.¹⁰⁵ WRAP workshops have a standard structure and emphasise, by reference to 14 specific case-studies, both the range of behaviours associated with different radicalised individuals, and that a referral should be based upon considered concerns about behaviour that are checked and shared with a Local Safeguarding Children Board before action is taken.¹⁰⁶ The workshop and similar guidance go some way to addressing concerns about the breadth of the Channel criteria, since they emphasise the holistic nature of the decision to refer, and that the expression of political viewpoints or religious beliefs are not in themselves a sufficient basis for referral.¹⁰⁷

The implementation of the Prevent duty in schools that receive government or local government funding is overseen primarily by Ofsted, although there are additional official inspectorates for independent schools which operate on a similar framework and are required to inspect in accordance with the same standards.¹⁰⁸ In 2015 Ofsted revised the relevant Inspectors' Handbook – the key framework for Ofsted assessments of school performance – to assess the ability of schools to identify and address radicalisation risks. The assessment of such arrangements is relevant in particular to key assessment criteria relating to the 'quality of leadership and management' in a school and also to 'the personal development, behaviour and welfare of children and learners'.¹⁰⁹ Inspectors are required to assess staff awareness of the methods of responding when they suspect that a pupil is vulnerable to extremism or radicalisation,¹¹⁰ and also the arrangements schools have in place to 'promote pupils' welfare', and prevent radicalisation and extremism.¹¹¹ Such an assessment includes checking policy and procedures for vetting and monitoring the actions of visitors to the school, and the Guidance gives the example of the need to check that there are policies on external speakers at school

¹⁰⁵ HM Government, *Channel Duty Guidance: Protecting vulnerable people from being drawn into terrorism* (2015); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf (accessed 10.8.18).

¹⁰⁶ See eg HM Government, 'Workshop to Raise Awareness of Prevent: Full Workshop Script' (December 2014); see at <https://assets.documentcloud.org/documents/2520075/wrap-full-workshop-script-december-2014-14-09.pdf> (accessed 10.8.18); 'What will those signs that someone needs our help look like? In truth, they will look a lot like other troubling behaviour.' See also A Ali, 'Workshop to Raise Awareness of PREVENT' (Birmingham Education Support Services, 2017); see at www.birmingham.gov.uk/.../workshop_to_raise_awareness_of_prevent.pptx (accessed 10.8.18).

¹⁰⁷ See for discussion eg J Lewis, 'Prevent as an Intractable Policy Controversy: Implications and Solutions' (2018) 15 *Journal for Deradicalization* 113.

¹⁰⁸ The Education (Independent School Standards) Regulations 2014, SI 3283/2014.

¹⁰⁹ Ofsted, 'Ofsted School inspection handbook: Handbook for inspecting schools in England under section 5 of the Education Act 2005' (Ref: 150066, 2018) 42.

¹¹⁰ *Ibid* para 148.

¹¹¹ *Ibid*.

assemblies.¹¹² Staff training arrangements are evaluated, including whether staff have undergone Home Office online training or attended the standardised Prevent workshop (WRAP), or similar training.¹¹³ Inspectors must also assess policy and performance relating to pupil awareness of radicalisation as a safeguarding risk, including in particular on-line risks, such as pupils becoming aware of friends online whose behaviour indicates that they may be becoming radicalised. Schools are also required to monitor IT use: ‘...governing bodies and proprietors should ensure appropriate filters and appropriate monitoring systems are in place’.¹¹⁴

An illustration of the operation of Ofsted in relation to the safe-guarding duty in a failing school is provided by the inspection of a Muslim faith Primary School in Luton, which found that the implementation of Prevent (and other safeguarding duties) was inadequate due to a lack of consistency in the training of new staff.¹¹⁵ In contrast, the inspection report for another Muslim Faith Primary school in Luton found that the safeguarding policy was suitable as it was accessible and key staff demonstrated a good understanding of the Prevent duty on inspection.¹¹⁶

The broad indication from reports into the effectiveness of Prevent in 2017 is that the number of frivolous or mistaken referrals has diminished as understanding of the nature of the Prevent safeguarding duty has improved, which may be credited to a greater awareness of radicalisation as a safeguarding issue due to the emphasis now placed on staff training in this area by the DfE and Ofsted.¹¹⁷ However, the effectiveness of the scheme in terms of making proportionate

¹¹² Ofsted, ‘Inspecting safeguarding in early years, education and skills settings’ (Ref: 160047, 2016); see at www.gov.uk/government/publications/inspecting-safeguarding-in-early-years-education-and-skills-from-september-2015/inspecting-safeguarding-in-early-years-education-and-skills-settings (accessed 10.8.18); Ofsted, ‘Inspecting Safeguarding in Maintained Schools and Academies’ (Ref: 140143, 2015); see at http://dera.ioe.ac.uk/21736/1/Inspecting_safeguarding_in_maintained_schools_and_academies_-_a_briefing_for_section_5_inspections.pdf (accessed 10.8.18) 14.

¹¹³ Ibid.

¹¹⁴ Department of Education, ‘Keeping children safe in education Statutory guidance for schools and colleges’ (September 2016) para 63; see at www.gov.uk/government/publications/keeping-children-safe-in-education--2 (accessed 10.8.18). This requirement has been criticised for having the potential to limit access to viewpoints touching on extremist themes and to intrude into online privacy eg Big Brother Watch, ‘Classroom Management Software – Another Brick in the Wall?’ (2016); see at www.bigbrotherwatch.org.uk/wp-content/uploads/2016/11/Classroom-Management-Software-Another-Brick-in-the-Wall.pdf (accessed 10.8.18).

¹¹⁵ Ofsted, ‘Inspection Report for Olive Tree Primary School, 23rd -25th May 2017’ (July 2017); see at <https://reports.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/ELS/131825> (accessed 10.8.18).

¹¹⁶ Ofsted, ‘Inspection Report for Rabia Girls’ and Boys’ School, 12th – 14th April 2016’ (May 2016); see at <https://reports.ofsted.gov.uk/provider/files/2567089/urn/130331.pdf> (accessed 10.8.18).

¹¹⁷ In 2015-16 the education sector referred almost 2,539 individuals (Home Office, ‘Individuals referred to and supported through the Prevent Programme, April 2015 to March 2016’ (Home Office Statistical Bulletin, March

referrals that avoid political or religious bias, and have little impact on the free expression of school pupils, is difficult to assess due to a lack of clarity in terms of reporting on the outcomes of Prevent.¹¹⁸ A particular difficulty with the ‘engage’ aspect of Channel referrals is the potential for the link with terrorism to be unclear, with the result that they can readily be represented as a tool of ideological repression, as various Islamist groups have indeed sought to do.¹¹⁹ The result may be that the prospect of Channel referrals has a chilling effect that is out of proportion to the actual benefit of the measures, but the data does not conclusively support such a conclusion, and it may be doubted due to the results of one academic study as to the impact of Prevent in schools.¹²⁰

4. Countering extremism by promoting ‘British values’ in schools

Introduction

Turning from the safeguarding aspect of Prevent to the more general countering of extremist narratives in schools, the Departmental Guidance explaining the Prevent duty states that schools can satisfy s26 by building pupils’ ‘resilience’ to radicalisation ‘by promoting fundamental ‘British values’ and enabling them to challenge extremist views’.¹²¹ As mentioned above, the relevant values include: ‘democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.’¹²² The emphasis on active promotion of such values represented a decisive shift from the approach of the previous Labour government from challenging terrorist-linked violent extremism that most obviously draws individuals into

2017); see at www.gov.uk/government/statistics/individuals-referred-to-and-supported-through-the-prevent-programme-april-2015-to-march-2016 (accessed 10.8.18) para 1.1); while in 2016-2017 this number had dropped to 1976 referrals (Home Office, ‘Individuals referred to and supported through the Prevent Programme, April 2016 to March 2017’ (Home Office Statistical Bulletin, March 2018); see at www.gov.uk/government/statistics/individuals-referred-to-and-supported-through-the-prevent-programme-april-2016-to-march-2017 (accessed 10.8.18) para 1.1); see also Joint Committee on Human Rights, *Counter Extremism* (2016-17, HL 39 HC 105) Appendix A.

