

The Prevent Duty:
Its Requirements and Implementation by University
Management in the Context of External Speaker Events

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September 2021

ABSTRACT

This thesis is concerned with how the requirements of the Prevent duty are understood and implemented by university management (UM) when assessing external speaker events. The main concern is how UM balance two seemingly opposite duties – the Prevent duty and the freedom of speech duty. Although previous studies have focused on student and academic staff perspectives on the effects of the Prevent duty on free speech in universities, this thesis sheds new light by using empirical data gathered through interviews, freedom of information (FOI) requests and online policies to create a picture of how the two duties are understood and implemented by UM. The participants were the final decision makers on controversial events. They were responsible for assessing the risk of radicalisation and extremism and then balancing that risk with the duty to uphold freedom of speech for external speaker events. Thus, their views on radicalisation, extremism, freedom of speech and the Prevent duty provide new insight into how relevant pieces of legislation, including the Counter-Terrorism and Security Act 2015 and the accompanying guidance, are implemented in universities, and the challenges UM face in the process.

The over-arching research question is, ‘how do university management interpret the requirements of the Prevent duty and the freedom of speech duty, and what practical implications does their interpretation have on the implementation of these duties in the context of external speaker events?’

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Introduction

FOCUS OF THE THESIS

This thesis is submitted for the degree of Doctor of Philosophy at the University of York, School of Law. The thesis addresses two broad areas of research: (a) critical research in counter-terrorism and human rights; and (b) organisational behaviour and legal environments. It is an explorative social legal study, which uses a social constructivist interpretive framework to analyse how the Prevent duty and the duty to protect freedom of speech are interpreted and implemented by university management (UM) for external speaker events.¹

CENTRAL ISSUE ADDRESSED IN THIS THESIS

Under Section 43 (1) of the Education (No. 2) Act 1986, universities are duty bound to ensure freedom of speech within law is secured for university members, students, employees and visiting speakers. The freedom of speech duty was introduced to ensure that controversial speakers were not prevented from speaking on university campuses, as long as the content of their speech was not 'unlawful'.² However, since the introduction of the Counter-Terrorism and Security Act 2015 (CTSA), universities are now also duty bound to have 'due regard to the need to prevent people from being drawn into terrorism'.³ This new 'Prevent duty' placed on a statutory footing the controversial Prevent policy, first introduced by the Labour government after the London bombings in 2005. The accompanying official Prevent guidance for relevant higher education bodies (RHEB) requires that when hosting external speakers, if extreme views are likely to be expressed that risk drawing people into terrorism or are shared by extremists, then RHEBs should not allow the event to proceed unless they are *entirely convinced* that the risk is *fully mitigated*.⁴ Hence, universities have two

¹ The university management that participated in this study were those members who had a role in the implementation of the Prevent duty and drafting relevant university policies. For a detailed discussion on the participants see Chapter seven, section 7.7 and table 7.3 in section 7.11.

² This is explored further in Chapter Five, Section 5.2.1.

³ Counter-Terrorism and Security Act 2015, Section 26

⁴ Emphasis Added. See: HM Government, 'Prevent Duty Guidance: For Higher Education Institutions in England and Wales' (Home Office, March 2015) para 11

concomitant and potentially opposing statutory duties: the Prevent duty and the freedom of speech duty.

There is, however, a lack of clarity as to how these potentially competing duties should be reconciled. The wording of paragraph 11 of the Prevent Duty Guidance for Higher Education (HEPDG) suggests that Prevent is a higher duty than freedom of speech; being ‘entirely convinced’ that the risk is ‘fully mitigated’ is a very high threshold for event approval, which if taken literally has the potential to stop many controversial events. On the contrary, the wording of the CTSA implies that the freedom of speech duty is the higher duty, as it requires universities to have ‘particular regard’ to the freedom of speech duty and ‘due regard’ to the Prevent duty. The High Court in *Butt v. Secretary of State for the Home Departments* (*Butt* case) attempted to provide some clarity by stating that having ‘particular regard’ to academic freedom and freedom of speech is more important than having ‘due regard’ to the application of paragraph 11 of the HEPDG. However, the Court of Appeal argued that the wording of paragraph 11 of the HEPDG is such that a ‘well-educated reader’ is likely to assume that the HEPDG is ‘the most specific and pointed guidance that exists’, which ‘already represents a balance of the relevant statutory duties affecting the RHEB decision-maker’.⁶ Hence, if UM are unfamiliar with the High Court ruling, they are likely to take the wording of paragraph 11 of the HEPDG literally, leading to events being cancelled if they are not entirely convinced that the risk is ‘fully mitigated’.

Moreover, Prevent is conceptually ambiguous and open to interpretation. The ambiguity stems from it being closely connected with the concepts of radicalisation and extremism. The concept of radicalisation is deeply contested and ill-defined,⁷ to the

<<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 05 April 2023

⁵ *Salman Butt v. Secretary of State for the Home Department* [2017] EWHC 1930 (Admin), [2017] 4 W.L.R. 154 [61]

⁶ *Regina (Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256, [2019] 1 W.L.R. 3873 [176]

⁷ Laura G. E. Smith, Leda Blackwood & Emma F. Thomas, ‘The Need to Refocus on the Group as the Site of Radicalization’, (2020) 15 *Perspectives on Psychological Science* 327; Mark Sedgwick, ‘The Concept of Radicalization as a Source of Confusion’, (2010) 22 *Terrorism and Political Violence* 479

extent that identifying radicalisation has been described as ‘frustrating’ by analysts.⁸ Moreover, there exist a plethora of varied definitions of radicalisation, which makes it hard to ascertain whether everyone is talking about the same thing.⁹ The concept of radicalisation is critically analysed in Chapter Two of this thesis. Likewise, the concept of extremism has been vaguely defined as:

Vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas.¹⁰

The definition of extremism and the terms used within it, such as fundamental British values, democracy and the rule of law, are ambiguous and contested concepts with widely differing understandings among scholars of legal philosophy.¹¹ The opaqueness of extremism and the ambiguity of radicalisation could lead to arbitrary decisions by UM when deciding to approve or ban external speaker events. Hence, when the Prevent duty was placed on a statutory footing in 2015, it caused a considerable amount of concern among the academic community about its impact on freedom of speech. Academics such as Paul Wragg argued that universities were ill-equipped and had too much arbitrary power, which could lead to over-cautious attitudes.¹² Ben Stanford raised the concern that university administrators were implementing policies in ways

⁸ Alex P. Schmid, ‘Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review’, (2013) International Centre for Counter-Terrorism, The Hague, <https://www.exit-practices.eu/uploads/1/3/0/4/130474014/schmid_a_2013.pdf> accessed 15 April 2020

⁹ For example, the European Commission’s definition differs from Mullin’s definition, which differs from Hannah *et al.*’s definition. All of which differ from Dalgaard-Nielsen’s definition. These definitions are explored in section 2.1 of chapter two.

¹⁰ Home Office, ‘Revised Prevent duty Guidance for England and Wales’, Updated 10 April 2019, <<https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales>> accessed 08 July 2020

¹¹ See chapter five for a full critique of extremism

¹² Paul Wragg, ‘For All We Know: Freedom of Speech, Radicalisation and the Prevent Duty’ (2016) 21 Communications law (Haywards Heath, England) 60

that were restricting free speech.¹³ The conceptual ambiguity surrounding Prevent and the problematic wording of the HEPDG establishes the need to explore how UM are implementing the Prevent duty for external speaker events. However, despite these concerns, there is an absence of empirical research that addresses how the Duty is implemented in practice. Thus, this project begins to fill this lacuna, by examining the implementation of the Prevent duty and freedom of speech duty for external speaker events at universities.

IMPORTANCE OF THE PROJECT

By advancing knowledge and understanding, universities play an important role in developing critical thinking in staff and students, in an environment that is free from undue interference and restriction.¹⁴ Considering that academic freedom and freedom of speech are crucial to a university's purpose, it is important to assess how UM weigh the Prevent duty with freedom of speech and academic freedom duties. External speakers play a crucial role in universities fulfilling this purpose, as they contribute to important debates, and provide important knowledge and experience. Thus, any limitation to their free speech could adversely impact what is traditionally considered a core function of the university within a liberal democracy. Controversial speakers are more likely to spark debates and dialogue than non-controversial speakers, which in turn leads to better opportunities for the advancement of knowledge. The fresh ideas and alternative views of well-informed speakers are crucial to avoid the danger of introverted views becoming the norm.

GAP IN LITERATURE

Whilst there is a growing body of academic scholarship on Prevent, there is a relative paucity of empirical research on how risk assessment is carried out as part of the Prevent duty. Hence, academics, such as Paul Dresser, have argued that more evidence-based research is required on how the Prevent duty is 'realised, (re)configured and performed'

¹³ Ben Stanford, 'The Multi-Faceted Challenges to Free Speech in Higher Education: Frustrating the Rights of Political Participation on Campus' [2018] Public Law 708

¹⁴ Joanna Gilmore, 'Teaching terrorism: the impact of the Counter-Terrorism and Security Act 2015 on academic freedom' (2017) 51 Law Teacher 515, p516

in various areas that are subject to that duty.¹⁵ Joel Busher and Lee Jerome point out the scarcity and infancy of available with which to evaluate how practices are taking shape and how its enactment is evolving over time.¹⁶ This section will provide a summary of the literature review related to the implementation of Prevent in various fields.¹⁷ Existing research has analysed the implementation of the Prevent duty by Prevent police officers, Prevent practitioners, NHS staff, schools and colleges.¹⁸ Dresser's study, for example, draws upon 21 semi-detached interviews with Prevent police officers and explores how risk assessments are carried out under Prevent.¹⁹ Tom Pettinger's study utilises 17 interviews with Channel²⁰ practitioners and explores (a) 'how an individual becomes sufficiently "seen" as harbouring risk'; (b) 'how practitioners negotiate supposed riskiness'; and (c) 'how practitioners "know" risks they observe'.²¹ Charlotte Heath-Kelly and Erzsebet Strausz's study focuses on how the Prevent duty is implemented in the NHS. Their data was gathered from a number of sources: (a) safeguarding teams working in six NHS Trusts and Clinical Commissioning Groups in the Midlands area in Prevent non-priority areas; (b) seventeen 'expert' interview

¹⁵ Dresser argues, 'In considering Prevent, it would be fruitful for future research to explore the ways counter-radicalisation is actualised, implemented and performed. Doing so will help a more nuanced account of Prevent to be realised'. See: Paul Dresser, 'Counter-Radicalisation Through Safeguarding: A Political Analysis of the Counter-Terrorism and Security Act (2015)' (2018) *Journal for Deradicalization*, 125, 155; Paul Dresser, 'Prevent Policing in Practice – The Need for Evidenced-Based Research' (2019) 15 *Policing* 716

¹⁶ Joel Busher and Lee Jerome, *The Prevent Duty in Education: Impact, Enactment and Implications* (Palgrave Macmillan, 2020) 3

¹⁷ A detailed literature review can be found in Chapter Six.

¹⁸ See Chapter Six

¹⁹ Paul Dresser, "'Trust your instincts – act" PREVENT police officers' perspectives of counter-radicalisation reporting thresholds' (2019) 12 *Critical Studies on Terrorism*, 605

²⁰ Channel is a Government intervention programme aimed at providing early support to those who 'it claims are vulnerable to being drawn into terrorism'. See: Home Office, 'Channel and Prevent Multi-Agency Panel (PMAP) guidance' (Home Office, 2021) <

<https://www.gov.uk/government/publications/channel-and-prevent-multi-agency-panel-pmap-guidance#:~:text=Channel%2FPMAP%20is%20about%20ensuring,involved%20in%20criminal%20terrorism%20activity.>> accessed 05 April 2023

²¹ Tom Pettinger, 'British Terrorism Preemption: Subjectivity and Disjuncture in Channel "de-radicalization" Interventions' (2020) 71 *The British journal of sociology* 970

participants, and (c) a 26 question survey with 329 NHS staff from the six NHS Trusts and Clinical Commissioning Groups.²²

All three studies have made valuable contributions regarding how Prevent is implemented. They have critically examined the implementation of Prevent as a safeguarding duty as well as identifying ‘gut feelings’ and ‘intuition’ as the bases for risk assessment under Prevent.²³ The reliability of gut feelings and intuition in risk assessment has also been critically analysed by Pettinger in a study that draws upon 33 interviews with former combatants from the Northern Ireland conflict.²⁴ Pettinger found that the former combatants, with their experience and reflection time post-conflict, were not able to identify why some people joined the conflict whilst others in the same situation did not. This then raises the question of how individuals who are duty bound to implement the Prevent duty, who are likely to have little or no experience in conflict or violence, are able to decide who is at risk of radicalisation and who is not. According to Pettinger, the answer is speculative guesswork.

