

A critical approach to the Prevent Duty in Higher Education

Raising awareness of the issues, from an
academic perspective

Free speech on campus?

- ▶ **'The Prevent Duty':** The duty to have due regard to the need to prevent individuals being drawn into terrorism, including but not limited to the University context...
- ▶ **Context:** There has recently been a lot of attention paid in the media, in Government and in Parliament to the problems involved in maintain free speech on University campuses; where the legal duty to promote and protection freedom of expression is vital.
- ▶ **Controversy:** The 'Prevent duty' in Higher Education has been problematic in a number of ways (Barrett, 2016). Prevent has divided professional and academic opinion over its value to counter-terrorism work, and its effect on communities on campuses. Muslim students, for example, can already feel like a University is a hostile place (Stevenson, 2017). As such, universities have been reminded of their duties concerning Prevent under both equality law and human rights law (EHRC, 2017). HEFCE have claimed there is strong support for the Prevent duty (HEFCE, 2017). On the other hand, the main academic trade union, UCU, has voted for a Prevent boycott at national Congress – only to be advised by its lawyers that a boycott would be unworkable (UCU, 2015).

What is our approach here?

- ▶ This participatory workshop will continue the process of creating **'open educational resources'** for future use in more critically and comprehensively informing academics and their students on the 'Prevent duty'.
- ▶ Two key aspects of the statutory 'Prevent' duty **guidance**, as it applies to universities, are the need for universities to ensure that their staff "have **sufficient training** to be able to recognise vulnerability to being drawn into terrorism, and be aware of what action to take to take in response", and as a result, to also "have robust procedures both internally and externally for **sharing information** about vulnerable individuals (where appropriate to do so)", including "**appropriate internal mechanisms** and external information sharing agreements where possible".
- ▶ And what about the **'choice to challenge'** in the classroom?

Results of a small survey on the Prevent duty

- ▶ 1,500 students and staff contacted; only 37 responses
- ▶ First, we asked our respondents what were their views on, or experiences of the adoption of the Prevent duty in higher education, if any; we then asked of our lecturer respondents, secondly, what were their 'experiences of the Prevent duty training offered by your Higher Education Institution', if they had undertaken this, and whether they had any thoughts as to how this training could be improved.
- ▶ We asked all our respondents whether they thought there were any advantages or disadvantages in including the Prevent duty as a key part of law or criminology curricula, and lastly, we asked about any relevant personal experiences of our respondents in relation to the operation of the Prevent duty.

Themes emerging from the survey

- ▶ **Necessity:** 'good idea to ensure Universities accept some responsibility for the safety of the country and its students'
- ▶ **Vulnerability:** 'people are getting lured into terrorism due to feeling isolated from our society'.
- ▶ **Discrimination:** "[Prevent is] flawed in supporting conscious and unconscious biases which lean toward racism and religious hatred. Fuels suspicion and not academic discussion"
- ▶ **Censorship:** "[Prevent] is necessary to have measures in place to stop students from being radicalised [but] there is also a fear of being falsely accused or targeted through the Prevent campaign. As a Muslim student, I have been very wary of researching some cases and certain legislations (sic) for my essays as I don't want this to be on my university search history and be flagged for radicalism..."
- ▶ **Awareness:** "Having a full and critical discussion of prevent, and the ideologies it concerns may be useful to counter misconceptions and foster a climate of open debate and free speech. This may help stop the Prevent duty being misapplied."

The Prevent Duty...

...and Human Rights and Equality

- S.26 of the CTSA 2015 – Universities must have "due regard to the need to prevent people from being drawn into terrorism..."
- S.31 of the CTSA 2015 – Universities "must have particular regard to the duty to ensure freedom of speech..."
- Article 10/11 ECHR – freedoms of expression and association
- Article 9 ECHR and Article 8 ECHR – religion, belief; and private life
- Article 14 ECHR – freedom from discrimination in relation to these rights
- S.149 EA 2010 and the duty to have due regard to the need to prevent the victimisation of, or discrimination against, a group with a protected characteristic, and to foster good relations between that group and others

What does the Prevent Duty concern: Extremism? Terrorism?