¹¹⁸ JCHR, *ibid.*, at 15.

¹¹⁹ *Ibid.*

¹²⁰ B Durodie, ‘Securitising education to prevent terrorism or losing direction?’ (2016) 64 *British Journal of Educational Studies* 21, 24 *et seq.* Home Office, ‘Individuals referred to and supported through the Prevent Programme, April 2015 to March 2016,’ n 117 above, para 2.7. See also 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); see at <http://azizfoundation.org.uk/wp-content/uploads/2017/07/What-the-Prevent-Duty-means-for-schools-and-colleges-in-England.pdf> (accessed 10.8.18) which concluded that ‘Most of the respondents did not perceive the Prevent duty to have had a “chilling effect” on discussion and debate...’ (at 65).

¹²¹ ‘The Prevent duty: Departmental advice for schools and childcare providers,’ n 84 above, 8; HM Government, *The Revised Prevent Duty Guidance*, (Issued 12 March 2015, revised 16 July 2015); see at www.gov.uk/government/publications/prevent-duty-guidance (accessed 10.8.18) para 58.

¹²² *Ibid.*

terrorism, to countering non-violent extremism where that link is less apparent. As the Guidance makes clear, the promotion of such values does not mean that students are required to adopt a state-sponsored understanding of such values, as occurs in nationalistic or ideological schooling and is associated with indoctrination.¹²³ It is clear that by ‘British’ values it is not meant that these are the values of the current government or of the British state in general. Nor is the promotion of ‘British values’ designed to inculcate a framework of ideas in a manner that marginalises any viewpoint about their nature, since the Guidance states that schools should provide ‘a safe environment for debating controversial issues and helping [pupils] to understand how they can influence and participate in decision-making’.¹²⁴ One commentator, giving evidence to the Joint Committee on Human Rights, criticised a lack of clarity and predictability as to the values that are being promoted,¹²⁵ but the focus on open debate militates against an attempt to set out an authoritative definition of such values.

In contrast to the safeguarding concern, the relationship between challenging opposition to the promotion of British values in schools, and fulfilment of the s26 duty, is less apparent.¹²⁶ As discussed, the safeguarding aspect of Prevent concerns the identification of a specific risk that an *individual* will be drawn into terrorism, and provides a clear basis for intervention on an individual basis, while the aim of supporting ‘British values’ relates to a more diffuse outcome.¹²⁷ This lack of clarity has contributed to the perception that the expression of certain viewpoints that contradict ‘British values’ will result in referral to Channel (and the various misconceptions concerning criminalisation of Muslims that have been associated with that process).¹²⁸ Furthermore, in the absence of a specific risk of an individual being drawn into terrorism, taking account of the ‘engagement,’ ‘intent’ and ‘capacity’ dimensions of risk in the Channel framework, the satisfaction of this aspect of the duty requires a close focus on the

¹²³ See eg YW Leung, ‘Nationalistic Education and Indoctrination’ (2004) 6(2) *Citizenship, Social and Economics Education* 116.

¹²⁴ ‘The Prevent duty: Departmental advice for schools and childcare providers,’ n 84 above, 8.

¹²⁵ Joint Committee on Human Rights, *Counter Extremism* (2016-17, HL Paper 39, HC 105) para 90, per Professor Rivers.

¹²⁶ See eg A Kundnani ‘A decade lost: Rethinking Radicalisation’ (Claystone 2015).

¹²⁷ See text to n 135.

¹²⁸ Joint Committee on Human Rights, *Counter Extremism* (2016-17, HL Paper 39, HC 105) paras 48-50; L Casey, ‘The Casey Review: A review into opportunity and integration’ (Department of Communities and Local Government, 2016); see at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575973/The_Casey_Review_Report.pdf (accessed 10.8.18) 152 *et seq*; S Warsi, *The Enemy Within* (Penguin 2018) 87; Islam21c, ‘Muslims in Luton display remarkable unity against Prevent’ 19/11/2016; www.islam21c.com/special/web-posts/muslims-in-luton-display-remarkable-unity-against-prevent/ (accessed 10.8.18).

definition of extremism. The breadth of the definition, which is ‘vocal or active opposition to fundamental British values,’ has been claimed to be a failing of Prevent,¹²⁹ notably by the Joint Committee on Human Rights.¹³⁰ However, there are two matters that should be taken into account in order to argue that such concerns can now be viewed as less significant.

Disapplication of aspects of the schools’ Prevent Guidance

First, following the *Butt* case,¹³¹ the Prevent Guidance can be disapplied if it conflicts with the provision of s26. That case arose in the university context, but it is argued that its findings as to the status of the Guidance to Higher Education providers¹³² should also be applied to the schools’ Guidance. Butt’s challenge to the lawfulness of the Guidance failed,¹³³ 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. It does not state that the Guidance is binding.¹³⁴ It was found that the Guidance is not law, in contrast to the duty under s26, and that it is not ultra vires that duty since it was not found to ‘equate non-violent extremism with terrorism’. It was found: ‘If there is some non-violent extremism, however intrinsically undesirable, which does not create a risk that others will be drawn into terrorism, the guidance does not apply to it,’ but it was not found that the inclusion of non-violent extremism went beyond what the Prevent duty lawfully permits, so long as in the circumstances it *could* be linked to the risk of drawing persons into terrorism.¹³⁵

The claimant in *Butt* further argued that the Guidance could not be shown to be necessary in terms of Article 10(2) ECHR on the basis that there was insufficient evidence that non-violent extremism contributed to drawing people into terrorism. Justice Ousley accepted that the forms

¹²⁹ See M Versi, ‘Concerns on Prevent: Meeting between David Anderson QC and the MCB’ (Muslim Council of Britain 2015); see at <https://www.mcb.org.uk/wp-content/uploads/2015/10/20150803-Case-studies-about-Prevent.pdf> (accessed 10.8.18).

¹³⁰ Joint Committee on Human Rights, *Counter Extremism* (2016-17, HL Paper 39, HC 105) para 50.

¹³¹ *Butt v Secretary of State for the Home Dept* [2017] EWHC 1930 (Admin).

¹³² HM Government, *The Revised Prevent Duty Guidance*, (Issued 12 March 2015, revised 16 July 2015); see at www.gov.uk/government/publications/prevent-duty-guidance (accessed 10.8.18).

¹³³ The case was brought by Salman Butt since he had been named in a Downing Street press release about the use of the Prevent duty to stop extremists radicalising students on university campuses. 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. He challenged his listing in the release as having such views, as well as the non-violent extremism aspects of the Guidance, although, as the court found, he had not been de-invited by a university under the Guidance and so was not a victim of the alleged breach of Article 10 *Butt v Secretary of State for the Home Dept* [2017] EWHC 1930 (Admin) [87]-[95].

¹³⁴ *Ibid* at [61]; it was found that the Guidance was ‘guidance not direction’ and that ‘[i]nstitutions are responsible for their own decisions’.

¹³⁵ *Ibid* at [30].

of expression of non-violent extremism that can draw people into terrorism were not susceptible to precise definition or to being clearly evidenced,¹³⁶ 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.¹³⁷ However, it was 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 that non-violent extremism could not draw people into terrorism.¹³⁸ Justice Ousley found that no such evidence had been presented.¹³⁹ After *Butt* evidence linking non-violent extremism with terrorism would be more likely to be available since the Home Office then began to release statistics on Prevent and to make specific case-studies available, such as those used in WRAP training.¹⁴⁰

That last point could be taken to mean that while some faith schools, such as Charedi schools, may well teach aspects of the curriculum in ways that do not comport with British values, and so aspects of expression in such schools could be deemed to fall within the category of non-violent extremism, the schools' Prevent Guidance on such extremism could be disapplied. That is because the link to drawing pupils towards terrorism appears to be missing, given that ultra-orthodox Jewish groups have no tradition of engaging in terrorist-related activity in the UK. (But other statutory duties, including the equality duty discussed below, might be found to be breached in such schools due to certain practices, including gender segregation.)¹⁴¹

Butt provided an important clarification of the relationship between the Prevent Guidance and the s26 duty. Clearly, it may take some time for the impact of *Butt* on the schools' Guidance to

¹³⁶ Ibid [132].