The implementation of Prevent in schools and colleges has also been analysed by Busher, Tufyal Choudhury and Paul Thomas, who conducted an extensive study consisting of 70 semi-structured interviews across 14 schools and colleges.²⁵ They did not find the depth or breadth of opposition to the Duty from school staff that they had anticipated, which they concluded was due to several reasons: first, the Prevent duty was presented as a safeguarding duty and the procedures used to meet the Prevent-related obligations were similar in practice to other safeguarding procedures; second,

²² Charlotte Heath-Kelly and Erzsebet Strausz, ‘The Banality of Counterterrorism "after, after 9/11"? Perspectives on the Prevent Duty from the UK Health Care Sector’ (2019) 12 *Critical studies on terrorism* 89; Charlotte Heath-Kelly and Erzsebet Strausz, ‘Counter-terrorism in the NHS Evaluating Prevent Duty Safeguarding in the NHS’, The University of Warwick <

https://warwick.ac.uk/fac/soc/pais/people/heath-kelly/project_report_60pp.pdf > accessed 19 September 2022

²³ These studies are explored in Chapter six

²⁴ Tom Pettinger, ‘Examining “Prevent” From a Former Combatant Perspective’ (2020) 25 *Sociology of Crime, Law and Deviance* 225

²⁵ Joel Busher, Tufyal Choudhury and Paul Thomas, ‘The Introduction of the Prevent Duty into Schools and Colleges: Stories of Continuity and Change’, in Joel Busher and Lee Jerome (eds), *The Prevent Duty in Education*, (Palgrave Macmillan Cham, 2020) 33

the signs of vulnerability to radicalisation were similar to vulnerability in other safeguarding areas; third, a self-assessment of staff revealed that they were already mostly addressing the requirements of the Duty. Similarly, both Heath-Kelly and Strausz's research, and Pettinger's study, found that presenting Prevent as a safeguarding duty had helped in enrolling NHS, teaching staff in schools and colleges and other professionals as allies in counter-terrorism programmes.

However, unlike universities, Prevent police, Channel practitioners,²⁶ NHS staff and schools have no positive duty to ensure that freedom of speech is protected. Hence, the studies conducted by Busher *et al.*, Dresser, Pettinger and Heath-Kelly and Strausz do not explore the potential tension between the two duties, nor how they are weighed and balanced. As noted above, freedom of speech and academic freedom are unique duties that are placed upon the higher education sector. Some research can be found on the effects of the Prevent duty in universities: 'Re/presenting Islam on Campus', led by Mathew Guest *et al.*, is one example.²⁷ The study was composed of a national survey of 2,022 students from across 132 universities; and interviews and focus groups with 253 staff and students at four universities and two Muslim colleges that provided degree programmes. The project highlights the concerns of students and staff about the impact of Prevent on freedom of speech and its ability to limit academic enquiry and to 'demonise Muslims',²⁸ with one student arguing 'religiosity is becoming ... criminalised'.²⁹ Similarly, a study was conducted by Simon Perfect that involved a private consultation with 33 'experts' from the higher education sector.³⁰ It also found that

²⁶ Channel refers to panels operating in England and Wales to provide early intervention and support to people identified as vulnerable to being drawn into terrorism. See: Home Office, 'Channel and Prevent Multi-Agency Panel (PMAP) guidance' (Home Office, 22 February 2021)

<<https://www.gov.uk/government/publications/channel-and-prevent-multi-agency-panel-pmap-guidance#:~:text=Channel%2FPMAP%20is%20about%20ensuring,involvement%20in%20criminal%20terrorism%20activity>> accessed 26 March 2023

²⁷ Mathew Guest, Alison Scott-Baumann, Sariya Cheruvallil-Contractor, Shuruq Naguib, Aisha Phoenix, Yenn Lee, Tarek Al-Baghal, 'Islam and Muslims on UK University Campuses: perceptions and challenges' (2020) Durham University, SOAS, Coventry University and Lancaster University <<https://eprints.soas.ac.uk/33345/1/file148310.pdf>> accessed 01 April 2023

²⁸ *Ibid*, p43

²⁹ *Ibid*, p41

³⁰ The list of experts can be found in section 6.3 of Chapter six.

many participants felt that Prevent was having a chilling effect on freedom of speech. Although the studies by Guest *et al.* and Perfect suggest that there is a potential conflict between the two duties and that there may be a chilling effect on academic enquiry, they do not consider the perspective of UM, who are duty bound to not only oversee but also make the final decisions regarding controversial external speaker events.

The role of UM in risk assessing external speaker events for possible radicalisation and extremism is complicated, as: (a) both radicalisation and extremism are conceptually ambiguous and contentious, and (b) the wording of the HEPDG, when read literally, seems to establish a very high threshold for event approval. Additionally, mitigating the potential future unknown risks may require a lot of time and resources. Hence, it is important to analyse how UM interpret radicalisation and extremism whilst balancing the requirements of the Prevent duty with the requirements of the freedom of speech duty. This project fills this gap in literature. Moreover, previous studies have adopted a Foucauldian analysis, using theories of governmentality, premediation, pre-emption and risk thinking to analyse their data. This project takes a new theoretical approach by analysing universities as large bureaucratic organisations and uses symbolic compliance, street-level bureaucracy, reactance and crowding-out theory to analyse the role and experience of UM in balancing the two duties. This difference of perspective also sheds new light on existing literature regarding the implementation of the Prevent duty. In order to explore these key issues, this project seeks to address the following overarching research question:

How do university management interpret the requirements of the Prevent duty and the freedom of speech duty and what practical implications does it have for external speaker events?

METHODOLOGY³¹

This project can be best described as a socio-legal study, which uses symbolic compliance, street-level bureaucracy, reactance and crowding-out theory to critically analyse the role and experience of UM in balancing the two duties in universities that are large bureaucratic organisations. Since this project takes the view that extremism,

³¹ The Methodology is discussed in detail in Chapter Seven

radicalisation and freedom of speech are personal or social constructs that are mind dependent, it adopts a constructivist/interpretivist paradigm to analyse the views and experiences of UM.

The study uses a qualitative design to develop a thorough understanding of how Prevent is balanced with freedom of speech through in-depth semi-structured interviews with 16 participants from 14 universities. The participants were members of senior university management, who were identified from university policies as 'designated officers', sometimes referred to as 'chief operating officers'. They were responsible for drafting the relevant policies, overlooking their implementation and taking the final decision on difficult events, which made them the key information holders on the implementation of Prevent in this area. The project also uses data collected through policies and documents obtained through Freedom of Information (FOI) requests and online searches. The documents were first analysed in order to prepare relevant questions for the semi-structured interviews. The documents were also used to triangulate information and compare the interview data with the policies and documents to get a more holistic understanding of university procedures and processes.

Data generated from the interviews was transcribed, fully anonymised and then analysed using the NVivo 12 software. The transcripts were coded using an inductive approach where statements were drawn together into clusters, called 'nodes' in NVivo. The codes were then analysed and organised around a number of themes that emerged from the interviews, which were grouped to make five main themes,³² which later became the results chapters.

THESIS STRUCTURE

In order to address the overarching research question, the project addresses six pertinent sub-questions that stem from the analysis of key literature in the first five chapters of the thesis. The following section will outline the chapters and the six sub-questions. The first six chapters are an extensive literature review on the background of

³² The five main themes are: Prevent concepts – extremism and radicalisation; event approval process; Prevent and risk averseness; direct impact of Prevent on freedom of speech; indirect chilling effect of Prevent on freedom of speech.

Prevent and related concepts such as radicalisation, extremism and freedom of speech. Chapter Seven presents the methods and the methodology of the empirical research. Chapters Eight to Twelve present the findings of the research. Chapter Thirteen provides the concluding remarks, summarising the findings from the preceding chapters. An outline of the chapters is presented below.

Chapter One explores the historical context that gave rise to the Prevent duty. It does this by dividing the period leading up to the Prevent duty into two phases: the pre-9/11 phase and the post-9/11 phase. It assesses the debates leading up to the Prevent duty, showing that the Government relied on reports from external thinktanks, such as the Henry Jackson Society (HJS), Centre for Social Cohesion (CSC) and Quilliam, for its argument that universities had become breeding grounds for radicalisation and extremism. Thus, one of the main objectives of the Prevent duty was to 'prevent' radicalisation from occurring on campus through external speakers. It will also highlight that reports from Student Rights, which is a project of the HJS, suggest that even after the introduction of the Prevent duty on a statutory footing and its compliance being monitored, universities are still allowing extreme speakers on campus and are thus failing in their Prevent duty. Chapter One critically explores this concern, and the methodology of the think-tanks, to show that there are two distinct narratives concerning whether or not universities are failing in their Prevent duty. Finally, the chapter explores the concerns relating to counter-terrorism legislation in general and the Prevent duty more specifically. The underlying need to critically explore the implementation of the Prevent duty for external speaker events stems from the tension between the two opposing narratives that this chapter identifies. Hence, this chapter sets the scene for the remaining thesis. The analysis in this chapter led to the first sub-questions:

1. In light of their experiences, do UM consider that universities are breeding grounds for radicalisation and extremism?³³
2. How can the views of UM be reconciled with the competing arguments that universities are either failing to implement the Prevent duty for external speaker events (as advanced by, for example Student Rights/Quilliam), or almost entirely

³³ This question is explored in Chapter Eight.

compliant with the Prevent duty (as noted by the Office of Students OfS/ Higher Education Funding Council for England)?³⁴

Since the concepts of radicalisation and extremism are central to the discourse surrounding the Prevent duty, Chapters Two and Three focus on unpacking these concepts by examining and critiquing the existing literature. Chapter Two explores the concept of radicalisation and what the Government considers to be factors of radicalisation. It critically assesses the Government's narrative and the theories that lend support to it. It will show that there is no consensus on the definition of radicalisation, making it a deeply contested term. Moreover, it highlights that since the dominant focus is on Muslims, this narrative may have some negative consequences, such as the creation of suspect communities and increasing grievances among the Muslim population.

Chapter Three critically explores the definition of extremism and the rationale of including non-violent extremism within it. It also highlights the possible difficulties that university administrative staff may have when assessing extremism as part of their Prevent duty. By assessing the debates in the academic literature, and those that occurred in Parliament, it demonstrates that the concept is contested and ambiguous. Chapters Two and Three thus raise the question of how, given the conceptual ambiguity surrounding Prevent, UM interpret radicalisation and extremism and understand the requirements of Prevent. Hence, these two chapters helped formulate the first part of the overarching research question and the formation of the following third sub-question:

3. How do UM understand the concept of 'extremism' and how is that understanding deployed in their event approval processes?³⁵

Since the Prevent duty needs to be balanced with the freedom of speech duty in universities, Chapters Four and Five focus on understanding the definition and scope of the freedom of speech duty. Chapter Four first assesses freedom of speech as a legal concept using legislation and international treaties. It reveals that procedural legal tests

³⁴ This question explored in Chapter Thirteen.

³⁵ This question is explored in Chapter Eight and Nine.

are not sufficient to produce clarity on the boundaries of what is acceptable and unacceptable speech. This chapter thus explores four philosophical arguments around freedom of speech (the argument from democracy, the argument from truth, the argument from autonomy, and the argument from natural rights theory). It shows that all four, when combined, provide a strong defence for freedom of speech.

Chapter Five critically explores the freedom of speech duty in the context of universities. It assesses the protection of speech as ‘academic freedom’ under the Education Reform Act 1988 and as ‘freedom of speech’ under the Education (No.2) Act 1986. The chapter analyses the historical context behind the Education (No.2) Act 1986, which reveals that one of the main objectives of the freedom of speech duty was to protect external speakers from being excluded from campus. Since the background of the Prevent duty suggests that the main purpose may have been to prevent certain types of external speakers, it is easy to envisage a conflict between the Prevent duty and the freedom of speech duty. This chapter also explores paragraph 11 of the HEPDG in light of the *Butt* case and concerns related to the chilling effect of the Prevent duty on free speech and academic enquiry. The literature review in this chapter led to the formulation of the following two sub-questions:

4. How do UM understand and implement paragraph 11 of the Prevent duty Guidance for Higher Education (HEPDG) and is there evidence of risk aversion in the implementation of the guidance?³⁶
5. Do participants consider that the Prevent duty has had either a direct or indirect chilling effect on freedom of speech in the context of external speaker events?³⁷

Since the role of UM involves risk assessment of external speaker events, Chapter Six critically analyses current empirical and theoretical literature regarding risk. It explores premediation, pre-emption, risk thinking and affect theory to analyse how future unknown risk is made actionable in the present. It then critically analyses the status of Prevent as a safeguarding duty. Finally, the chapter identifies the gap in literature that this project seeks to fill through the following theories: symbolic compliance, street-level

³⁶ This question is explored in Chapter Ten and Eleven.

³⁷ This question is explored in Chapter Ten and Eleven.

bureaucracy, reactance and crowding-out theory. This chapter helped formulate the following sub-question:

6. What are the approval processes for external speaker events and how are risk assessments carried out and decisions made?³⁸

Thus, the six literature review chapters identify a number of challenges for UM when assessing external speaker events. UM have the task of risk-assessing extremism and radicalisation, both contested and vague terms, whilst balancing two seemingly opposing duties – the Prevent duty and the freedom of speech duty. This provides the context for the over-arching research question: ‘How do university management interpret the requirements of the Prevent duty and the freedom of speech duty, and what practical implications does their interpretation have on the implementation of the duty in the context of external speaker events?’

Chapter Seven then lays out the methods and the methodology used to explore this research question. It presents a defence of the methods adopted and the constructivist/interpretivist paradigm used to explore the research questions and to analyse the findings. Moreover, it highlights the limitations of the findings as well as pointing out how the project was modified as the research developed.

Chapter Eight, the first of five results chapters, is divided into two parts. The first part presents the views and experiences of participants concerning (a) the risk of radicalisation on university campuses, and (b) whether universities are unique in this respect compared to other environments. The second part of the chapter analyses the understanding of participants regarding the concept of extremism. Both parts of the chapter shed new light on the perspective of management, who are responsible for implementing the Prevent duty in the context of external speaker events; on the debate surrounding universities being the breeding grounds for radicalisation; and on the debates surrounding the ambiguous nature of the concept of ‘extremism’. This chapter helps answer the first and third sub-questions.

³⁸ This question is explored in Chapter Nine.