- ▶ S.26 of the CTSA 2015 – Universities must have "due regard to the need to prevent people from being drawn into terrorism..." – Preventing **far-right** radicalisation through to **Islamist radicalisation that would lead to terrorism...**
- ▶ **Case:** The High Court in *Butt v Home Secretary* (2017) noted that it can be regarded: [151] "as obvious that one target of the guidance is Islamist terrorism, and preventing Muslim and non-Muslim people being drawn into it through non-violent Islamist extremism."
- ▶ **Principle:** [30] "The active opposition to fundamental British values must in some respect risk drawing others into terrorism before the guidance applies to it. If there is some nonviolent 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 what about safeguarding?**
- ▶ **Stats:** The Home Office **highlighted** that in the year to March 2017, 6,093 referrals were made under the Prevent duty in all sectors, and more than a third of resulting cases dealt with under the Channel programme were for far-right involvement.

What is a Prevent 'referral'?

- ▶ Prevent Duty...
- ▶ Channel Programme
- ▶ Strictly speaking, university educators will be under employment law duties of a contractual nature to their institutional employers to report extremist views, or worrying, potentially radicalising behaviour, based on their training. *A university itself may take the decision to then report the matter to the police.*
- ▶ As Greer and Bell explain it, "if the staff in a given students' welfare service think any concerns raised about a specific student may require it, they may make a formal referral to a chief police officer who may then refer to a local authority panel, but "only if there are reasonable grounds to believe the individual is vulnerable to being drawn into terrorism"" – referencing the provisions of the Counter-Terrorism and Security Act 2015 in s.36(3). See Greer and Bell, p.94.
- ▶ *Task: Where would you report your concerns, in your University, that a person may be being drawn, or is drawing others, into terrorism?*

What happens to information shared with the police under Prevent?

- ▶ **Case:** In *Butt* the High Court held that [254] "The retention of the data is proportionate... The absence of clear deletion provisions does not make it disproportionate yet, since there is no reason why in the Claimant's case, if legitimately collected, the data should have been deleted. The fact that some of the data comes from a private body's information about public meetings or social media posts by the Claimant does not bear on the issue."
- ▶ **Principle:** No reasonable expectation of privacy on the part of Dr. Butt given the public nature of his expression of his views on e.g. homosexuality as being morally equivalent to paedophilia etc.
- ▶ **Context:** A recent Department of Education 'advice note' has explained that information about an individual passed on to the police will be dealt with only by specialist officers and stored on a dedicated 'PCMS', and so would not be shared with future employers, for example. See DfE, *Safeguarding vulnerable individuals in Higher Education from terrorist groups*, 2017.

Holding events with invited speakers airing contentious views?

- ▶ *R (Ben-Dor) v University of Southampton* (2016)
- **Case:** Here Ben-Dor could not establish a breach of Articles 10 or 11 on the part of the university...
- The University had postponed a conference concerning the legitimacy of the activities of the State of Israel under international law, scheduled to take place on university premises, due to their insistence on certain safety and security matters.
- **Task:** Let's discuss what your University requires us to do in terms of planning for events in a way that balances safety and freedom of expression...
- **Also:** Please note that in March 2018, the Parliamentary Joint Committee on Human Rights published [guidance](#) on the parameters of holding events lawfully on University Campuses.

Refusing a speaker the right to attend an event?

- ▶ As with many issues concerning 'qualified' rights, the important thing is to look at **evidence**, be **rational** and make a **balanced, proportionate** decision...
- ▶ **Case:** The High Court in *Butt v Home Secretary* (2017) found that the claimant should not have been afforded 'standing': [81] "The Claimant is not a victim simply because he makes generalised assertions, which is at best all that he does, that his rights will or could be breached in the future. The Claimant must show that he is directly affected... *He has no right to go on to a university campus to express his views.*"
- ▶ And what about Butt's **Article 10 ECHR** rights? [141] "The degree and nature of interference is limited. The Claimant and all others remain free to express his or their beliefs through all other means of communication at their disposal, including to students off campus or via social media..."