¹³⁷ Ibid [132].

¹³⁸ Ibid [134].

¹³⁹ Ibid.

¹⁴⁰ Home Office, 'Individuals referred to and supported through the Prevent Programme, April 2016 to March 2017,' n 117; HM Government, *Channel Duty Guidance: Protecting vulnerable people from being drawn into terrorism* (2015); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf (accessed 10.8.18); Educate Against Hate, 'Teachers' Q&As: Intervention Working' (2018); see at <https://educateagainsthate.com/teachers/are-there-real-world-examples-of-cases-where-successful-interventions-have-stopped-a-young-person-being-radicalised-2/> (accessed 10.8.18).

¹⁴¹ See *HM Chief Inspector of Education, Children's Services and Skills v The Interim Executive Board of Al-Hijrah School* [2017] EWCA Civ 1426.

filter through to schools. Further, where some aspects of the schools' Guidance reflect *other* statutory duties imposed on schools, apart from s26, it would need to be applied. The schools' Prevent Guidance now needs to be up-dated to reflect *Butt*, but also to make it clearer as to which aspects reflect which duties. But it can be concluded that the breadth of the Guidance is of less concern than previously appeared to be the case.

Overlap of Prevent with existing duties

Secondly, as the DfE's advice on the Prevent Guidance makes clear, the active defence of and promotion of British values in schools is relevant, not only to the Prevent duty, but to a number of education-related statutory duties and to government policy,¹⁴² particularly that of the Department of Education, which has direct responsibility for the running of State schools, and which has an oversight role in relation to almost all educational services. Indeed, governmental references to the promotion of British values suggest that it is seen primarily as a goal of education policy and only secondarily as an aspect of home security,¹⁴³ *unlike* the safeguarding aspect of Prevent. An assessment of education law and policy in general is beyond the scope of this chapter, so what follows is merely a brief overview intended to provide context to discussion of the impact of Prevent on expression in schools.

Maintained schools (ie those controlled by Local Education Authorities) are required under s78 Education Act (EA) 2002, in following the national curriculum, to promote the 'spiritual, moral, social and cultural development' of pupils. Department of Education (DfE) Guidance on the fulfilment of the s78 duty now includes more explicit references to British values, aligning it with Prevent.¹⁴⁴ Furthermore, s38 Education and Inspections Act 2006 imposes a duty on such schools to promote community cohesion. Independent Schools (ie privately controlled or Academies with a funding agreement with the DfE) have a similar duty, set out in s157 EA 2002, which is further specified in the Independent School Standards Regulations 2010 (amended 2014) to include promotion of 'British values' aligned with Prevent¹⁴⁵ and to 'further tolerance and harmony between different cultural traditions'.¹⁴⁶ Maintained or

¹⁴² 'The Prevent duty: Departmental advice for schools and childcare providers,' n 84 above, 8.

¹⁴³ See eg Department of Education, 'Promoting fundamental British values as part of SMSC in schools' (2014); see at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380595/SMSC_Guidance_Maintained_Schools.pdf (accessed 10.8.18).

¹⁴⁴ *Ibid.*

¹⁴⁵ The Education (Independent School Standards) Regulations 2014, SI 3283/2014, Sched 1 Para 5.

¹⁴⁶ *Ibid* Sched 1 para 5(v).

independent schools which are faith schools, whether maintained or (more typically) independent, are also subject to the s78 or s157 EA 2002 requirements, 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 by a nominated religious authority (s5(7) and s48 Education Act 2005). The statutory duties applicable to maintained and independent schools relate both to the content of the curriculum as well as to its delivery and the organisation of the school environment.

In certain respects the move to a more explicitly Prevent-aligned understanding of the s78 and s157 EA 2002 requirements is uncontroversial, it is argued, in free speech terms. Defending values of democracy, the rule of law and liberty involves, as the Prevent guidance makes clear, support for a mutually respectful debate about politics, religion and culture reflecting a plurality of views, which is at the core of the value of free speech, as discussed further in Section 6, below (and indeed, rights to free expression and to non-discrimination are mutually supportive civil rights). However, the movement towards a Prevent-aligned understanding of 'mutual respect and tolerance' conflicts with the expression of certain socially conservative, and usually religiously-based, viewpoints of pupils and parents within certain religious sects.¹⁴⁷ It also conflicts with socially conservative viewpoints associated with secular far-right groups such as For Britain or National Action; where a parent is a member of, or associated with, such a group, the child might well bring the views of its parents into school.¹⁴⁸ The DfE has made it clear that mutual respect is incompatible with notions that individuals who are members of certain groups are either morally inferior or superior and/or more or less entitled to enjoy freedoms and benefits than others due to their status as members of such a group. Promotion of 'British

¹⁴⁷ Such socially conservative viewpoints are found in the ultra-orthodox Charedi schools; for example, the Charedi Talmud Torah Tashbar school was closed in January 2016. Ofsted inspectors found that the school taught 'cultural and ethnic insularity because it is so narrow and almost exclusively rooted in the study of the Torah' and no lessons were taught in English: British Humanist Association, 'BHA reveals illegal Jewish school allowed to stay open for years despite repeated Ofsted warnings' (January 2016); see at <https://humanism.org.uk/2016/01/15/bha-reveals-illegal-jewish-school-allowed-to-stay-open-for-years-despite-repeated-ofsted-warnings/> (accessed 10.8.18). Such viewpoints are also found in certain Salafi-dominated schools; for example, in Bordesley Independent School in Birmingham Ofsted inspectors closed the school after finding that the curriculum was 'narrow and inadequate' and that 'Religious education dealt only with Islam to the exclusion of any other religion' in addition to finding extremist literature: National Secular Society, 'Head of unregistered Islamic school banned from teaching' 15th January 2018; see at www.secularism.org.uk/news/2018/01/nss-banned-head-of-unregistered-islamic-school-should-be-prosecuted (accessed 10.8.18).

¹⁴⁸ See eg Home Office, 'CONTEST The United Kingdom's Strategy for Countering Terrorism: Annual Report for 2015' (Cm 9310, 21 July 2016); Devon and Cornwall Police, 'Case study: how Channel helped' (2015); see at www.devon-cornwall.police.uk/advice/your-community/prevent-extreme-views/a-case-study-how-channel-helped/ (accessed 10.8.18).

values' therefore requires teachers, to an extent, to educate against and challenge such views when expressed by pupils, and make it clear that they are not acceptable or welcome in a school environment, partly because they may have a directly adverse impact on the welfare of other pupils, members of the 'inferior' group, as such views are often a justification for physical and emotional abuse ('bullying'). While pupils, depending on their age, might be expected to tolerate being disturbed by the expression of others' views, that would not be expected to extend to systematically enduring discriminatory expression, especially when condoned or disregarded by the school. It should be emphasised that while this understanding of 'mutual respect' is clearly a key aspect of the Prevent Guidance, it is far from unique to Prevent, since the requirement that schools operate in a manner that does not undermine mutual respect and tolerance under s149 Equality Act 2010 (the Public Sector Equality duty) has increasingly been interpreted by the DfE, Ofsted and the courts in a similar manner.¹⁴⁹ Toleration of the promotion of discriminatory ideologies in schools may be more likely to be found to represent a failure to implement the Equality duty than the Prevent duty.¹⁵⁰

Fostering 'British values' as a viewpoint-based attack on faith/political groups?