Chapter Nine draws upon the interview data as well as document analysis to create a detailed holistic picture of the event-approval process. It provides new insight into the stages an application goes through and the causes for escalation of applications for approval. The participants were the final decision makers in their respective universities. The findings presented in this chapter thus provide a new understanding of how final decisions are made concerning controversial external speakers and the parties that may be involved in the risk assessment and decision-making process. This chapter helps answer the sixth sub-question.

Chapter Ten analyses empirical data and presents the findings concerning whether or not there is the possibility of risk averseness within UM. It assesses the potential for risk aversion that may stem from the Prevent monitoring system and the implementation of Prevent duty guidance. This chapter also assesses whether or not there are factors that suggest that universities are showing ‘symbolic compliance’.³⁹ The findings of this chapter also add a new dimension to the debate surrounding whether or not Prevent will cause risk aversion in universities. Hence, it helps answer sub-question four.

Chapters Eleven and Twelve are extensions to the findings of Chapter Ten. Chapter Eleven assesses the views of participants concerning whether or not they feel freedom of speech has been ‘directly’ impacted in the form of events being stopped as a result of Prevent-related concerns. Chapter Twelve presents the findings concerning the views of participants regarding an ‘indirect chilling effect’ of the Prevent duty on external speaker events.⁴⁰ Both chapters use university documents and other project data to

³⁹ Edelman *et al.* describe symbolic compliance as demonstrating compliance by using pre-existing policies and laws without necessarily creating significant change in behaviour. See: Lauren B. Edelman, Stephen Petterson, Elizabeth Chambliss, Howard S. Erlanger, ‘Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers’ Dilemma’ (1991) 13 *Law & Policy* 73

⁴⁰ The term ‘chilling effect’ in this project refers to self-censorship of speech as a result of the Prevent duty. The Joint Committee on Human Rights report in 2018 stated that ‘[t]he fear of being reported for organising or attending an event, combined with the increased levels of bureaucracy following the introduction of the Prevent duty, is reported to be having a “chilling effect” on freedom of speech’.

See: House of Commons and House of Lords Joint Committee on Human Rights, *Freedom of Speech in Universities, Fourth Report* (2017–19, HL PAPER 111, HC 589),

<<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/589.pdf>> accessed 01 March

assess whether or not they support the views of participants concerning the 'direct' and 'indirect' impact of prevent. Hence, both chapters shed new light on sub-question five.

Chapter Thirteen presents the concluding remarks, which draw on the findings from all of the results, to address sub-question two and the over-arching research question.

Acknowledgments

It is a pleasure to extend my thanks to both of my supervisors, Joanna Gilmore and Matt Matravers, for their valuable advice and supervision during the course of the PhD. Without their perpetual support and guidance, this project may never have got off the ground. Both are not only outstanding scholars in their field, but have also been great motivators and sources of support during my PhD journey. I take much inspiration from their unrivalled motivation to make students succeed in their goals. I would also like to thank Katy Sian, Lawrence McNamara and Simon Halliday for their valuable advice during the course of this project.

I would also like to extend gratitude and thanks to the participants for their candid and informative interviews, without which this project could not have advanced. All of the participants had demanding university administrative roles, yet freely provided their precious time for the research. They have provided valuable insight into how universities function and balance difficult duties. Although they cannot be named, due to the full anonymity provided, I will forever remain grateful for their participation.

I would like to dedicate this work to my father, Mohammed Akhlaq, mother, Nazir Begum, and all other family members who have provided great support and encouragement. I would like to thank my wife and children for standing by my side and enduring five long years of my self-absorption and isolation. I hope my PhD provides encouragement to my children to aim high and exceed expectations. If I can do it, so can you.

Declaration

I declare that this thesis is a presentation of original work and I am the sole author.

This work has not previously been presented for an award at this, or any other,
University. All sources are acknowledged as references.

Chapter One

INTRODUCTION TO THE PREVENT DUTY

The UK has a long history of dealing with terrorism, which can be divided into two distinct phases: first, the pre-9/11 period, which focused on terrorism emanating from Northern Ireland, and second, the post-9/11 period, where international terrorism, mainly from people who hold the same ideology as al-Qaeda, dominated. In this phase far-right organisations were also proscribed, though international terrorism was considered the greater threat. In both phases, the UK Government faced the challenge of terrorism using a variety of strategies, some of which seemed to be using a war-like model whilst others seemed to deploy the criminal legal system. A large number of pieces of legislation came into existence in the process, including the Counter-Terrorism and Security Act 2015, which established the statutory Prevent duty.

This chapter will introduce Prevent by setting out the context and background that led to it being imposed on universities as a statutory duty. In doing so, this chapter adopts a Foucauldian analysis to argue that terrorism is a social construction that is shaped by its surrounding discourse, which is visible in how the meaning of terrorism has evolved over the years. Hence, it will first lay out the argument that terrorism is a social construct and then outline the two phases of the terror threat and their key features, all of which set the background to the Prevent duty. It will show that the Prevent duty is a product of the post-9/11 phase, in which 'Islamist' ideology and the unprecedented threat of international terrorism were seen as key features. Secondly, it will highlight the manner in which successive governments have reacted to the terror threat by rushing emergency legislation through Parliament; the Counter-Terrorism and Security Act 2015 that placed Prevent on a statutory footing being one example. Thirdly, the chapter will analyse the Government's narrative regarding the need for the Prevent duty and the evidence behind the narrative. In doing so, the chapter will argue that there are strong indicators that suggest an alternative narrative, to which universities may ascribe, exists. Finally, it will highlight the concerns of academics and the debates that occur around the Duty.

1.1 SOCIAL CONSTRUCTION OF TERRORISM

'What is a terrorist?' is an important question, as being labelled as a terrorist can have serious legal, political and social ramifications. Especially as governments have the

discretion to designate people and groups as terrorists, which may be the result of politically motivated or biased decisions.¹ The high level of discretion is amplified by the fact that there no single united international definition of terrorism.² States may also try and influence the international community to define terrorism in such a manner that particular state-sponsored groups are kept outside the definition.³ Designation of groups and individuals as terrorists is thus arguably subject to manipulations of language and symbols by powerful state actors.⁴ According to Beck *et al.*, the difference in the lists of designated terrorists held by the US, UK and the EU indicates the difference in how the meaning of terrorism is construed.⁵ Considering that state actors have this level of control over defining who is a terrorist, which can have serious consequences upon the individual or group, it is important to assess how terrorism has been constructed over the years. It is argued that the discourse surrounding terrorism in the media and government papers shapes the understanding of what constitutes terrorism. From a Foucauldian perspective, discourses do not just describe things as they are, but they construct and shape reality and the objects of which they speak.⁶ Foucault argued:

I would like to show that ‘discourses’, in the form in which they can be heard or read, are not, as one might expect, a mere intersection of things and words: an obscure web of things, and a manifest, visible, coloured chain of words; I would like to show that discourse is not a slender surface of contact, or confrontation, between a reality and a language (langue), the intrication of a lexicon and an

¹ Colin Beck, Emily Miner and Pomona College, ‘Who Gets Designated a Terrorist and Why?’ (2013) 91 *Social forces* 837

² Schmid and Longman’s review of over one hundred definitions of terrorism shows that there is no unified international understanding of terrorism. See: Alex P Schmid and Albert J Longman (eds), *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature* (New Brunswick, NJ: Transaction Books, 1988) pp. 5 – 6; also see: Lord Carlile, ‘The Definition of Terrorism: A Report by Lord Carlile of Berriew Q.C. Independent Reviewer of Terrorism Legislation’ (Cm 7052, March 2007)

³ Boaz Ganor, ‘Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?’ (2002) 3 *Police practice & research* 287

⁴ Beck *et al.* (n1) p 838

⁵ *Ibid*, p 840

⁶ Iara Lessa, ‘Discursive Struggles Within Social Welfare: Restaging Teen Motherhood’ (2006) 36 *The British Journal of Social Work* 283

experience ... [rather, discourses are] practices that systematically form the objects of which they speak.⁷

Thus, discourses influence individuals' experiences, their ability to think, speak and act.⁸ For example, Ahmad argues that the BBC's reporting of the 'war on terror' was the discourse that shaped the understanding regarding al-Qaeda, which shifted as the context in the BBC's reporting developed.⁹ Critical counter-terrorism scholars, such as Turk, argue that contrary to media accounts of terror incidents and the official narrative, terrorism is not a given reality, instead is it an 'interpretation of events and their presumed causes', which is biased and which attempts to manipulate perceptions to promote certain interests.¹⁰ Innes and Levi posit that institutions of law and criminal justice create and sustain particular orders of reality by defining some acts, but not other ostensibly similar events, as 'extremism'.¹¹ This has been neatly summed up by Kinhi *et al.* as: 'terrorism [is] in the eyes of the Beholder'.¹²

Understood in this manner, defining terrorism is not by any means a neutral reflection of reality, but instead it is a social construct dependent upon the surrounding discourse. The scope to shape and construct the meaning of terrorism is due to (a) there not being

⁷ Michel Foucault, *The Archaeology of Knowledge*, (Tavistock 1972, Translated from the French by A. M. Sheridan Smith) pp. 48 – 49

⁸ Cynthia Hardy and Nelson Phillips, 'Discourse and Power', in Grant D and others (eds), *The SAGE Handbook of Organizational Discourse* (SAGE Publications, Limited 2004) p301

⁹ Jared Ahmad, *The BBC, The 'War on Terror' and the Discursive Construction of Terrorism: Representing Al-Qaeda*, (Springer International Publishing 2018) p3

¹⁰ Austin T. Turk, 'Sociology of Terrorism' (2004) 30 *Annual review of sociology* 271, pp. 271 – 272; similar arguments have also been made in Ayo Osisanwo and Osas Iyoha, 'We Are Not Terrorist, We Are Freedom Fighters': Discourse Representation of the Pro-Biafra Protest in Selected Nigerian Newspapers' (2020) 31 *Discourse & society* 631

¹¹ Martin Innes and Michael Levi, 'Making and Managing Terrorism and Counter-Terrorism: The View from Criminology', in Alison Liebling, Shadd Maruna, and Lesley McAra (eds), *The Oxford Handbook of Criminology* (Oxford University Press 2017) p458

¹² Shaul Kimhi, Daphna Canetti-Nisim, Gilad Hirschberger, 'Terrorism in the Eyes of the Beholder' (2009) 15 *Peace and conflict* 75

an internationally accepted definition of terrorism¹³ and (b) the UK legal definition of terrorism being broad.¹⁴

Terrorism has been defined in Sections 1 and 2 of the Terrorism Act 2000 as follows:

(1) In this Act “terrorism” means the use or threat of action where—

(a) the action falls within subsection (2),

(b) the use or threat is designed to influence the government [or an international governmental organisation]¹⁵ or to intimidate the public or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious [, racial]¹⁶ or ideological cause.

(2) Action falls within this subsection if it—

(a) involves serious violence against a person,

(b) involves serious damage to property,

(c) endangers a person’s life, other than that of the person committing the action,

(d) creates a serious risk to the health or safety of the public or a section of the public, or

(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

¹³ Schmid and Longman’s review of over one hundred definitions of terrorism shows that there is no unified international understanding of terrorism. See: Alex P Schmid and Albert J Longman (n 2) pp. 5–6; Lord Carlile (n 2)

¹⁴ Human Rights Watch, ‘UK: Counter the Threat or Counterproductive? Commentary on Proposed Counterterrorism Measures’ (2007) Human Rights Watch p23

<<https://www.hrw.org/legacy/backgrounder/eca/uk1007/uk1007web.pdf>> accessed: 10 January 2023

¹⁵ This was inserted as an amendment by the Terrorism Act 2006 (c. 11), s. 34; S.I. 2006/1013, art. 2

¹⁶ This was inserted as an amendment by the Counter-Terrorism Act 2008 (c. 28), ss. 75(1)(2)(a), 100(5) (with s. 101(2)); S.I. 2009/58, art. 2(a)

According to Amnesty International, this broad definition is 'open to subjective interpretation' and 'easily lends itself to abusive police practices'.¹⁷ The purpose of this section is not to present a critique of the broad terms of the definition, rather it is to show that what constitutes terrorism is a social construct, which has developed and changed over the years. According to Innes and Levi, the concept of terrorism has been constructed through multiple ways of thinking, which encompass journalistic accounts, biographies and political treaties.¹⁸ Some of these constructs provide rich descriptions of geopolitical events whilst others provide 'a series of explicitly and implicitly politically motivated accounts ... to provoke or justify a particular course of action'.¹⁹ Likewise, the construction of the concept of terrorism is also influenced by various academic disciplines and their differing epistemological and disciplinary backgrounds, such as Internal Relations, Politics, Psychology and Criminology.²⁰

1.2 THE PHASES OF TERROR THREAT

By analysing the various phases of the terror threat and how the Government has reacted, the next section serves the dual purpose of (a) demonstrating how the official and media discourses have shaped the understanding of terrorism, and (b) providing the context for the Prevent duty. This section is divided into the following two sections: first, the pre-9/11 phase, and second the post-9/11 phase.