References and reading

- ▶ David Barrett, 'Tackling radicalisation: the limitations of the anti-radicalisation prevent duty', *E.H.R.L.R.* 2016, 5, 530–541
- ▶ EHRC, *Delivering the Prevent duty in a proportionate and fair way: A guide for Higher Education providers in England on how to use equality and human rights law in the context of Prevent*, 2017, from <https://www.equalityhumanrights.com/en/publication-download/delivering-prevent-duty-proportionate-and-fair-way> (accessed at 13.04.2017)
- ▶ Jamie Grace, 'Countering extremism and recording dissent: Intelligence analysis and the Prevent agenda in UK Higher Education' (2017), *Journal of Information Rights, Policy and Practice* Vol. 2(2)
- ▶ Steven Greer and Lindsey Bell, 'Counter-Terrorist law in British Universities: a review of the "prevent" debate' (2018) P.L. 85
- ▶ HEFCE, *Implementation of the Prevent duty in the higher education sector in England: 2015–16*, 2017, from <http://www.hefce.ac.uk/pubs/year/2017/201701/> (accessed at 13.04.2017)
- ▶ Amy Steadman, Jamie Grace and Rhiannon Roberts, 'The 'choice to challenge'? Counter-radicalisation and the Prevent agenda in the University context', (Forthcoming book chapter) (2018)
- ▶ Jacqueline Stevenson, 'University can feel like a hostile place to Muslim students', 2017 from <http://theconversation.com/university-can-feel-like-a-hostile-place-to-muslim-students-74385> (accessed at 13.04.2017)
- ▶ UCU, *Prevent duty guidance*, 2015, from https://www.ucu.org.uk/media/7370/The-prevent-duty-guidance-for-branches-Dec-15/pdf/ucu_preventdutyguidance_dec15.pdf (accessed at 20.03.2017)

A case study on campus speech

- ▶ **Evie Jackson** is a second year law student at the University of Sharrowfield, and she is also the chair of the organising committee of the University of Sharrowfield branch of the organisation Students Against Police States ('SAPS'). SAPS is a radical group, with an anarchist political philosophy, and a history of organising 'direct action' at protests for high-profile political causes. This has sometimes led to acts of violence being committed by SAPS members at protests.
- ▶ Evie invites her personal tutor, Bill Wallace, to an event she has organised to take place on the University campus. Speaking at the event is a well-known environmental campaigner affiliated to SAPS – **Micky Stevens**. Micky has a history of criminal offences such as aggravated criminal damage and affray, attained in a long career of violent public protest. Micky urged his listeners to travel to Gloucestershire, to a demonstration immediately adjacent to the site of the government's General Communication Headquarters – better known as GCHQ. Micky advocated SAPS members chaining themselves together in groups and lying in the roads and on the pavements outside all the entrances to GCHQ buildings at the site, which would make it difficult for GCHQ staff to ignore the protest, or indeed, to drive into work that day. Micky argued this tactic would draw national media attention to the role of GCHQ staff in covertly intercepting the e-mails and social media communications of perfectly innocent UK citizens.

A case study on campus speech

- ▶ Bill did not enjoy Micky's speech at the event. Indeed, he was concerned about the tone of the talk, and Micky's criminal history (which Micky had recounted with some enthusiasm), as well as Micky's advocacy for the kind of protest tactics outlined above. While Bill was pretty certain that SAPS is not a "proscribed terrorist organisation", his understanding of his internal University-organised 'Prevent duty' training was that he should pass on his concerns, chiefly the idea that Micky might be advocating behaviour that could be regarded as extremist.
- ▶ The Registrar of the University of Sharrowfield, Mandy Byers, took a full account of the meeting from Bill, and decided she agreed with his concerns – passing the information about Micky's presence and the contents of his talk to Sharrowfield Police. Mandy felt that Micky's speech could possibly draw some people into terrorism. Mandy also informed the police about Evie's role in organising the event. Nobody approached Evie prior to this decision being made to share information with the police. Last week, Bill told Evie that this information had been passed on to Sharrowfield Police. This development greatly upset Evie, who feared it would prejudice her ability to gain employment on a graduate training-scheme with the Civil Service in London after her time at the University.
- ▶ **What do you make of this scenario? Whose rights are affected and how?**