Opponents of Prevent and of DfE policy on 'British values' have characterised the Prevent-DfE's approach as an 'attack' on political or faith groups that hold convictions and beliefs contrary to those values, including Islamist groups, such as Engage Dewsbury, who oppose violent extremism but have claimed that Prevent has no credibility and is perceived to be anti-Muslim.¹⁵¹ But the characterisation of the Prevent-DfE's approach as an attack on political/faith groups exaggerates and obscures, it is argued, the type of pressure being brought against members of such groups who express discriminatory views, contrary to promoting 'mutual respect' between groups, in two ways. It is important to address them briefly in order to establish whether that pressure is illegitimate in free speech terms.¹⁵²

¹⁴⁹ *HM Chief Inspector of Education, Children's Services and Skills v The Interim Executive Board of Al-Hijrah School* [2017] EWCA Civ 1426; 'Promoting fundamental British values as part of SMSC in schools,' n 143; Ofsted 'Talmud Torah Machzikei Hadass School: Independent school additional inspection report' (15 July 2015); see at <https://reports.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/ELS/100294> (accessed 10.8.18) 2.

¹⁵⁰ Equality and Human Rights Commission, 'Gender Segregation at Events and Meetings: guidance for universities and Students' Unions' (17 July 2014); see at www.equalityhumanrights.com/en/publication-download/gender-segregation-events-and-meetings-guidance-universities-and-students (accessed 13.8.18).

¹⁵¹ See eg R Shabi, 'Deradicalising Britain: the activists turning young Muslims away from extremism' *the Guardian* (13 March 2016); see at www.theguardian.com/uk-news/2016/mar/18/deradicalising-britain-the-activists-turning-young-muslims-away-from-extremism (accessed 10.8.18). One individual who worked for Engage Dewsbury claimed that Prevent was 'Islamophobic' and designed to 'de-Islamise Islam' (ibid).

¹⁵² S Greer and L Bell 'Counter-terrorist law in British universities: a review of the "prevent" debate' [2018] PL 84, 97-99.

Firstly, challenging expression that is incompatible with mutual respect in schools is not an attack on the group, nor on the private holding of such views, but rather opposes their expression in the school environment on grounds of safeguarding the welfare of pupils who might be intimidated or humiliated by others due to such expression. Furthermore, the requirement is not necessarily to challenge the expression of a certain *viewpoint*, but rather to open the viewpoint up to reasoned debate; for example, racist or homophobic views typically rely on morally loaded assumptions about the target group, such as that homosexuals are promiscuous, which may only be addressed if those assumptions are explored. Secondly, the challenge is not to group doctrine as a whole but rather to certain aspects of it that may be expressed in schools by pupils. Even if the contentious aspect of certain doctrines might be deemed fundamental to ‘group doctrine’ by some members, beyond the most basic assertions the identification of any aspect as ‘fundamental’ is likely to be contestable – and this is even more likely to be the case in relation to sophisticated and long-standing religious, political and cultural traditions, such as are encapsulated in Islam.¹⁵³ Therefore, an apparently fundamental challenge to an aspect of group doctrine from the perspective of certain group members, such as to the assertion that those who believe that women who enjoy sexual freedoms are not evil, would not represent a challenge to a fundamental aspect of it for others.¹⁵⁴ Furthermore, as seen in the case of ultra-conservative Salafi Islam, those who challenge the ‘fundamental’ status of certain contentious values can be subject to extreme pressure from other members in the group, which could lead to an understandable reluctance to express such views publicly, thus giving the impression of a false unanimity.¹⁵⁵ Bearing these important distinctions in mind, it is nevertheless clear that a degree of pressure is brought to bear on pupils who hold views contrary to the DfE-Prevent approach to ‘mutual respect’. As discussed above, the fact that Prevent is a project of the Home Office which closely involves the police could create a degree of intimidation and could contribute to a perception that coercive measures will be

¹⁵³ See I Bowen, *Medina in Birmingham, Najaf in Brent: Inside British Islam* (Hurst 2014); I Manji, *Allah, Liberty and Love: The Courage to Reconcile Faith and Freedom* (The Free Press, 2011).

¹⁵⁴ See Manji, *Allah, Liberty and Love* *ibid*; U Hasan, ‘The Veil – Between Tradition and Reason, Culture and Context’, in R Hannan & T Gabriel (eds) *Islam and the Veil: Theoretical and Regional Contexts* (Continuum Books, 2011).

¹⁵⁵ Such as Dr Usama Hassan – a former prominent Salafi cleric – who challenges the emphasis placed on mainstream conservative Islamic ideas such as veiling. See Dr Hasan’s profile at Quilliam (a counter-extremism think-tank): www.quilliaminternational.com/about/staff/usama-hasan/. See also S Khan, *Battle for British Islam* (Saqi 2016) 160-164, 195-96. See generally Z Sardar, *Desperately Seeking Paradise* (Granta Books 2005).

brought against individuals who express such views.¹⁵⁶ But such a perception could be dispelled if the workings of Prevent in schools were communicated much more transparently to parents and others.

In 2016-17 a number of Charedi and Islamic faith schools came under pressure to comply with the DfE-Prevent approach to ‘mutual respect’.¹⁵⁷ In one instance an Islamic faith school was reported by the Chief Inspector of Ofsted to have literature defending medieval Islamic views on the treatment of women, in particular a tract entitled *Women Who Deserve to go to Hell*, a polemic that reinforces Qur’anic justifications for the control of wives by husbands on pain of violence, and also emphasises that women who do not wear Islamic clothing are evil (‘wear garments yet be nude’).¹⁵⁸ But the consequences that followed would have arisen regardless of Prevent; the school hosting such material was unregistered and since lack of registration is illegal, the school was therefore closed (see further below in relation to enforcement of the Prevent duty).¹⁵⁹ However, Ofsted used the example to emphasise the point that schools require greater government regulation, including via Prevent (and the Equality duty). Another example of the promotion of equality as a ‘British value,’ which took Prevent into account, is provided by the 2015 Ofsted inspection of the Darul Uloom Islamic high school¹⁶⁰ – which became notorious as one of the Islamic faith schools in which extremism and child abuse were exposed by Channel 4, as referred to above.¹⁶¹ The report found that:

‘[d]espite pupils’ understanding of fundamental British values, leaders do not consistently practise the values that they teach. For example, inspectors were concerned that when they met with members of the governing body, a female governor sat in an adjacent room to the main meeting and contributed through a doorway. This practice, which governors informed inspectors was their usual arrangement, does not

¹⁵⁶ See n 95; also Open Society Justice Initiative, ‘Eroding Trust: The UK’s PREVENT Counter-Extremism Strategy in Health and Education’ (Open Society Foundations 2016) 17.

¹⁵⁷ An example of the closure of a Charedi school is the Talmud Torah Tashbar school which was closed in January 2016.

¹⁵⁸ MA Hakim, *Women Who Deserve to go to Hell* (Darul Ishaat 1901).

¹⁵⁹ See text to n 175 *et seq.*

¹⁶⁰ Ofsted, ‘Inspection Report for Darul Uloom Islamic High School 13 October 2015’ (Ofsted 2015); see at <https://reports.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/ELS/103586> (accessed 10.8.18).