1.2.1 PRE-9/11 PHASE

In the late 1960s, when the conflict in Northern Ireland erupted into serious violence, the British Government initially seemed to respond by adopting a war model that included, in 1971, the internment of suspected paramilitaries in what were effectively

¹⁷ Amnesty International, 'United Kingdom - Human rights: a broken promise', (Amnesty International, 2006) p10 <<https://www.amnesty.org/en/wp-content/uploads/2021/08/eur450042006en.pdf>> accessed 10 January 2023

¹⁸ Martin Innes and Michael Levi, 'Making and Managing Terrorism and Counter-Terrorism: The View from Criminology', in Alison Liebling, Shadd Maruna, and Lesley McAra (eds), *The Oxford Handbook of Criminology* (Oxford University Press 2017) p456

¹⁹ Ibid

²⁰ Ibid; Luis de la Corte, 'Explaining Terrorism: A Psychosocial Approach' (2007) 1 Perspectives on Terrorism

prisoner-of-war camps.²¹ Internment was also deeply unpopular and anti-internment sentiment brought more riots and violence.²² In a deeply sectarian conflict, internment undermined the credibility of the British Government as an ‘honest broker’.²³ Later, the Government changed its approach and introduced the ‘Diplock system’, a criminal justice system to deal with the conflict. The ‘Diplock Courts’ were characterised by a single judge sitting without a jury, with lower standards for the admission of evidence,²⁴ which was largely based on confessions extracted in police interrogation or obtained as a result of evidence provided by supergrasses.²⁵ It also extended the police and army powers to stop and question, stop and search, search and seize, and arrest and detain for up to seven days without charge.²⁶ Members of the British Special Forces were also deployed, and on a number of occasions were accused of operating or at least endorsing a shoot-to-kill policy.²⁷ The sectarian conflict in Northern Ireland, often referred to as the ‘The Troubles’, came to an end with the Good Friday Agreement on 10 April 1998, which set up a power-sharing assembly to govern by cross-community consent.²⁸

In 2004, David Blunkett, the then Secretary of State, argued that due to its long-standing experience of conflict in Northern Ireland, the UK had ‘some of the most developed and sophisticated anti-terrorism legislation in the world’, which was in addition to the general criminal law.²⁹ The Terrorism Act 2000 is an example of this anti-terrorism legislation,

²¹ Steven Greer, ‘Human rights and the struggle against terrorism in the United Kingdom’ [2008] *European Human Rights Law Review* 163

²² Josfa-Dolores Ruiz-Resa, ‘Legal Culture on Justice and Truth: The Tribunals of Inquiry About Bloody Sunday’, [2020] *The Age of Human Rights Journal* 73

²³ Greer (n21)

²⁴ Charles Carlton, ‘Judging Without Consensus, the Diplock Courts an Northern Ireland’ (1981) 3 *Law and Policy Quarterly* 225

²⁵ Greer (n21)

²⁶ Greer (n21)

²⁷ Maureen Ramsey, ‘Shoot to Kill’ in Lionel Cliffe, Maureen Ramsey and Dave Bartlett (eds), *The Politics of Lying* (Palgrave Macmillan, London 2000)

²⁸ Secretary of State for Northern Ireland, *Policy Paper: The Belfast Agreement*, (Cm 3883, 1998)

²⁹ Secretary of State for the Home Department, *Counter-terrorism Powers: Reconciling Security and Liberty in an Open Society: a Discussion Paper*, (Cm 6147, 2004) para 17

which made the powers that had been developed over time permanent and established a framework to deal with international terrorism.³⁰

1.2.2 POST-9/11 PHASE

This section will show that many analysts argue that the post-9/11 phase was different in nature to the pre-9/11 phase, with some describing the 9/11 attacks as a ‘watershed moment that has changed the course of transnational terrorism history’.³¹ It will analyse three distinctive features of the discourse regarding this phase: (a) the threat of terrorism was seen as more dangerous than in the pre-9/11 phase; (b) the threat was seen as emerging predominantly from Islamist extremism; and (c) far-right extremism was seen as a relatively low priority. This section will show that the discourse framed terrorism as predominantly an Islamic problem.

1.2.2.1 UNPRECEDENTED THREAT

On 9 September 2001, four planes were hijacked by Islamist extremists.³² Two were flown into the twin towers of the World Trade Centre in New York, whilst the third plane was crashed into the western face of the Pentagon and the fourth into a field in southern Pennsylvania.³³ The magnitude of this disastrous attack was unprecedented and marked a change in the nature of the threat and how it would be tackled. It is worth noting that the attacks of 9/11 are used as a rough marker for when the threat changed in nature, as there had been failed attempts to bomb the World Trade Centre before 9/11. According to the 9/11 Commission report, Ramzi Yousef, who had planted a huge bomb beneath the World Trade Centre in 1993, said ‘that he had hoped to kill 250,000

³⁰ Ibid

³¹ Mustafa Demir and Ahmet Guler, ‘The Effects of 9/11 Terrorist Attacks on Suicide Terrorism’, (2023) 15 Behavioral sciences of terrorism and political aggression 24, p25

³² National Commission on Terrorist Attacks Upon the United States, ‘The 9/11 Commission Report executive summary’, (2004) NCJ – 206229

<https://govinfo.library.unt.edu/911/report/911Report_Exec.pdf> accessed 28 September 2021

³³ Ibid

people'.³⁴ However, the discourse and response from countries and their governments changed after 9/11.

The famous saying of Brian Jenkins in 1975 that '[t]errorists want a lot of people watching and a lot of people listening and not a lot of people dead', whilst perhaps true for the pre-9/11 phase, was now dangerously anachronistic, with Bruce Hoffman arguing that the reverse had become the case post 9/11.³⁵ It seems that this was also the view of many who held positions in the Government, such as Blunkett, who said:

The terrorist attacks of 11 September 2001 established a new dimension to the terrorist threat, the infliction of mass casualties by horrific means, by suicide terrorists who struck without warning, without any claim or pretence to be advancing a negotiable cause.³⁶

The threat of international terrorism was described as 'greater in scale and ambition' than the terrorist threats faced in the past.³⁷ It was argued that post 9/11 terrorists 'share an ambition to cause mass casualties without warning' using tactics that are unlike terrorist threats faced in the past, such as suicide attacks and chemical, biological and radiological weapons.³⁸ Andrew Parker, the head of the MI5, has been quoted as saying that the threat of terrorism 'is multi-dimensional, evolving rapidly and operating at a scale and pace we've not seen before'.³⁹ Furthermore, he argued that it was at the

³⁴ National Commission on Terrorist Attacks Upon the United States, 'The 9/11 Commission Report' (2004) NCJ – 206230, p72 <<https://govinfo.library.unt.edu/911/report/911Report.pdf>> accessed 28 September 2021

³⁵ Bruce Hoffman, 'Terrorism and Counterterrorism After September 11TH', (2001) 6 U.S. Foreign Policy Agenda An Electronic Journal of the U.S. Department of State 22

³⁶ Secretary of State for the Home Department, *Counter-terrorism Powers: Reconciling Security and Liberty in an Open Society: a Discussion Paper*, (Cm 6147, 2004) para 5

³⁷ Cabinet Office, *The National Security Strategy of the United Kingdom Security in an interdependent world*, (Cm 7291, 2008) para 3.2

³⁸ Ibid, Para 3.5

³⁹ Vikram Dodd, 'UK facing most severe terror threat ever, warns MI5 chief', *The Guardian* (17 Oct 2017), <<https://www.theguardian.com/uk-news/2017/oct/17/uk-most-severe-terror-threat-ever-mi5-islamist>> accessed 08 April 2018

highest tempo he had seen in his 34-year career and that ‘today there is more terrorist activity, coming at us more quickly, and it can be harder to detect’.⁴⁰

In a report by The National Consortium for the Study of Terrorism and Responses to Terrorism (START), during the period between 2002 and 2015, ‘more than 4,900 terrorist attacks were carried out by groups or organizations affiliated with the organization now known as the Islamic State’, which caused more than 33,000 deaths, 41,000 injuries, and more than 11,000 individuals to be held hostage or kidnapped.⁴¹ In short, the official discourse related the post-9/11 phase to the aim of causing a large number of casualties and deaths.

1.2.2.2 ISLAMIST IDEOLOGY

One of the main features in the terrorism discourse concerning this phase is that it frames the attacks as ideologically driven, mainly by Islamist extremism.⁴² According to the Joint Terrorism Analysis Centre (JTAC),⁴³ the predominant threat of terrorism after 9/11 appears to originate from international terrorism, which ‘has become largely synonymous with Islamist terrorism’⁴⁴ and is defined ‘as acts of terrorism perpetrated or inspired by politico-religiously motivated groups or individuals who support and use violence as means to establish their interpretation of an Islamic society’.⁴⁵ In this phase, the threat from international terrorism has mainly been classed as ‘severe’ or ‘critical’,

⁴⁰ Ibid

⁴¹ Erin Miller, ‘Patterns of Islamic State-Related Terrorism, 2002-2015’, [2016] The National Consortium for the Study of Terrorism and Responses to Terrorism (START) 1, p1
<https://www.start.umd.edu/pubs/START_IslamicStateTerrorismPatterns_BackgroundReport_Aug2016.pdf> accessed 02 April 2023

⁴² Chapter Two will assess the role of ideology in greater detail.

⁴³ The Joint Terrorism Analysis Centre (JTAC) was established in 2003 in MI5's headquarters in London. Its role is to bring together counter-terrorist expertise from the police and government agencies and analyse and assess all intelligence relating to international terrorism, as well as setting the threat levels. See: Security Services MI5, ‘Joint Terrorism Analysis Centre’, <<https://www.mi5.gov.uk/joint-terrorism-analysis-centre>> accessed 12 February 2020

⁴⁴ Security Service MI5, ‘International Terrorism’, <<https://www.mi5.gov.uk/international-terrorism>> accessed 06 February 2020

⁴⁵ HM Government, ‘CONTEST The United Kingdom’s Strategy for Countering Terrorism’, (Cm 9608, 2018) p8

whereas Northern Ireland-related terrorism in Great Britain has fluctuated between ‘substantial’ and ‘moderate’.⁴⁶ The Prevent Strategy 2011 argues that it is al-Qaeda and those ‘who share the violent Islamist ideology associated with it’ that pose the greatest threat to the UK.⁴⁷

The National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission, which was created after 9/11 by Congress and the then US President George Bush, pointed out that since terrorism was now driven by ideology, it was harder to end the threat it posed:

The problem is that al Qaeda represents an ideological movement, not a finite group of people. It initiates and inspires, even if it no longer directs. In this way it has transformed itself into a decentralized force. Bin Ladin [sic] may be limited in his ability to organize major attacks from his hideouts. Yet killing or capturing him, while extremely important, would not end terror. His message of inspiration to a new generation of terrorists would continue.⁴⁸

1.2.2.3 FAR-RIGHT EXTREMISM

During the initial period of the post-9/11 phase, far-right extremism seemed to be a very rare feature in terrorism-related discussions and literature. The official Government discourse argued that terrorism associated with right-wing groups was not as ‘widespread, systematic or organised’ as al-Qaeda.⁴⁹ In contrast to those involved with al-Qaeda and related organisations, people involved in extreme right-wing groups, the CONTEST Strategy 2011⁵⁰ posits, ‘have not received the same training, guidance or support’ and ‘nor have they ever aspired or planned to conduct operations on the scale

⁴⁶ Security Service MI5, ‘Threat Levels’, < <https://www.mi5.gov.uk/threat-levels>> accessed 02 April 2023

⁴⁷ HM Government, *Prevent Strategy*, (Cm 8092, 2011) para 3.12

⁴⁸ National Commission on Terrorist Attacks Upon the United States, (n32) p16

⁴⁹ HM Government, ‘CONTEST the United Kingdom’s strategy for Countering terrorism’, (Cm 8123, 2011) section 2.39

⁵⁰ This is the UK counter-terrorism strategy that is organised around four work streams: Purse, Prevent, Protect and Prepare. See:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf> accessed 08 August 2021

of those planned by Al Qa'ida'.⁵¹ Thus, initially far-right extremism was a relatively low priority and at times concerns were raised, although sparingly. Yet far-right terrorist attacks did happen. Clare Ellis *et al.* argued that although media focus was largely on violent Islamist extremists, between January 2000 and December 2014 right-wing extremists were responsible for substantially more fatalities in the West.⁵² Their dataset shows that right-wing attacks caused 94 fatalities, while religiously inspired attacks killed 16 people.⁵³ It seems that the discourse surrounding terrorism was slow to recognise far-right extremism and constructed Islamist extremism as the main terror threat, even though Ellis *et al.*'s research suggested that there were more fatalities resulting from far-right extremism than from Islamist extremism.

In 2014, Theresa May highlighted the threat from far-right extremism, during the second reading of the CTSA bill:

Today, however, the threat from terrorism is becoming ever-more complex and diverse. Last year we saw the first terrorist-related deaths in Great Britain since 2005: Fusilier Lee Rigby was brutally murdered by Islamist extremists, and Mohammed Saleem, an 82-year-old Muslim from Birmingham, was stabbed to death by a far-right extremist who then tried to bomb mosques in Walsall, Wolverhampton and Tipton.⁵⁴

Although the discourse gradually seemed to alter and the threat of terrorism from far-right extremists was given higher acknowledgment, ideology-driven international terrorism was still considered as the main threat. In December 2016, the first extreme right-wing group, National Action, was proscribed by the then Home Secretary, who took further action in September 2017, proscribing Scottish Dawn and National Socialist Anti-

⁵¹ HM Government (n49) section 2.40

⁵² Clare Ellis, Raffaello Pantucci, Jeanine de Roy van Zuijdewijn, Edwin Bakker, Benoît Gomis, Simon Palombi and Melanie Smith, 'Lone-Actor Terrorism Final Report', [2016] Royal United Services Institute for Defence and Security Studies, page 11

<https://rusi.org/sites/default/files/201604_clat_final_report.pdf> accessed 18 February 2020

⁵³ *Ibid*, p11

⁵⁴ Theresa May, HC Deb 2 December 2014, vol 589, col 207

Capitalist Action as aliases of National Action.⁵⁵ According to the Home Office, in July 2017 the Police ‘disrupted 22 terrorist plots, seven of which were related to extreme right-wing ideologies’.⁵⁶ The MEND Manifesto 2016 for the Police and Crime Commissioner Elections argued ‘far right extremism continues to present a serious security threat to the UK although it is often underestimated in a climate where an excessive focus on al-Qaida inspired terrorism obscures the nature and scale of the threat posed by neo-Nazi groups and far right social movements’.⁵⁷

The Home Office suggests that the threat from far-right terrorism remains small, whereas the threat from Islamist terrorism remains high.⁵⁸ Yet, according to the Home Office, 44% of those who went on to receive confidential support through the Prevent Channel were referred for concerns related to far-right extremism, compared to the 45% that were referred for Islamist extremism.⁵⁹ This was also picked up by the media, with the *Independent* arguing that in 2018-19 ‘the number of suspected Islamists and far-right extremists being flagged to the Prevent programme are now equal’.⁶⁰ This shows that although the number of terrorist plots by far-right extremists that were disrupted may be fewer in number compared to Islamist extremism, nonetheless, the number of referrals is almost the same.