¹⁶¹ The head-teacher and key staff at the school were replaced by the DfE subsequently to the Channel 4 revelations, Channel 4, ‘Dispatches Mosque teacher jailed’ (Nov 2011); see at www.channel4.com/info/press/news/dispatches-mosque-teacher-jailed (accessed 10.8.18).

demonstrate equality and respect, and undermines the school's work to promote British values.'¹⁶²

In general, however, while over a third of Independent Jewish faith schools were found inadequate between 2016/2017, and over a quarter of Muslim faith schools were found inadequate in the same period, most have more recently achieved compliance with the DfE-Prevent approach.¹⁶³ An indicative example of compliance is provided by the Ofsted report for the Olive Tree Primary school in London, a registered independent Islamic faith school.¹⁶⁴ In relation to the quality of education provided the school had come under pressure to do more to challenge negative views about homosexual relationships, and an example was given of a positive development whereby the governors had adopted a strategy for doing so by engaging with pro-gay charities.¹⁶⁵

For the reasons given above, it is argued that the Prevent Duty Guidance and DfE approach to that duty appear to be creating a minimal interference with free debate about religion, politics and culture in schools. It should, furthermore, be emphasised that the approach also *supports* such debate. The importance of giving students the confidence to interrogate cultural, religious and political assumptions is consistently emphasised within the DfE Guidance for Schools and to an extent in the Prevent Guidance itself,¹⁶⁶ as emphasised above, as the most important factor in preventing radicalisation.¹⁶⁷ For example, where teachers or pupils are concerned as to measures that favour only one political or religious narrative in schools, through a narrowing of the curriculum to focus mainly on such a narrative, a key issue in the Trojan Horse affair, Ofsted is now required to take such concerns into account.¹⁶⁸ Therefore a Catholic school would not be prevented from teaching the majority Catholic view that abortion is a mortal sin, but it would be prevented from denying pupils access to minority Catholic positions critical of that view, or to other religious and secular commentary critical of the assumptions underpinning it. To take some further examples - school pupils would not be prevented from

¹⁶² Ofsted, 'Inspection Report for Darul Uloom Islamic High School 13 October 2015' (Ofsted 2015) 5; see at <https://reports.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/ELS/103586> (accessed 10.8.18).

¹⁶³ Ofsted, 'The Annual Report of Her Majesty's Chief Inspector of Education, Children's Services and Skills 2016/17 (2017, HC 618).

¹⁶⁴ Ofsted, 'Inspection Report for Olive Tree School 12 and 19 September' (November 2017); see at <https://reports.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/ELS/134400> (accessed 10.8.18).

¹⁶⁵ Ibid 2.

¹⁶⁶ See n 116.

¹⁶⁷ 'The Prevent duty: Departmental advice for schools and childcare providers,' n 84 above.

¹⁶⁸ Ofsted, 'School inspection handbook: Handbook for inspecting schools in England under section 5 of the Education Act 2005' (Ref: 150066, 2018) 42-44.

criticising US/UK bombing in Syria under Prevent, but it would not be expected that the school would promote only one narrative concerning that action. A pupil would not be prevented from expressing a positive view about Sharia law, but again the school would not be expected to promote only one, favourable, view of that law. It would not be in accordance with Prevent for the teacher simply to challenge that view as unacceptable, or, alternatively, to shut down a minority Muslim opinion opposed to Sharia. If, on the other hand, a pupil whose parents were members of a far-right group brought leaflets into school supporting the ideas of that group, such as that Muslims should leave the UK, the school, in furtherance of the ‘British value’ of tolerance of minorities under the Prevent Guidance, but also under the Equality duty, should prevent their distribution. The direct link with a far-right group would also appear to satisfy s26.

Conclusions

Thus, Prevent can foster a ‘more speech’ solution to the narrowing of pupils’ perspectives in some faith schools, given that it opposes religiously or politically-based closing down of a plurality of views.¹⁶⁹ Additionally, the Prevent duty reinforces measures to promote equality, and encourages teachers to foster a critical attitude among pupils towards, for example, restrictions linked to gender and sexuality. The importance of supporting such attitudes has been repeatedly re-emphasised by high profile liberal Muslims, such as Irshad Manji, who has complained that where conservative Islamic discourse is allowed to predominate in schools, LGBT Muslims and sympathisers are rendered ‘invisible’ because they fear violent rejection if they express their views.¹⁷⁰ Sara Khan has made a similar point in relation to feminist Islamic perspectives, which she argues are also suppressed if conservative Sunni Islamic doctrine is not challenged in UK schools.¹⁷¹

5. Enforcement of the Prevent duty in schools

Regulation of Schools

If maintained schools funded by the local authority fail to remedy breaches of the Prevent duty that failure is primarily overseen by Ofsted, and could result in intervention measures, such as

¹⁶⁹ See further below n 194. See also a recent study by Busher et al (n 94) which found little evidence that educational professionals perceive the duty to have led to a ‘chilling effect’ on free speech in schools and colleges (p 53). It also found ‘considerable support (41% of respondents) for the view that Prevent duty had resulted in more open discussions around such topics as extremism, intolerance and inequality’ (p 51).

¹⁷⁰ I Manji, *Allah, Liberty and Love: The Courage to Reconcile Faith and Freedom* (The Free Press, 2011).

¹⁷¹ S Khan, *The Battle for British Islam* (Saqi 2016) 125.

school closure or the imposition of special measures.¹⁷² In respect of academies funded by central government, failure to remedy such breaches could result in the withdrawal of the funding agreement.¹⁷³ After 2015 Ofsted used powers to conduct no-notice inspections, in order to reduce the likelihood that schools could present a false image of their practices.¹⁷⁴ These powers were a direct response to criticisms that Ofsted had failed to identify problems of extremism in the Trojan Horse schools, particularly Park View (one of the schools at the centre of the affair) which had been rated as ‘Outstanding’.¹⁷⁵ Privately funded schools can choose to be inspected by Ofsted or by an independent inspectorate, but such inspections do not trigger formal enforcement measures. All ‘independent educational institutions’ must be registered under s96 Education and Skills Act 2008, and Ofsted has powers to inspect and close such institutions.¹⁷⁶

There is at present no requirement for supplementary schooling to be registered, despite the fact that evidence of extremism has been found repeatedly in Madrassas.¹⁷⁷ Proposals for such a registration requirement, which were a significant aspect of the Command paper in which the Conservative Government’s revised counter-terrorism strategy was set out in 2015,¹⁷⁸ would have formed part of the Counter-Extremism and Safeguarding Bill 2016, but were ultimately dropped from the government’s legislative agenda, and the proposals have not so far been revived. This failure has been strongly criticised, notably by Dame Louise Casey,¹⁷⁹ who regarded it as indicative of general government inaction in light of the recommendations in her report, as well as by Ofsted.¹⁸⁰ Similarly, parents who are educating their children at home are

¹⁷² Education and Inspections Act 2006, Part 4.

¹⁷³ Academies Act 2010, ss2A and 2D.

¹⁷⁴ Ofsted, ‘School inspection handbook: Handbook for inspecting schools in England under section 5 of the Education Act 2005’ (Ref: 150066, 2018) para 48. Section 8 Education Act 2005.

¹⁷⁵ Education Committee, ‘Extremism in Schools: the Trojan Horse Affair’ (HC 2014-2015, 473) paras 30-41. Ofsted responded to the committee’s recommendations, saying that one the reason for change was a ‘culture of fear and intimidation’ in such schools after the Trojan Horse affair: Education Committee, ‘Extremism in schools: Ofsted Response to the Committee’s Seventh Report of Session 2014–15’ (HC 2015-16, 324).

¹⁷⁶ Ofsted, ‘Handbook for conducting inspections of unregistered schools’ (September 2015); see at <https://www.gov.uk/government/publications/inspections-under-section-97-of-the-education-and-skills-act-2008-handbook-for-inspectors> (accessed 10.8.18).

¹⁷⁷ Channel 4, *Dispatches: Lessons in Hate and Violence*.

¹⁷⁸ Home Office, *Counter-Extremism Strategy* (Cm 9148, 2015) para 24.

¹⁷⁹ National secular society, ‘Islamic faith schools endorsing misogyny, dossier reveals’ (28 November 2017); see at www.secularism.org.uk/news/2017/11/islamic-faith-schools-endorsing-misogyny-dossier-reveals (accessed 10.8.18); see also Louise Casey, ‘The Casey Review: A review into opportunity and integration’ (Department of Communities and Local Government, 2016); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575973/The_Casey_Review_Report.pdf (accessed 10.8.18) paras 7.55-7.57.

¹⁸⁰ See eg Ofsted, ‘The Annual Report of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills 2016/17 (2017, HC 618) 15; Ofsted’s chief operating officer Mathew Coffey, ‘We have no ability to inspect

not required to register,¹⁸¹ making it easier for some parents to send their children to illegal, unregistered schools.¹⁸² This phenomenon has come under scrutiny recently, in part due to counter-extremism efforts linked to Prevent; raids have found the presence of extremist literature on the premises of unregistered schools.¹⁸³ The Chief Inspector has consistently recommended enhanced regulation of children who are home-schooled to the government, but this recommendation has also not yet been acted upon.¹⁸⁴

Role of the Charity Commission

In addition to enforcement through Ofsted, or another inspectorate, educational Trusts are regulated by the Charity Commission, which is also required to enforce the Prevent duty. An example of the interaction between the two bodies arose recently in relation to the Lantern of Knowledge Educational Trust. After a critical Ofsted report cited failures of management and safeguarding concerns, the Commission embarked on a statutory inquiry into the charity which included an assessment of ‘...the management and supervision of staff at the school with access to children or young people’.¹⁸⁵ It is also possible, although very unlikely, that judicial review of a school (if it was a qualifying public body) could provide a basis for enforcing the Prevent duty.

Bars on employment/service against leaders/governors

out-of-school settings, such as madrassas, and we believe greater powers in this area could help keep children safe in the future.’ J Grierson, ‘Isis follower tried to create jihadist child army in east London’ (02 March 2018); see at www.theguardian.com/uk-news/2018/mar/02/isis-follower-umar-haque-jihadist-child-army-east-london--radicalise (accessed 10.8.18) See also R Long, ‘Counter-extremism policy in English schools’ (CBP 07345, 20 January 2017) para 2.6.

¹⁸¹ See Home Education UK, ‘De-registration: the basics;’ see at <http://www.home-education.org.uk/legal-dereg.htm> (accessed 10.8.18).

¹⁸² ‘The Casey Review’ n 179 above, para 7.49. M Wilshaw, ‘Advice notes on academies and maintained schools in Birmingham’ (8 July 2016); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535976/HMC_I_advice_note_to_the_Secretary_of_State_on_Birmingham_8_July_16.pdf (accessed 10.8.18).

¹⁸³ National secular society, ‘Islamic faith schools endorsing misogyny, dossier reveals’ (28 November 2017); see at www.secularism.org.uk/news/2017/11/islamic-faith-schools-endorsing-misogyny-dossier-reveals (accessed 10.8.18).

¹⁸⁴ M Wilshaw, ‘Advice letter from Sir Michael Wilshaw, Her Majesty’s Chief Inspector, in respect of suspected illegal schools’ (16 May 2016); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/523694/Unregistered_schools_advice_note_16_May_2016.pdf (accessed 10.8.18). See R Long, ‘Counter-extremism policy in English schools’ (CBP 07345, 11 April 2018) para 2.7.

¹⁸⁵ Charity Commission, ‘New charity investigation: Lantern of Knowledge Educational Trust’ (2 March 2018); see at www.gov.uk/government/news/new-charity-investigation-lantern-of-knowledge-educational-trust (accessed 10.8.18).

It is not only schools and educational trusts that are subject to pressure to comply with the Prevent Duty; individual teachers and governors, either involved in, or who fail to challenge, extremism in schools may also be subject to sanction, although private litigation for breach of the Prevent duty is prevented by s34 CTSA 2015. Failure to observe the Prevent duty could amount to a failure to satisfy the statutory teaching standards, which is a ground for dismissal or for refusal to award Qualified Teacher Status.¹⁸⁶ Furthermore, in particularly serious cases the Teaching Regulation Agency professional conduct hearing panel could impose a prohibition order, barring the individual from teaching.¹⁸⁷ The promotion of extremism in schools is singled out in particular as a factor weighing in favour of the imposition of such an order, and specific reference is made to the ‘exposure of pupils to [extremist] actions or behaviours’ by inviting speakers known to espouse extreme views to speak at school events.¹⁸⁸ Individual governors can also be barred from serving by direction of the Secretary of State under s142 of the Education Act 2002 or s128 of the Education and Skills Act 2008. This sanction was applied to Tahir Alam, former governor of Park View high school – one of the schools at the centre of the Trojan Horse affair. In the prohibition direction published by the Department of Education the Secretary of State found that Tahir Alam’s activities as the governor most responsible for the issues raised in the Clarke Report, were aimed at undermining ‘British values’. The notice cited in particular activities such as ‘inviting extremist speakers to address pupils as well as ‘the narrowing of curricula in non-faith schools to make them conform with conservative religious teachings...’.¹⁸⁹ This notice was later upheld on appeal.¹⁹⁰

6. Duties to foster pluralistic, free debate in schools

¹⁸⁶ Department of Education ‘Teacher’s Standards’ (July 2011, updated June 2013); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665520/Teachers_Standards.pdf (accessed 10.8.18).

¹⁸⁷ Teaching Regulation Agency, ‘Teacher misconduct: The prohibition of teachers: Advice on factors relating to decisions leading to the prohibition of teachers from the teaching profession’ (April 2018); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700607/Teacher_misconduct-the_prohibition_of_teachers.pdf (accessed 10.8.18). A breach could amount to a finding of ‘unacceptable professional conduct’ or ‘conduct that may bring the profession into disrepute’.

¹⁸⁸ Ibid 13.

¹⁸⁹ Department of Education, ‘Regulation of school managers and governors: prohibition direction’ 3rd September 2015; see at www.gov.uk/government/publications/direction-tahir-alam-banned-from-managing-independent-schools (accessed 10.8.18).

¹⁹⁰ See for the rejection of his appeal against the banning order: ‘Ruling on ex-chair of governors at “Trojan Horse” school kept under wraps’ *Times Educational Supplement* (2 January 2018); see at www.tes.com/news/ruling-ex-chair-governors-trojan-horse-school-kept-under-wraps (accessed 10.8.18). Unusually this ruling was not published, despite being heard in public.

The impact of the Prevent/DfE approach in avoiding the imposition of a narrow, mono-cultural curriculum in schools, and in fostering the promotion of a range of viewpoints, has been considered above. But a range of other duties are also imposed on schools, designed to further similar ends, although no specific duty to promote free expression in schools, similar to that imposed on universities under s31 CTSA, is imposed. Freedom of speech finds positive legal protection under Article 10 ECHR,¹⁹¹ given further effect by the Human Rights Act 1998 (HRA). S6 HRA provides that it is ‘unlawful’ for public bodies, which includes government and LEA-funded schools, as well as Ofsted, to act in a way that is incompatible with a Convention right.

The rights of children, and especially mature school children, to express and receive ideas in education is recognised by Article 13 of the United Nations Convention on the Rights of the Child 1989, which has been ratified by the United Kingdom. Prevent may be said to be aligned with Article 13 since it is partly intended to prevent the narrowing of children’s minds due to the imposition upon them of a rigid, religiously or politically driven ideological curriculum, affording them greater opportunities to receive a range of ideas.¹⁹²

Protocol 1, Article 2 ECHR provides a right to education. Its core content is understood to be the protection of the individual from political indoctrination by the state, and that discussion of matters that are the subject of beliefs or convictions should be addressed ‘in an objective, critical and pluralistic manner’ that reflects the core democratic values of the ECHR.¹⁹³ The right to education in Article 2 emphasises that anti-liberal indoctrination is a particular concern within school settings.¹⁹⁴ This concern is emphasised in *Campbell and Cosans v UK*¹⁹⁵ in which it was found that the scope of the convictions and beliefs that merit protection under

¹⁹¹ Article 10 provides in paragraph 1 that ‘[e]veryone has the right to freedom of expression... to receive and impart information and ideas without interference by public authority’ subject to paragraph 2 which states that ‘the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society’.

¹⁹² See n 199.