However, the threat from right-wing extremists did not feature in the threat level system on the MI5 website until July 2019, after which it included left-wing and right-wing terrorism. The threat is now split into two categories (a) National Threat ‘which includes

⁵⁵ Home Office News Team, ‘Fact sheet: Right-wing terrorism’ (Gov.UK, 20 September 2019) <<https://homeofficemedia.blog.gov.uk/2019/09/20/fact-sheet-right-wing-terrorism/>> accessed 08 February 2020

⁵⁶ Ibid

⁵⁷ ‘Police and Crime Commissioner Elections MEND Manifesto 2016’ (2016) MEND p21 <https://www.mend.org.uk/wp-content/uploads/2016/04/PCC_Manifesto_2016.pdf> accessed 08 February 2020

⁵⁸ Home Office News Team (n55)

⁵⁹ Ibid

⁶⁰ Lizzie Dearden, ‘Number of far-right referrals to counter-extremism programme hits record high’, *Independent* (19 December 2019), <<https://www.independent.co.uk/news/uk/home-news/far-right-extremists-programme-prevent-counter-terrorism-record-a9253016.html>> accessed 08 February 2020

Islamist, Northern Ireland, left-wing and right-wing terrorism',⁶¹ and (b) Northern Ireland-related Threat Level to Northern Ireland.⁶² This reflects the rise of right-wing terrorism, which cannot not be ignored, as demonstrated by the murder of the Labour MP Jo Cox in 2016,⁶³ the attack near Finsbury Park Mosque in 2017,⁶⁴ and the 'Punish a Muslim Day' letters that were distributed across the UK to incite attacks on Muslims in 2018.⁶⁵

In summary, the official discourse did not frame far-right extremism as the main terrorism threat, but instead argued that ideology-driven Islamist extremism was the greatest danger. Far-right extremists were considered not to have received the same training and support as Islamist extremists. The discourse did not frame their aspirations as wanting to conduct attacks on the same scale as Islamists. This is reflected by the MI5 website, which did not feature the threat from right-wing groups until July 2019, and the late proscriptions of far-right groups by the UK Government from 2016. Home Office news reports constantly produced the narrative that the threat from far-right terrorism was small, despite their own data showing that the number of far-right extremists and Islamist extremists who received support from the Prevent Channel were almost equal.⁶⁶ Thus through a Foucauldian lens, the terrorism discourse is not an accurate, objective, description of the reality of the terror threat, but rather it construes and shapes the understanding of that threat. The construct of terrorism as a Muslim problem is also visible in the US. Anna Meier argues that scholars and policymakers in the US continually locate the source of the terror threat within the Muslim community, with violence by

⁶¹ Security Service MI5 (n46)

⁶² Ibid

⁶³ Ian Cobain and Matthew Taylor, 'Far-right terrorist Thomas Mair jailed for life for Jo Cox murder', *The Guardian*, (23 November 2016) <<https://www.theguardian.com/uk-news/2016/nov/23/thomas-mair-found-guilty-of-jo-cox-murder>> accessed 06 February 2020

⁶⁴ Kevin Rawlinson, 'Darren Osborne jailed for life for Finsbury Park terrorist attack', *The Guardian*, (02 February 2018) <<https://www.theguardian.com/uk-news/2018/feb/02/finsbury-park-attack-darren-osborne-jailed>> accessed 06 February 2020

⁶⁵ Martin Belam, 'UK communities take action against 'Punish a Muslim Day' letter', *The Guardian* (3 April 2018) <<https://www.theguardian.com/uk-news/2018/apr/03/uk-communities-take-action-against-punish-a-muslim-day-letter>> accessed 24 April 2018

⁶⁶ Home Office News Team (n55)

Muslim perpetrators not only receiving 37% more media coverage than violence by non-Muslims, but also being five times more likely to be labelled as terrorism.⁶⁷

1.3 RESPONSE TO TERROR THREAT

Immediately after the 9/11 attacks, governments, including in the UK, started to overhaul their counter-terrorism legislations. Civil freedoms were reduced and rights limited for terror suspects.⁶⁸ A few examples are presented here to highlight this point. In England the controversial pre-charge detention period was increased from seven days, as set in the Terrorism Act 2000, to 14 days in 2003 by the Criminal Justice Act and then to 28 days in 2006 by the Terrorism Act. In 2011 it reverted to 14 days. There were also failed attempts to extend this limit to 90 days in 2006 and to 42 days in 2008.

The other immediate reaction of the UK Government was to rush through emergency legislation, namely the Anti-Terrorism Crime and Security Act 2001, in just over a month. Part 4 of the Act allowed for a suspected international terrorist to be deported. If deportation was not possible, then the person could be indefinitely imprisoned without charge or trial under section 23 of the Act. However, in 2004 the House of Lords found that section 23 was incompatible with Article 5 of the European Convention of Human Rights and as a result Part 4 of the Act was repealed.⁶⁹ Nevertheless, indefinite detention was replaced by equally controversial control orders and later by the Terrorism Prevention and Investigation Measures (TPIMs).

Following the 7 July terror attacks in London, the Terrorism Act 2006 was introduced, which included new offences such as inciting or encouraging terrorism, the possession of terrorist publications, and the glorification of terrorism. There was widespread concern that these offences would impact on freedom of speech, with Geoffrey Bindman arguing that it could be a 'dangerous inroad on freedom of speech, if it was used against

⁶⁷ Anna A Meier, 'Terror as Justice, Justice as Terror: Counterterrorism and Anti-Black Racism in the United States' (2022) 15 *Critical studies on terrorism* 83

⁶⁸ Mariaelisa Epifanio, 'Legislative response to international terrorism', (2011) 48 (3) *Journal of Peace Research* 399

⁶⁹ *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)*, [2004] UKHL 56, [2005] 2 W.L.R. 87

people who said it could be necessary to use violence against a repressive regime'.⁷⁰ It was argued that existing legislation was enough to convict extremists, for example 'Hamza's conviction included four charges brought under the Public Order Act 1986 of using threatening, abusive or insulting words or behaviour with the intention of stirring up racial hatred'.⁷¹

The other significant legislation of this phase is the Counter-Terrorism and Security Act 2015 (CTSA), which introduced new provisions intended to aid law enforcement in countering suspected terrorists. The dramatic appearance of ISIL in Iraq and Syria in 2014 was the immediate trigger for the CTSA, as well as concerns of homegrown terrorism.⁷² It introduced the power to seize for up to 30 days the travel documents of those suspected of travelling overseas in support of terrorism, which raised concerns of racial profiling, as argued by Christian A. Honeywood.⁷³ The 2015 Act also introduced the controversial Temporary Exclusion Order (TEO), which allows the Government to bar anyone suspected of involvement in terrorism from returning to the UK and to invalidate the British passport held by the excluded individual.⁷⁴

⁷⁰ Simon Jeffery, 'Q&A: The Glorification of Terrorism', *The Guardian* (February 15, 2006), <<https://www.theguardian.com/world/2006/feb/15/qanda.terrorism>> accessed 12 February 2020

⁷¹ Ibid

⁷² Steven Greer and Lindsey Bell, 'Counter-Terrorist Law in British Universities: A Review of the "Prevent" Debate', [2018] Public Law 84

⁷³ Christian A. Honeywood, 'Britain's Approach to Balancing Counter-Terrorism Laws with Human Rights', (2016) 9 *Journal of Strategic Security* 24. According to the Equality and Human Rights Commission a black person is 'at least six times as likely to be stopped and searched by the police in England and Wales as a white person' and an Asian is around twice as likely to be stopped and searched as a white person'. The report also argues that 'evidence points to racial discrimination being a significant reason why black and Asian people are more likely to be stopped and searched than white people': See: Equality and Human Rights Commission, 'Stop and think A critical review of the use of stop and search powers in England and Wales', (March 2010) p5

<https://www.equalityhumanrights.com/sites/default/files/ehrc_stop_and_search_report.pdf> accessed 12 February 2020

⁷⁴ Counter-Terrorism and Security Act 2015, s2

1.3.1 PREVENT DUTY

The other contentious measure introduced by the CTSA 2015, which is the focus of this research project, is the Prevent duty. Section 26 of the CTSA 2015 establishes the statutory Prevent duty, which applies to specified authorities including universities:

A specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism.⁷⁵

The foundations of Prevent can be traced back to the Government's counter-terrorism strategy, known as CONTEST, that was developed in early 2003.⁷⁶ The CONTEST Strategy is divided into four strands: Pursue, Prevent, Protect and Prepare, which were designed 'to reduce the risk to the UK and ... interests overseas from terrorism, so that people can go about their lives freely and with confidence'.⁷⁷ It was argued that Prevent was the most important strand in the CONTEST strategy, as it aimed to 'strike at the taproot of extremism'.⁷⁸

The Prevent strand required cooperation between many organisations and it was argued that this co-operation was not consistent throughout Great Britain. Therefore, legislating and putting Prevent on a statutory footing would have the effect of making its delivery 'a legal requirement for specified authorities and improve the standard of work on the Prevent programme across Great Britain'.⁷⁹ In 2015, with the passing of the CTSA, Prevent became a legal duty with the purpose 'to stop people becoming terrorists or supporting terrorism'.⁸⁰

⁷⁵ Ibid, s26

⁷⁶ House of Commons Home Affairs Committee, *Project CONTEST: The Government's Counter-Terrorism Strategy*, (Ninth Report of Session 2008–09, HC 212) p4

<<https://publications.parliament.uk/pa/cm200809/cmselect/cmhaff/212/212.pdf>> accessed 11 February 2020

⁷⁷ HM Government (n49) p6

⁷⁸ House of Commons Home Affairs Committee (n76) p10

⁷⁹ Explanatory Notes, Part 5, Summary and Background, Counter-Terrorism and Security Act 2015, para 176 <<http://www.legislation.gov.uk/ukpga/2015/6/notes/division/9/1>> accessed 04 September 2018

⁸⁰ Ibid, para 175

Due to concerns that this new Duty would impact freedom of speech, especially for universities, Section 31 (2) of the CTSA 2015 was added:

When carrying out the duty imposed by section 26(1), a specified authority to which this section applies—

(a) must have particular regard to the duty to ensure freedom of speech, if it is subject to that duty;

(b) must have particular regard to the importance of academic freedom, if it is the proprietor or governing body of a qualifying institution.

Section 29 of the CTSA 2015 places a third duty on specified authorities, including universities, to give ‘regard’ to any guidance from the Secretary of State:

(1) The Secretary of State may issue guidance to specified authorities about the exercise of their duty under section 26(1).

(2) A specified authority must have regard to any such guidance in carrying out that duty.

The above sections of the legislation show that there are three duties on universities, which in order of importance are as follows: (a) to have ‘particular regard’ to freedom of speech and academic freedom; (b) to have ‘due regard’ to preventing students being drawn into terrorism; (c) to have ‘regard’ to any guidance from the Secretary of State concerning the implementation of Prevent, which is commonly referred to as the ‘statutory guidance’.

The wording of the CTSA 2015 seems to suggest that these are three distinct duties; however, according to the Higher Education Funding Council for England (HEFCE), which was the first appointed body to monitor the implementation of the Prevent duty in universities⁸¹ prior to Office for Students (OfS),⁸² universities need to have ‘regard’ to

⁸¹ HEFCE, ‘Implementation of the Prevent Duty in the Higher Education Sector in England: 2015-16’, January 2017/01, p2 <<https://files.eric.ed.gov/fulltext/ED574192.pdf>> accessed 28 September 2021

⁸² OfS, ‘Monitoring of the Prevent duty 2016-17 progress report and future development’, OfS 2018.27, Published 11 July 2018, p3 <https://www.officeforstudents.org.uk/media/160fe2df-d737-419c-8071-19fa2dab0ee4/ofs2018_27.pdf> accessed 02 April 2023

the guidance issued by the Secretary of State in order to fulfil the 'due regard' duty of preventing students being drawn into terrorism. The HEFCE report in 2017 stated:

To demonstrate 'due regard' to the duty, higher education providers need to:

- have robust and appropriate policies and processes in place, responding to the Prevent duty statutory guidance
- show that they are actively implementing and following these policies in practice.⁸³

Thus, it seems that those implementing and monitoring the Prevent duty may not be drawing a distinction between the 'due regard' and 'regard' duties in practice. As such, the HEFCE report states that '[e]very provider has submitted detailed evidence which HEFCE has assessed against the requirements of the statutory guidance'.⁸⁴ Its successor, OfS, uses the same approach, as it asserts:

The Prevent statutory guidance will continue to provide the foundations for the OfS's approach to monitoring implementation of the duty, and therefore our expectations on how providers will need to demonstrate due regard to the duty will not differ from the previous expectations under HEFCE.⁸⁵

Under the Guidance issued by the Secretary of State, institutions are expected to take measures in eight areas: External speakers and events; Partnerships; Risk assessment; Action plans; Staff training; Welfare and pastoral care/chaplaincy support; IT policies; Student unions and societies.⁸⁶ This project only focuses on implementation of Prevent

⁸³ HEFCE (n81) p2

⁸⁴ Ibid

⁸⁵ OfS, 'Prevent duty: Framework for monitoring in higher education in England 2018-19 Onwards', OfS 2018.35, <<https://www.officeforstudents.org.uk/media/3e9aa5d3-21de-4b24-ac21-18de19b041dc/prevent-duty-framework-for-monitoring-in-higher-education-in-england-2018-19-onwards-updated-22-january-2019.pdf>> accessed 12 August 2021

⁸⁶ HM Government, 'Prevent Duty Guidance: For Higher Education Institutions in England and Wales', Home Office, March 2015, <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 19 July 2017

in the area of external speakers and events. Assessing the implementation of all eight areas would be beyond the scope of a PhD project.