¹⁹³ *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1979-80) 1 EHRR 711 para 53; *Campbell and Cosans v UK* (1982) 4 EHRR 293 para 58.

¹⁹⁴ Protocol 1 Article 2 states ‘In the exercise of any functions which it assumes in relation to education and teaching, the state shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions’; see also *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1979-80) 1 EHRR 711 para 53. See further Harris, Boyle, Bates, Buckley ‘Law of the European Convention on Rights’ (OUP, 2009) 703; *Campbell and Cosans v UK* (1982) 4 EHRR 293.

¹⁹⁵ *Campbell and Cosans v UK* (1982) 4 EHRR 293.

Article 2 are those that ‘are worthy of respect in a “democratic society” and are not incompatible with human dignity...’.¹⁹⁶ It is clear that the ‘promotion of British values’ aspect of Prevent is not merely compatible with the rationale of Article 2, and with the values underlying the ECHR as a whole, including Article 10,¹⁹⁷ but actually supportive of them, because those ECHR values are reflected in the Prevent Guidance.¹⁹⁸

The combination of the requirements of Article 10, Article 2, Protocol 1, Article 13 and the DfE/Prevent approach could pose problems for literalist approaches to religious texts in faith schools since the assumptions underpinning the texts could not be explored without challenging that approach. One method of avoiding falling foul of requirements to promote free speech and debate would be to separate religious instruction based on a literalist approach from teaching other aspects of the curriculum, such as Relationships and Sex Education, Biology and History.

Exposure of pupils to extremist speakers, combined with attempts to isolate pupils from exposure to forms of art, music, dance, knowledge of key world religions, and ideas as to non-discrimination against homosexuals,¹⁹⁹ could aid in isolating Muslim pupils from British society. Creation of isolationism was linked in *Butt* to the risk of drawing persons towards terrorist-related activity. Justice Ousley considered whether, given the disputed nature of the

¹⁹⁶ Ibid para 58.

¹⁹⁷ *Handyside v United Kingdom* (1979–80) 1 EHRR 737; *IA v Turkey* (2007) 45 EHRR 30 para 43.

¹⁹⁸ See text to n 121 above.

¹⁹⁹ This was a central claim in the ‘Clarke report’ in relation to the Trojan Horse affair (see n 35). 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, as practised in the curriculum, are not consistent with the Islamic requirements for modesty as they may involve sexual connotations and messages when performed within mixed-gender groups or if performed in front of mixed audiences’...Muslims believe that God should not and cannot be represented in any form, whether two-dimensional or three-dimensional....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. For this reason some Muslim parents may express concerns in the way music is taught in school and the extent to which their children may participate in it. Muslim pupils should not be expected to participate in drama or musical presentations associated with celebratory 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 of humans....When organising overnight trips involving Muslim pupils, mixed-gender groups should be avoided. This will encourage greater participation, particularly from Muslim girls’. In relation to Nansen Primary school Ofsted found evidence that a process similar to that outlined in Tahir Alam’s report had occurred: Ofsted, ‘Inspection report for Nansen Primary School - A Park View Academy 2nd April 2014’ (9 June 2014), such as that ‘Pupils do not get a broad education. The governing body has removed some subjects, such as music, from the timetable.’ and ‘Pupils have limited knowledge of religious beliefs other than Islam.’

evidence, a possible connection between non-violent extremism and drawing people into terrorism could be shown, as relevant to the link between the schools' Prevent Guidance and s26 CTSA. He found that non-violent extremism could create a 'framework of a sense of separateness, alienation, victimhood... at one with a rigid and pure version of religion or ideology' that was capable of justifying violence.²⁰⁰ He found that when a view is part of a 'rigid and pure' ideology that seeks to change UK law to reflect that ideology through non-violent democratic means, then this was 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 [democratic, non-violent] means'.²⁰¹ These findings would apply equally – or more strongly - to schools, given the greater vulnerability of school children to persuasion from authority figures as compared to students.

Conclusions

It is argued in conclusion, based on the findings above, that Prevent is neither a policy of mass surveillance of children nor of mass propaganda designed to pressure school-children to adopt any particular viewpoint, as opponents of Prevent have suggested since its inception.²⁰² Rather, Prevent was designed to be a policy that was complementary to pre-existing approaches to handling 'sensitive and controversial issues' in schools,²⁰³ which recognised the importance of a '... climate in which children can express a point of view that may differ from those held either by their teachers/practitioners or their peers'.²⁰⁴ But the hyperbole about Prevent deployed by the anti-Prevent lobby²⁰⁵ is, it is argued, obscuring impartial, objective analysis of

²⁰⁰ *Butt v Secretary of State for the Home Dept* [2017] EWHC 1930 (Admin) [137].

²⁰¹ *Ibid* [138].

²⁰² J Mohammed and A Siddiqui, 'The PREVENT strategy: A cradle to grave police-state' (CAGE, 2013); see at www.cage.ngo/prevent-strategy-cradle-grave-police-state (accessed 10.8.18).

²⁰³ 'The Prevent duty: Departmental advice for schools and childcare providers,' n 84 above, 8.

²⁰⁴ Department of Education, 'Keeping children safe in education Statutory guidance for schools and colleges' (September 2016); see at www.gov.uk/government/publications/keeping-children-safe-in-education--2 (accessed 10.8.18).

²⁰⁵ L Casey, 'The Casey Review: A review into opportunity and integration' (Department of Communities and Local Government, 2016); see at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575973/The_Casey_Review_Report.pdf (accessed 10.8.18). See also J Lewis, 'Prevent as an Intractable Policy Controversy: Implications and Solutions' (2018) 15 *Journal for Deradicalization* 113. The Joint Committee on Human Rights has stated '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' in *Counter Extremism* (2016-17, HL Paper 39, HC 105) para 50.

Prevent as it operates in schools, making it hard to disentangle its real impact in terms of stigmatisation of Muslims from the impact of Prevent myths.²⁰⁶ The image of Prevent that has been created by the anti-Prevent lobby is intended to indicate that it is having counter-productive effects in schools and so should be abandoned. Use of exaggeration and distortion of its effects are intended to feed feelings of persecution within certain communities, in order to provide a basis for that argument; it has therefore to an extent become a tool of extremist propaganda itself. The most high-profile narratives about Prevent appear to have arisen from the school context.²⁰⁷

Thus, certain activist groups have sought to arouse anxiety in some Muslim communities as to the effect of Prevent in schools and have sought to present the strategy as a further argument for furthering Muslim isolationism and suspicion of the ‘West’.²⁰⁸ This effect could be particularly heightened in a community, such as the socially conservative Deobandi Muslim community, meaning that pupils from that community could be seen as the ‘target’ of apparent ideological repression. It is, obviously, extremely difficult to assess the extent or impact of such concerns, but some faith groups and academics have highlighted this as an issue.²⁰⁹ It is

²⁰⁶ See Busher et al ‘What the Prevent duty means for schools and colleges in England’ (n 94) which covered this issue but did not seek to disentangle the two factors, finding ‘concerns about increased stigmatisation of Muslim students in the context of the Prevent duty – although such concerns tended not to focus on their own institution, where they perceived these issues to be being managed’ (p 65). The concern was found to have a general rather than a focused nature, possibly favouring the argument that where students and teachers focus on their own actual experience of stigmatisation it is found to be less pressing.