1.4 UNIVERSITIES – THE BREEDING GROUNDS

The Duty applies to specified authorities, which include universities, because the Government held the view that universities were places where radicalisation⁸⁷ happened. The CONTEST Strategy 2011 points out:

Some students were already committed to terrorism before they arrived at university; others were radicalised when they were there but by people operating outside the university itself; a third group have been attracted to and engaged in extremist activity at university and have then gone on to commit acts of terrorism after they have left.⁸⁸

The same point was reinforced by the Government even after Prevent became a legal duty. The Prevent Duty Guidance states that ‘some students may arrive at RHEBs already committed to terrorism; others may become radicalised whilst attending a RHEB due to activity on campus; others may be radicalised whilst they are at a RHEB but because of activities which mainly take place off campus’.⁸⁹ According to Matthew Reisz, MI5 identified 39 universities as being ‘vulnerable to violent extremism’ prior to 2011.⁹⁰ Various debates in the House of Commons and Lords suggest that a number of MPs and Lords reckoned that the activity of ‘terrorist radicalisers and recruiters’ in student societies had led to acts of terrorism.⁹¹ The finger seems to be pointed directly at

⁸⁷ Radicalisation according to the Government is ‘the process by which a person comes to support terrorism and extremist ideologies associated with terrorist groups’. See: HM Government, ‘Revised Prevent duty guidance: for England and Wales’ <<https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales>> accessed 08 August 2021

⁸⁸ HM Government, (n49) s5.63

⁸⁹ H.M. Government, (n86) para 2

⁹⁰ Matthew Reisz, ‘Contravene or intervene?’, Times Higher Education, 6 January 2011, <<https://www.timeshighereducation.com/features/contravene-or-intervene/414746.article>> accessed 30 September 2016

⁹¹ For instance, in the House of Commons, MP Ben Wallace argued: ‘We know that there are and have been terrorist radicalisers and recruiters, and terrorists active on campus, who have recruited young men and women into terrorism. We know that from some convictions. I can give an example of

external speakers in the 2011 Prevent Strategy, which argues that extremist preachers and groups like Hizb ut-Tahrir and al-Muhajiroun specifically target universities and colleges, especially those that have a high number of Muslim students, with the objective to radicalise and recruit.⁹² The Strategy states that '[t]here is evidence to suggest that some people associated with some Islamic student societies have facilitated this activity and that it has largely gone unchallenged'.⁹³

Not only has it been argued that extremist preachers were the cause of radicalisation, but it has also been claimed that universities were failing to prevent radicalisation. The Extremism Taskforce, which was set up by the Government in 2013, argued that reticence and failure to confront extremists and their ideologies in the past has led to 'an environment conducive to radicalisation in some mosques and Islamic centres, universities and prisons'.⁹⁴ The same argument was advanced by Lord Carlile, when writing his report on the independent oversight of the Prevent strategy, who argued that universities were at fault for being too 'slow or even reluctant to recognise their full responsibilities'.⁹⁵ He posited that '[t]here is unambiguous evidence to indicate that

someone who was head of Society X; one is currently serving time in prison for a terrorist plot to kill police and soldiers. He was head of one society at the university and engaged busily in more than just espousing his beliefs, so we know that it is a recruiting ground'. MP Ben Wallace, Joint Committee on Human Rights Oral evidence: Freedom of speech in universities, HC 589, Wednesday 7 February 2018, <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/freedom-of-speech-in-universities/oral/78267.html>> accessed 19 February 2020; In the House of Lords, Baroness Deech argued, 'Jihadi John was a university graduate; Michael Adebolajo—Lee Rigby's murderer—was at the University of Greenwich; the underpants bomber, Abdulmutallab, was at UCL. There are numerous other examples of killers who were radicalised at university right here'. HC Deb 25 January 2017, vol 778, col 757

⁹² HM Government, (n47) para 10.66

⁹³ Ibid, para 10.67

⁹⁴ HM Government, 'Tackling extremism in the UK - Report from the Prime Minister's Task Force on Tackling Radicalisation and Extremism' (December 2013) para 1.5 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263181/ETF_FINAL.pdf> accessed 01 October 2016

⁹⁵ Lord Carlile, 'Report to the Home Secretary of Independent Oversight of Prevent Review and Strategy' (May 2011) para 51 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97977/lord-carlile-report.pdf> accessed 02 October 2016

extremist organisations have been active, and successful, in extremist and radicalising activity in British universities'.⁹⁶

The above narrative sets the background to the Prevent duty. The words of Lord Bates in the House of Lords debate leading up to the CTSA 2015 summarised that Prevent aimed to prevent radicalisation at universities – 'Prevent duty is designed to apply to sectors which can most effectively protect vulnerable people from radicalisation. There is no doubt that higher and further education is one of them'.⁹⁷ Therefore, Section 26 of the CTSA 2015 was drafted in an attempt to tackle perceived radicalisation on campuses and in other specified authorities.

1.4.1 EVIDENCE BASE FOR THIS NARRATIVE

There are many news reports that seem to support the Government's case. For example, Umar Farouk Abdulmutallab, a 25-year-old former engineering student at University College London and president of the university Islamic society⁹⁸, who pleaded guilty to attempting to blow up a commercial plane for al-Qaeda on 25 December 2009.⁹⁹ Likewise, there are a number of controversial reports from sources that Government policy makers used to shape their policy. For example, a report from the CSC published in 2010 argues that 'for many years it has been clear that British university campuses are breeding grounds of Islamic extremism',¹⁰⁰ and that students actively involved in Islamic societies were twice as likely to hold extremist views compared to others.¹⁰¹ The report mostly provides a list of 'extremist' speakers who have addressed audiences at universities, whilst arguing that the university authorities had full prior knowledge of

⁹⁶ Ibid

⁹⁷ Lord Bates, 'Counter-Terrorism and Security Bill', HL Deb 28 January 2015, vol 759, col 253

⁹⁸ David Barret, Patrick Sawyer and Sean Rayment, 'Revealed: the true extent of Islamic radical influence at UCL', *The Telegraph* (03 Jan 2010) <<http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/6924618/Revealed-the-true-extent-of-Islamic-radical-influence-at-UCL.html>> accessed 30 September 2016

⁹⁹ BBC News, 'Underwear bomber Abdulmutallab sentenced to life' (16 February 2012) <<http://www.bbc.co.uk/news/world-us-canada-17065130>> accessed 30 September 2016

¹⁰⁰ The Centre for Social Cohesion, 'Radical Islam on UK Campuses - A Comprehensive List of Extremist Speakers at UK Universities' (April 2010) <<https://henryjacksonsociety.org/wp-content/uploads/2013/01/RADICAL-ISLAM-ON-CMAPUS.pdf>> accessed 30 September 2016

¹⁰¹ Ibid

their presence on campus. There is clear evidence that the Government relied upon CSC reporting in drafting their responses and strategies.¹⁰² For example, when trying to make the point that radicalisation happens on university campuses, the CONTEST Strategy 2011 quoted figures from a CSC report titled 'Islamist Terrorism: The British Connections'.¹⁰³

Quilliam is another thinktank that argued that 'Islamic radicalisation on university campuses is not new'.¹⁰⁴ Lucy James, from Quilliam, argued:

Things are getting worse and universities have done little or nothing. They seem disinclined to acknowledge the problem, because it's complex, and feel the need to cherish freedom of speech. If you try to bring the issue up, you get Milton quoted at you. People don't see the danger of non-violent Islamism. Yet as well as possibly leading to terrorism, it is also very bad for cohesion on campuses.¹⁰⁵

Likewise, Student Rights, which is a project of HJS, published reports examining advertised events on social media with speakers it argued had extremist views. In its 2015 report, it claimed to have logged 400 advertised events in the three calendar years

¹⁰² Catherine McGlynn and Shaun McDaid, *Radicalisation and Counter-Radicalisation in Higher Education* (Emerald Publishing 2019) p62

¹⁰³ The CONTEST Strategy 2011 report mentions: 'More than 30% of people convicted of Al Qa'ida associated terrorist offences in the UK between 1999 and 2009 are known to have attended university or a higher education institution. Another 15% studied or achieved a vocational or further education qualification. About 10% of the sample were students at the time when they were charged or the incident took place'. See: HM Government, (n49) s5.63; See also: Robin Simcox, Hanna Stuart, Houriya Ahmed and Douglas Murray 'Islamist Terrorism The British Connections', Henry Jackson Society (2011) <<https://henryjacksonsociety.org/wp-content/uploads/2011/07/Islamist+Terrorism+2011+Preview-1.pdf>> accessed 16 February 2020

¹⁰⁴ Quilliam Foundation, 'Briefing Paper Radicalisation on British University Campuses: a case study', Quilliam Foundation (October 2010) p2

¹⁰⁵ Matthew Reisz, 'Contravene or intervene?', *Times Higher Education* (6 January 2011) <<https://www.timeshighereducation.com/features/contravene-or-intervene/414746.article>> accessed 30 September 2016

between 2012 and 2014.¹⁰⁶ The paper named the top five universities with the most advertised events over the three years, which were the following: University of Westminster, Queen Mary University London, Kingston University, King's College London, and Aston University.¹⁰⁷ The influence of organisations such as Student Rights on government policy, became apparent when the Government in 2015 publicly named the same universities for having hosted 'speakers voicing views that are contrary to British values'.¹⁰⁸ The Downing Street press release titled 'PM's Extremism Taskforce: tackling extremism in universities and colleges top of the agenda', stated that:

In 2014 there were at least 70 events involving speakers who are known to have promoted rhetoric that aimed to undermine core British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs, held on university campuses. Queen Mary, King's College, SOAS and Kingston University held most events. Events included the hosting of 6 speakers that are on record as expressing views contrary to British values, including Haitham Al-Haddad, Dr Uthman Lateef, Alomgir Ali, Imran Ibn Mansur (aka 'Dawah Man'), Hamza Tzortis and Dr Salman Butt.¹⁰⁹

The influence of groups such as the HJS upon government policies is recognised by students and experts. According to a report prepared by Perfect in partnership with the Centre of Islamic Studies SOAS, which records a consultation with 33 participants from the higher education sector, one of the participants argued 'the Government is not the only party involved in making these decisions, "campaigning groups" often have a major

¹⁰⁶ Rupert Sutton, 'Preventing Prevent? Challenges to Counter-Radicalisation Policy on Campus', The Henry Jackson Society (July 2015) p17 <http://henryjacksonsociety.org/wp-content/uploads/2015/10/Preventing-Prevent_webversion3.pdf> accessed 28 September 2021

¹⁰⁷ Ibid

¹⁰⁸ David Matthews, 'Government names universities hosting extremist speakers', *Times Higher Education* (September 17 2015) <<https://www.timeshighereducation.com/news/government-names-universities-hosting-extremist-speakers>> accessed 11 September 2018

¹⁰⁹ HM Government, 'Press release: PM's Extremism Taskforce: tackling extremism in universities and colleges top of the agenda' (17 September 2015) <<https://www.gov.uk/government/news/pms-extremism-taskforce-tackling-extremism-in-universities-and-colleges-top-of-the-agenda>> accessed 16 August 2017

influence over who Government (or the media) considers to be extreme'.¹¹⁰ Likewise, Alison Scott-Baumann argues 'if you wish to know whether personal data are being collected about you by the government, you have to request that information from the Home Office and, if you wish, from the Henry Jackson Society'.¹¹¹

Not only did Student Rights criticise universities for allowing speakers it counted as extreme prior to Prevent being placed on a statutory footing, but it also continues to level the same criticism after the CTSA 2015. For example, it reports to have documented 30 events that hosted speakers it claims are extremist between 21 September 2015 and 31 January 2016, a duration of just over four months.¹¹² It claims that 'all but three are believed to have gone ahead as planned, and only six appear to have attempted to provide any kind of balance'.¹¹³ However, the universities that were named in the Downing Street press release denied the claims.¹¹⁴

1.4.1.1 RELIABILITY OF THE EVIDENCE BASE

It must be remembered that the results and methodology of Student Rights and CSC have faced much criticism. Student Rights has been under scrutiny since as early as 2013, when Hilary Aked argued that its study regarding campus extremism was 'dishonest

¹¹⁰ Simon Perfect, 'Freedom of Speech in Universities - Monday 31 October – Tuesday 1 November 2016 Report', [2017] College of St George in partnership with Centre of Islamic Studies SOAS, <<https://www.stgeorghouse.org/wp-content/uploads/2017/03/Freedom-of-Speech-in-Universities-Report.pdf>> accessed 22 March 2020

¹¹¹ Alison Scott-Baumann, 'Ideology, Utopia and Islam on Campus: How to Free Speech a Little From its Own Terrors', (2017) 12 (2) Education, Citizenship and Social Justice 159