²⁰⁷ One widely reported example was a student who was reported to have been referred for a drawing that a teacher mistakenly thought was a ‘cooker bomb’ which was revealed to be a cucumber; another widely reported, but apocryphal, example was of a pupil who was visited by police after a teacher read in his homework that he lived ‘in a terrorist house’ apparently as a misspelling for ‘terraced’ (in his evidence to the JCHR David Anderson highlighted this referral as a ‘myth’ as the police investigation was in fact in relation to the suggestion that the uncle was abusing him): Joint Committee on Human Rights, *Counter Extremism* (2016-17, HL Paper 39, HC 105) para 49. In a significant report, The Open Society Justice Initiative has listed 11 case-studies of issues relating schools, ‘Eroding Trust: The UK’s PREVENT Counter-Extremism Strategy in Health and Education’ (Open Society Foundations 2016) 65-89. Similarly, professor Joe Cannatac, UN Special Rapporteur on the right to privacy, noted that representatives of Muslim communities had characterised Prevent as ‘dividing, stigmatising and alienating communities’ but stated that ‘I was to date unable to gather sufficient evidence to substantiate such claims’ and recommended that ‘sufficient resources be allocated by the UK government to reinforce the evidence-base as to the precise impact of Prevent’ L Dearden, ‘UK government straying towards ‘thought crime’ by criminalising viewing terrorist material, UN inspector says’ (29 June 2018); see at <https://www.independent.co.uk/news/uk/politics/thought-crime-uk-un-terrorism-government-viewing-material-offence-law-a8423546.html> (accessed 10.8.18).

²⁰⁸ S Khan, *Battle for British Islam* (Saqi 2016) 96 *et seq.*

²⁰⁹ See eg V Coppock, ‘“Can you Spot a Terrorist in Your Classroom?” Problematising the Recruitment of Schools to the “War on Terror” in the United Kingdom’ (2014) 4(2) *Global Studies in Childhood* 115, 116; Muslim Council of Britain, ‘Parliamentary Briefing on introducing “Prevent” as a statutory duty for all public bodies’ 18th January 2015; see at <http://www.mcb.org.uk/wp-content/uploads/2015/01/MCB-Briefing-on-introducingPrevent-as-a-statutory-duty-for-all-public-bodies.pdf> (accessed 10.8.18); Home Affairs Committee, ‘Radicalisation: the counter-narrative and identifying the tipping point’ (HC 2016-17, 135) Written evidence submitted by Faith Matters; A Kundnani, ‘Spooked!: How not to prevent violent extremism’ (London: Institute of Race Relations

questionable, however, whether the solution to such concerns is to abandon Prevent as opposed to challenging the narrative of persecution, especially as there is evidence that the anti-Prevent campaign is losing ground as Prevent ‘beds’ in.²¹⁰ Echoing the recommendations of the Joint Committee on Human Rights (JCHR) in relation to the impact of Prevent in universities²¹¹ the solution appears to be to retain Prevent but to ensure that parents, pupils, teachers, School Governors, are educated much more effectively about the operation of Prevent in schools. In general, the creation of greater transparency in respect of its real impact in schools is needed in order to counter Prevent myths.²¹² The announcement of a Commission for Countering Extremism could play a part in achieving these goals, but until it is known what recommendations the Commission will make to the government, it is unclear how the legal environment may be affected.²¹³

However, on the basis that a number of activist groups are deliberately seeking to distort the effects of Prevent in schools,²¹⁴ they are unlikely to be receptive to attempts at creating greater transparency. If their intention is to use distortion and exaggeration in order to fuel feelings of grievance in some communities with a view to then using the argument that due to its counter-productivity Prevent should be abandoned, which could give such groups a freer hand in relation to radicalisation in schools, that project would obviously be disturbed if the true impact

2009) 25-28. See also J Taylor, “‘Suspect Categories,’ Alienation and Counterterrorism: Critically Assessing PREVENT in the UK’ (2018) 1 *Terrorism and Political Violence* 1156.

²¹⁰ S Greer and L Bell ‘Counter-terrorist law in British universities: a review of the “prevent” debate’ [2018] PL 84, 94. See Busher et al ‘What the Prevent duty means for schools and colleges in England’ (n 94 above) which found that among school and college staff ‘wholesale criticism of, much less opposition to, the duty was...very rare in the interview data’ (p 60).

²¹¹ See also Joint Committee on Human Rights, *Counter Extremism* (2016-17, HL 39 HC 105) at 15.

²¹² See n 205.

²¹³ See overview at ‘Commission for Counter Extremism’ at www.gov.uk/government/organisations/commission-for-countering-extremism (accessed 10.8.18). The Commissioner’s brief is to examine the ‘scale, influence and reach of extremism within Britain...and look at the effectiveness of counter-extremism measures and policies...’. The appointee, Sara Khan, has been publicly critical of the hyperbole surrounding Prevent and, as a Muslim, strongly advocates for compatibility between British values and the Prevent strategy. Her appointment was greeted with concern by some: see BBC, ‘New counter-terrorism tsar faces calls to quit’ (25 January 2018); see at <http://www.bbc.com/news/uk-politics-42807560> (accessed 10.8.18), including the former Conservative Party Chair Baroness Sayeedi Warsi, who has claimed that Khan is too close to the Home Office: see J Grierson, ‘Choice of new UK anti-extremism chief criticised as “alarming”’ *the Guardian* (25 January 2018); see at <https://www.theguardian.com/politics/2018/jan/24/leading-muslim-campaigner-sara-khan-head-anti-extremism-drive> (accessed 10.8.18).

²¹⁴ ‘The Casey Review,’ n 205 above, described ‘an active lobby opposed to Prevent’. She found that ‘elements of this lobby...appear to have an agenda to turn British Muslims against Britain’, whose activism to undermine Prevent she describes as making British Muslims ‘feel even more alienated and isolated – and therefore more vulnerable to extremists and radicalisers’. 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’ (p 155). See also Greater Manchester Preventing Hateful Extremism and Promoting Social Cohesion Commission, ‘A Shared Future’ (Greater Manchester Combined Authority, July 2018); see at www.greatermanchester-ca.gov.uk/downloads/file/780/a_shared_future (accessed 10.8.18) para 10.16.

of Prevent could be made to reach ordinary parents and pupils. It might therefore be concluded that there is a case for abandoning Prevent on grounds of proportionality since it overlaps with existing duties, and on the one hand there is limited evidence that it has had an impact in countering extremism among pupils,²¹⁵ while on the other activist groups have to an extent succeeded in using Prevent as an aid to radicalisation in some communities. But that would be likely to aid in the creation of a limited and stunted educational experience for some pupils,²¹⁶ leaving them less able to obtain employment and post-school qualifications, and possibly more open to seeking isolation within society, rendering some of them more vulnerable to radicalisation. While it is not argued that Prevent has created decisive change, its abandonment would also tend to disempower once again those such as Khalid Mahmood who sought unsuccessfully to draw the attention of the authorities to such limited educational experiences in Birmingham as one aspect of the Trojan Horse affair.²¹⁷ Also Muslim or non-Muslim parents and teachers, resistant to the imposition of a narrowed curriculum on the pupils, would similarly face a diminution in their avenues of challenge. So instead efforts to educate communities about Prevent should be increased, especially on the basis that it is now working more effectively, given that teachers and others in schools have had time to undergo training and gain greater experience as to its true impact.

The modern Prevent policy as it applies to schools has in some respects changed substantially from that adopted by the Labour Governments between 2003-2010, but it retains a commitment to the creation of complementarity to existing law/policy on safeguarding of pupils and inculcating knowledge about political and moral values as well as setting standards of behaviour in conformity with those values. It is contended that as applied in schools Prevent has the potential to support rather than inhibit expression since, in company with other statutory duties of schools, including the equality duty, it supports the broadening of pupils' minds rather than the narrowing of them due to the imposition of a narrow curriculum based on socially conservative values. Thus, in so far as Prevent in schools is linked to the Trojan Horse affair, it is argued that the affair has led to an impact in schools more in tune with the promotion of free speech values than inhibitory of them. In so far as it supports the expression of a plurality

²¹⁵ Joint Committee on Human Rights, *Counter Extremism* (2016-17, HL 39 HC 105) paras 36-42.

²¹⁶ See above n 199.

²¹⁷ HC Deb 2 Dec 2014, vol 603, cols 248, 265.

of views in schools, as opposed to promoting their isolation from such plurality, it is also likely to diminish their risk of being drawn towards terrorism.