¹¹² Student Rights, 'Extreme or Intolerant Speakers on London Campuses between September 2015 and January 2016' [2016] The Henry Jackson Society p2 <[http://studentrights.org.uk/userfiles/files/Extreme%20or%20Intolerant%20Speakers%20in%20London%20FINAL\(1\).pdf](http://studentrights.org.uk/userfiles/files/Extreme%20or%20Intolerant%20Speakers%20in%20London%20FINAL(1).pdf)> accessed 30 December 2016

¹¹³ Ibid

¹¹⁴ Sarah Cassidy and Jonathan Owen, 'Soas hits back at David Cameron's accusations that it played host to "hate preachers"', *The Independent* (17 September 2015), <<http://www.independent.co.uk/news/education/education-news/soas-hits-back-at-david-camerons-accusations-that-it-played-host-to-hate-preachers-10506676.html>> accessed 16 August 2017

pseudo-science in support of a toxic narrative'.¹¹⁵ The events logged in most studies done by Student Rights are selected events from open source media, which does not provide a complete picture of campus events and the sample is biased from the start.¹¹⁶ Perfect and Scott-Baumann argue that the highly selective process has 'an almost total focus on Muslim speakers'.¹¹⁷ Student Rights tends to draft a list of events that are advertised on social media and have a speaker they deem to be 'extremist'. Yet, the reports do not document whether those extreme views were actually mentioned in those events. Moreover, they have been discredited for 'labelling of speakers as extreme by virtue of their associations, rather than based on evidence of their own remarks'.¹¹⁸ Further still, there is no consideration of whether or not the 'extremism' identified could draw students into terrorism, which is at the centre of the Prevent duty.¹¹⁹ Thus, the reliability of claims in reports from HJS have been a long-standing concern for academics and Muslim organisations. For example, after accusing Huda Television Ltd of 'regularly publish[ing] content containing Islamist extremist subject matter', HJS had to retract its statements, apologise and pay libel damages to the channel.¹²⁰

¹¹⁵ Hilary Aked, 'Student Rights "Campus Extremism" Study: Dishonest Pseudo-Science in Support Of a Toxic Narrative', *Huffington Post* (15 May 2013) <https://www.huffingtonpost.co.uk/hilary-aked/student-rights-campus-extremism-study_b_3277503.html> accessed 11 September 2018

¹¹⁶ Ibid

¹¹⁷ Simon Perfect and Alison Scott-Baumann, 'A critical analysis of the Henry Jackson Society's report Extreme Speakers and Events: In the 2017/18 Academic Year', (SOAS, 2019) <<https://blogs.soas.ac.uk/cop/wp-content/uploads/2020/05/A-critical-analysis-of-the-Henry-Jackson-Society%E2%80%99s-report-Extreme-Speakers-and-Events.pdf>> accessed 27 July 2021

¹¹⁸ Ibid

¹¹⁹ Ibid

¹²⁰ Press association, 'Henry Jackson Society pays libel damages to Muslim TV channel over false extremism claims', *Press Gazette* (September 14 2020) <<https://www.pressgazette.co.uk/henry-jackson-society-think-tank-pays-out-libel-damages-to-muslim-tv-channel-over-false-extremism-claims/>> accessed 26 July 2021. The HJS report was penned by Emma Webb, 'Extremism on the Airwaves: Islamist Broadcasting in the UK', [2018] Henry Jackson Society, <<https://web.archive.org/web/20181124165249/https://henryjacksonsociety.org/wp-content/uploads/2018/11/HJS-Extremism-on-the-Airwaves-Report-web.pdf>> accessed 26 July 2021. The apology is found here: <<https://henryjacksonsociety.org/errataandcorrigenda/>> accessed 26 July 2021

Moreover, Student Rights is not comprised of students, but is an HJS project, and has attracted controversy with key staff criticised for holding views and making comments that are anti-Muslim and anti-immigrant.¹²¹ Tom Griffin *et al.*, for example, have described HJS as the ‘leading exponent of neoconservatism in the UK today grounded in a transatlantic tradition deeply influenced by Islamophobia’.¹²² In 2011, HJS merged with the anti-Muslim thinktank the CSC.¹²³ Key members of CSC and HJS have espoused views that themselves could be regarded as extreme. Douglas Murray, for example, the director of the CSC and previous Associate Director of the HJS, argued in a speech delivered at the Pim Fortuyn Memorial Conference on Europe and Islam in the Netherlands, ‘Conditions for Muslims in Europe must be made harder across the board: Europe must look like a less attractive proposition’.¹²⁴ Murray also wrote in a column for *Standpoint* that London had ‘become a foreign country’, since white Britons were a minority in 23 of 33 London boroughs.¹²⁵ In 2012, William Shawcross, the then director

¹²¹ Randeep Ramesh, Social Affairs Editor, ‘Rightwing thinktank pulls funds for Commons groups after disclosure row’, *The Guardian* (30 December 2014)

<<https://www.theguardian.com/politics/2014/dec/30/rightwing-thinktank-pulls-funds-commons-groups-disclosure-rules>> accessed 11 September 2018

¹²² Tom Griffin, Hilary Aked, David Miller and Sarah Marusek, ‘The Henry Jackson Society and the degeneration of British neoconservatism: Liberal interventionism, Islamophobia and the ‘War on Terror’’ [2015] Public Interest Investigations, Glasgow.

<https://purehost.bath.ac.uk/ws/portalfiles/portal/167838132/Griffin_et_al_Henry_Jackson_Society_sp_inwatch_report_web.pdf> accessed 02 April 2023

¹²³ Centre for Social Cohesion (Facebook, 13 April 2011)

<https://www.facebook.com/permalink.php?story_fbid=204239972932201&id=318346097177> accessed 26 July 2021

¹²⁴ Douglas Murray, ‘What are we to do about Islam?’ A speech to the Pim Fortuyn Memorial Conference on Europe and Islam, Social Affairs Unit, 3 March 2006. Accessed via the Internet Archive at: <<http://web.archive.org/web/20080201133647/http://www.socialaffairsunit.org.uk/blog/archives/000809.php>> accessed 26 July 2021. For a fuller critique of CSC, see: Tom Mills, Tom Griffin and David Miller, ‘The Cold War on British Muslims: An examination of Policy Exchange and the Centre for Social Cohesion’ [2011] Public Interest Investigations, Glasgow.

<https://purehost.bath.ac.uk/ws/portalfiles/portal/232268/SpinwatchReport_ColdWar.pdf> accessed 26 July 2021

¹²⁵ Douglas Murry, ‘Census That Revealed a Troubling Future’, *Standpoint* (March 2013),

<<http://standpointmag.co.uk/node/4868/full>> accessed 11 September 2018

of HJS, said 'Europe and Islam is one of the greatest, most terrifying problems of our future. I think all European countries have vastly, very quickly growing Islamic population'.¹²⁶ A former senior member of the HJS, Marko Attila Hoare, left the organisation in 2012, reporting that 'his opposition to Murray's anti-Muslim and anti-immigration views saw him driven out of the organisation'.¹²⁷ Likewise, Matthew Jameson, one of the founding directors of HJS, asserted on leaving the organisation that it had 'become a far-right, deeply anti-Muslim racist organisation, run in the most dictatorial, corrupt and undemocratic fashion and utilized as a propaganda outfit to smear other cultures, religions and ethnic groups'.¹²⁸ Thus, its motive and purpose are questionable and its claims should be approached with caution and raise the concern of researcher bias when analysing extremism amongst Muslim students.

Quilliam has also been known to lobby the Government concerning extremism. It was criticised in 2010 for preparing a secret list for a top British security official which accused 'peaceful Muslim groups, politicians, a television channel and a Scotland Yard unit of sharing the ideology of terrorists'.¹²⁹ The Labour MP Keith Vaz spoke out, saying 'I think it's very dangerous to be drawing up lists of this kind. I am concerned and will be writing to the home secretary to ask if the government requested this list, what is the status of this list, and why it is being considered in this way'.¹³⁰

¹²⁶ Randeep Ramesh, 'Quarter of Charity Commission inquiries target Muslim groups', *The Guardian* (16 November 2014), <<https://www.theguardian.com/society/2014/nov/16/charity-commission-inquiries-muslim-groups>> accessed 11 September 2018

¹²⁷ James Bloodworth, 'Labour should cut its ties with the illiberal Henry Jackson Society', *The Guardian* (20 May 2013), <https://www.theguardian.com/commentisfree/2013/may/20/labour-cut-ties-henry-jackson-society> accessed 11 September 2018

¹²⁸ Matthew Jameson, 'Brendan Simms and the racist corrupt Henry Jackson Society', (18 February 2017) available online at: <https://www.linkedin.com/pulse/brendan-simms-racist-corrupt-henry-jackson-society-matthew/> accessed 26 July 2021

¹²⁹ Vikram Dodd, 'List sent to terror chief aligns peaceful Muslim groups with terrorist ideology', *The Guardian* (4 August 2010) <https://www.theguardian.com/uk/2010/aug/04/quilliam-foundation-list-alleged-extremism> accessed 12 September 2018

¹³⁰ Ibid

1.4.2 IS THERE AN ALTERNATIVE NARRATIVE?

The criticism levelled by academics at the organisations mentioned above seems to suggest that their narrative might be biased and may not paint a true picture of what happens on campus. Furthermore, the denial of the universities that were mentioned in the Student Rights report and subsequently in the Downing Street press release, may be an indication that there is another narrative very distinct from the picture painted by Student Rights, CSC and Quilliam. It could be argued that being a university student and committing an act of terrorism shows simultaneity rather than causation. Furthermore, essential empirical evidence is missing to suggest that the terrorism committed by those students was a result of influence from activity on campuses. For example, the central conclusion of an independent review panel headed by Dame Fiona Caldicott into Abdulmutallab's time at UCL was that 'there was no evidence to suggest either that Umar Farouk Abdulmutallab was radicalised while a student at UCL, or that conditions at UCL during that time or subsequently were conducive to the radicalisation of students'.¹³¹

Nonetheless, even after the introduction of statutory Prevent duty, Student Rights continues to argue that universities are allowing speakers with extreme views on campus.¹³² This is despite Prevent monitoring bodies finding high levels of university compliance with the Prevent duty. In early 2017, HEFCE found that 'the vast majority of providers (93%) demonstrated that robust processes were in place which met the requirements of the guidance'.¹³³ The report suggested that universities clearly understood their responsibilities and took pragmatic steps to balance freedom of speech with the requirements of the Prevent duty.¹³⁴ In late 2017, HEFCE published a second report, which pointed out that 95% (298 providers) were able to satisfy HEFCE

¹³¹ UCL News, 'UCL's response to Abdulmutallab review report', (08 October 2010) <<https://www.ucl.ac.uk/news/2010/oct/ucls-response-abdulmutallab-review-report>> accessed 06 February 2020

¹³² Richard Black, 'Extreme Speakers and Events: In the 2016-17 Academic Year', The Henry Jackson Society (September 2017) p4 <<http://henryjacksonsociety.org/wp-content/uploads/2017/09/Extreme-Speakers-and-Events-in-the-2016-17-Academic-Year-Final-1.pdf>> accessed 28 September 2021

¹³³ Ibid; HEFCE, 'Implementation of the Prevent Duty in the Higher Education Sector in England:2015-16' (January 2017/01) para 32 <<https://files.eric.ed.gov/fulltext/ED574192.pdf>> accessed 10 April 2023

¹³⁴ Ibid

that they were demonstrating due regard to the Prevent duty.¹³⁵ Crucially, it argued that none of the providers failed in demonstrating due regard to the Duty.¹³⁶ In the 2016-2017 annual report assessment exercise, OfS (which replaced HEFCE in April 2018 as the monitoring body) found that 97% of providers were able to demonstrate that they were fulfilling their duty to have due regard to the Prevent duty.¹³⁷ The report highlighted:

[W]e currently see no cause, in the information being reported to us, for concern that the sector or individual providers are not balancing their freedom of speech responsibilities with the Prevent duty, or indeed other legislation such as health and safety.¹³⁸

Thus, reports, both from HEFCE and OfS, demonstrate that universities are complying with the Prevent duty and are not only showing 'due regard' to Prevent, but are also appropriately balancing it with the 'particular regard' duty to freedom of speech.

However, Student Rights seems critical of the findings of HEFCE, as it argues that the findings of compliance by HEFCE only 'confirm that higher education institutions have in place the appropriate mechanisms to comply with their legal duties. However, they fail to demonstrate whether these procedures are effectively enforced'.¹³⁹ This shows that the narrative provided by Student Rights is in stark contrast with the narrative presented by HEFCE and OfS. This project will attempt to explore and explain this differing narrative

¹³⁵ HEFCE, 'Analysis of Prevent annual reports from higher education providers for activity in 2015-16', August 2017/11, p3

¹³⁶ Ibid

¹³⁷ OfS, 'Monitoring of the Prevent duty 2016-17 progress report and future development', OfS 2018.27, Published 11 July 2018, p10 <https://www.officeforstudents.org.uk/media/160fe2df-d737-419c-8071-19fa2dab0ee4/ofs2018_27.pdf> accessed 28 September 2021; Also see: OfS, 'Prevent Review Meetings Findings from the 2019 programme', OfS 2020.09, Published 6 February 2020 <<https://www.officeforstudents.org.uk/media/dab85cfd-3648-4ca7-a21d-61ac4bb2699a/prevent-review-meetings-findings-from-2019-programme.pdf>> accessed 28 September 2021

¹³⁸ OfS (n137) para 44

¹³⁹ Emma Fox, 'Profiting From Prejudice: How mend's 'IAM' campaign Legitimised Extremism', The Henry Jackson Society (March 2018) <<http://henryjacksonsociety.org/wp-content/uploads/2018/03/HJS-Profiting-from-Prejudice-Report.pdf>> accessed 09 February 2020

as one of its research questions, using empirical data gathered through semi-structured interviews and content analysis of university policies.

It may be argued that since Student Rights, CSC and Quilliam have been heavily criticised and their research methods discredited by academics, their narrative is not worthy of being explored as a credible alternative to the HEFCE and OfS narrative. However, this project seeks to explore it because this narrative was adopted by the Government and it formed the evidence base for the need of the statutory Prevent duty. The influence of organisations such as Student Rights continues to exist, even after the statutory Prevent duty, in key debates surrounding universities. For example, in 2017, Baroness Deech supported the narrative of Student Rights in the House of Lords and argued:

[A]lthough the Prevent duty guidance requires such speech that we disapprove of to be balanced, this is not happening. Speakers are turning up and giving speeches to audiences that are not allowed to challenge them. At best, they can only write down their questions. There are tens of such visiting speakers every year—*there are organisations that keep tabs*.¹⁴⁰ (Emphasis added)

1.5 CONCERNS REGARDING COUNTER-TERRORISM LEGISLATION

Counter-terrorism legislation in general and the Prevent duty specifically has been the focus of significant academic criticism and debate. The following sections will first assess the concerns regarding counter-terrorism laws in general and then concerns regarding the Prevent duty more specifically.

1.5.1 GENERAL COUNTER-TERRORISM LAWS

The litany of anti-terror legislation has been criticised by human rights commentators as being draconian, ill-balanced, wide-reaching and possessing the capability to encroach

¹⁴⁰ Baroness Deech, Higher Education and Reform Bill, HL Deb 25 January 2017, vol 778, col 757. It has been reported that in 2018 Henry Jackson Society had a ‘staffer’ who worked in the Home Secretary’s office and it received £83,452.32 from the Home Office, during 2015-17, for reports on connections between the UK and Islamist terrorism. See: Mark Curtis and Matt Kennard, ‘Revealed: UK Home Office paid £80,000 to a lobby group which has funded Conservative MPs’, *Open Democracy* (14 July 2020) <<https://www.opendemocracy.net/en/opendemocracyuk/revealed-uk-home-office-paid-80000-to-a-lobby-group-which-has-funded-conservative-mps/>> accessed 15 August 2021

on essential liberties and freedoms.¹⁴¹ There is a plethora of legislation¹⁴² that came into existence in the three phases outlined in section 1.1 of this chapter, which shows that the response from the Government to the terror threat has mainly been to rush in new legislation after an atrocity takes place. However, this approach has not been free from criticism. Max Hill QC, the Independent Reviewer of Terrorism Legislation, has argued that ‘terrorism legislation in the UK, to date, has been generated often in reaction to major events and in haste’.¹⁴³ The first Prevention of Terrorism (Temporary Provisions) Act 1974 was rushed through parliament in 48 hours, shortly after the two pub bombings in Birmingham. Likewise, the UK Government reacted rapidly to 9/11, by introducing the Anti-Terrorism, Crime and Security Act 2001 into the statute books within three months.¹⁴⁴ The Prevention of Terrorism Act 2005 was introduced in the House of Commons on 22 February 2005 and received Royal Assent on 11 March 2005. The Counter-Terrorism and Security Bill 2015 was first introduced on 26 November 2014 and the UK Government requested that the bill be fast tracked into legislation, because the Independent Joint Terrorism Analysis Centre raised the UK national terrorist threat level from ‘Substantial’ to ‘Severe’.¹⁴⁵ Moreover, it was argued that ‘at least 500 British

¹⁴¹ Christian A. Honeywood, ‘Britain’s Approach to Balancing Counter-Terrorism Laws with Human Rights’, (2016) 9 *Journal of Strategic Security* 24

¹⁴² *Pre-9/11*: Prevention of Terrorism (Temporary Provisions) Act 1974; Prevention of Terrorism (Temporary Provisions) Act 1976; Suppression of Terrorism Act 1978; Prevention of Terrorism (Temporary Provisions) Act 1989 (repealed); Reinsurance (Acts of Terrorism) Act 1993; Prevention of Terrorism (Additional Powers) Act 1996 (repealed); Criminal Justice (Terrorism and Conspiracy) Act 1998; Terrorism Act 2000. *Post 9/11*: Anti-terrorism, Crime and Security Act 2001; Prevention of Terrorism Act 2005 (repealed); Terrorism (Northern Ireland) Act 2006; Terrorism Act 2006; Counter-Terrorism Act 2008; Terrorist Asset-Freezing etc. Act 2010; Terrorism Prevention and Investigation Measures Act 2011; Counter-Terrorism and Security Act 2015. *Post December 2016*: Counter-Terrorism and Border Security Act 2019; Terrorist Offenders (Restriction of Early Release) Act 2020; Counter-Terrorism and Sentencing Act 2021.

¹⁴³ Max Hill Qc Independent Reviewer of Terrorism Legislation, ‘The Tom Sargent Memorial Lecture for JUSTICE 24th October 2017’, <<https://terrorismlegislationreviewer.independent.gov.uk/tom-sargent-memorial-lecture-for-justice-24th-october-2017/>> accessed 04 September 2018

¹⁴⁴ Ben Brandon, ‘Terrorism, human rights and the rule of law: 120 years of the UK’s legal response to terrorism’, [2004] *Criminal Law Review* 981

¹⁴⁵ Counter-Terrorism and Security Bill, Explanatory Notes, House of Lords Bill 75, <<https://publications.parliament.uk/pa/bills/lbill/2014-2015/0075/en/15075en.htm>> accessed 26 April

citizens have travelled to Syria and Iraq, many of whom have joined terrorist groups such as ISIL, and many others have travelled from other countries in Europe and further afield'.¹⁴⁶ Just over two months later, the bill received Royal Assent on 12 February 2015.

Professor Brice Dickson highlighted five problems with legislation that is passed in emergency. Firstly, since the time to debate in the two Houses of Parliament is reduced, it leads to provisions that may 'turn out to be inappropriate'.¹⁴⁷ Secondly, it reduces the time for interested people outside of Parliament to consider the content of the Bill, and thus 'valuable points that they may have been able to make may go unheard'.¹⁴⁸ Thirdly, provisions that are not strictly time-limited 'may become a semi-permanent feature of the law and be resorted to in situations for which they were never designed'.¹⁴⁹ Fourthly, to the public the legislation will seem like a 'knee-jerk reaction' so that the Government can 'be seen to be doing something' when pre-existing legislation would have been 'adequate to deal with that incident'.¹⁵⁰ Lastly, it may lead to the false belief that 'all that needs to be done to deal with the problem has been done', when various other measures unrelated to law-making could also be deployed to 'make the recurrence of the terrorism much less likely'.¹⁵¹

Referring to the terrorism legislations passed in haste, Lord Hoffman memorably argued that 'the real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws

2018; House of Lords and House of Commons Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Security Bill, Fifth Report* (2014 – 15, HL Paper 86, HC 859)

<https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/86/86.pdf> (accessed 21/08/2021)

¹⁴⁶ Counter-Terrorism and Security Bill, Explanatory Notes (n143)

¹⁴⁷ Brice Dickson, 'Memorandum', in House of Lords Constitution Committee, 'Fast-track Legislation: Constitutional Implications and Safeguards' Constitution Committee - Minutes of Evidence, Session 2008-09, <<https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/9031806.htm>> accessed 26 April 2018

¹⁴⁸ *Ibid*

¹⁴⁹ *Ibid*

¹⁵⁰ *Ibid*

¹⁵¹ *Ibid*

such as these... It is for Parliament to decide whether to give the terrorists such a victory'.¹⁵² Hill, the Independent Reviewer of Terrorism Legislation, has also argued that:

[W]e don't need more terrorism offences, and there may be examples of redundant terrorism offences which time has proved are not as necessary as Parliament thought.

... [T]raining for terrorism under sections 6 and 8 of the 2006 Act was not charged at all in 2015 or 2016. Inciting terrorism overseas was charged once in the same two-year period. Possession of articles for terrorist purposes under section 57 of the 2000 Act was charged once in 2015 and not at all in 2016. Some revision and trimming of the current legislation may therefore be possible, and that would be a good thing. In general, I would suggest that our legislators i.e. Parliament have provided for just about every descriptive action in relation to terrorism, so we should pause before rushing to add yet more offences to the already long list.¹⁵³

1.5.2 CONCERNS REGARDING THE PREVENT DUTY

Prevent, more specifically, was contentious on a number of grounds even before it was introduced on a statutory footing in 2015. The following concerns will be explored in this section: (a) Prevent is likely to boost racism and Islamophobia, and create suspect communities; (b) it will become, or at least be seen as, an instrument of covert surveillance and spying upon students; and (c) it will have a chilling effect on freedom of speech. In addition to these concerns are the reports of children and students being misjudged and referred to the Prevent Channel, which made several headlines in mainstream media.

In 2015, the University and College Union (UCU) pointed out that Prevent will help 'racist parties such as UKIP to flourish' and that it was unacceptable to force its members to 'be involved in the racist labelling of students'.¹⁵⁴ It also raised concerns that Prevent

¹⁵² *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)* [2004] UKHL 56, [2005] 2 W.L.R. 87 (Lord Hoffman) para 97

¹⁵³ Max Hill Qc Independent Reviewer of Terrorism Legislation (n143)

¹⁵⁴ University and College Union, 'The Prevent Duty A guide for branches and members', (December 2015) para 20 <https://www.ucu.org.uk/media/7370/The-prevent-duty-guidance-for-branches-Dec-15/pdf/ucu_preventdutyguidance_dec15.pdf> accessed 18 February 2020

would force its members to spy on learners.¹⁵⁵ Likewise, the National Union of Students has argued that ‘racism and Islamophobia are hardwired into it [Prevent]’.¹⁵⁶ Similarly, Professor Louise Richardson, the Vice-Chancellor of Oxford University, argued that:

Whole groups of students may see themselves as being suspect. The Prevent legislation is not explicitly anti Islamist but it’s widely perceived to be directed against extreme Islamists and I worry that Islamic students would feel that they are suspect.¹⁵⁷

In 2016, Andy Burnham, the then Shadow Home Secretary, was reported to have argued that reporting extremist behaviour under the Prevent duty was equivalent to the internment policy in Northern Ireland, which was highly discriminatory against one group of people.¹⁵⁸ The above perceptions of Prevent are also observable in National Union of Students documents,¹⁵⁹ as well as the works of academics such as Fahid Qurashi,¹⁶⁰ Arun Kundnani,¹⁶¹ Katy Sian,¹⁶² and a recent report from a number of

¹⁵⁵ Ibid

¹⁵⁶ National Union of Students, ‘What is PREVENT and why should we oppose it?’, (Wednesday 07 November 2018) <<https://www.nusconnect.org.uk/resources/what-is-prevent-and-why-should-we-oppose-it>> accessed 18 February 2020

¹⁵⁷ Daniel Kodosi, ‘Vice-Chancellor Richardson Criticises RMF, Prevent’, *Cherwell* (16th January 2016), <<https://cherwell.org/2016/01/16/vicechancellor-richardson-criticises-rmf-prevent/>> accessed 18 February 2020

¹⁵⁸ Frances Perraudin, ‘Andy Burnham calls for ‘toxic’ Prevent strategy to be scrapped’, *The Guardian* (Thu 9 Jun 2016) <<https://www.theguardian.com/politics/2016/jun/09/andy-burnham-calls-for-toxic-prevent-strategy-to-be-scrapped>> accessed 18 February 2020

¹⁵⁹ National Union of Students (n156)

¹⁶⁰ Fahid Qurashi, ‘The Prevent strategy and the UK ‘war on terror’: embedding infrastructures of surveillance in Muslim communities’, (2018) 4 Palgrave Communications 1

¹⁶¹ Arun Kundnani, ‘Spooked! How not to prevent violent extremism’, Institute of Race Relations, (October 2009); also see: Karen Kellard, Leighton Mitchell and David Godfrey, ‘Preventing violent extremism pathfinder fund: guidance note for government offices and local authorities in England’, Department for Communities and Local Government (December 2008), <<https://emosandcrane.co.uk/resources/DCLG-PreventingViolentExtremismPathfinderFund.pdf>> accessed 20 February 2020

¹⁶² Katy Sian, ‘Born Radicals? Prevent, Positivism, and ‘Race-Thinking’’, (2017) 3 Palgrave Communications 1

academics, titled 'Leaving the War on Terror, A Progressive Alternative to Counter-Terrorism Policy'.¹⁶³

However, there is another side to this debate, which argues that Prevent has been successful and that most challenges against Prevent are based upon myth and misunderstanding. For example, Ben Wallace, the Secretary of State for Defence, argued that 'approximately 381 people' were in danger of being drawn into violent extremism or terrorism and were diverted in 2015-16.¹⁶⁴ He argued that 'it is quite hard to look them in the face and say that Prevent is not working'.¹⁶⁵ He further added 'when I hear its critics, I say, "You tell me what we should have as Prevent", and they go on to describe Prevent itself'.¹⁶⁶ Reports from the HJS state that many organisations and individuals who continue to criticise the Prevent duty are 'spreading false or misleading information' especially with regards to 'racism, Islamophobia or the deliberate targeting of a suspect community'.¹⁶⁷ The same argument is advanced by Stephen Greer and Lindsey Bell that the campaign against Prevent is driven by 'myth, misunderstanding, misconception, and misinformation'.¹⁶⁸ They argue that there is no trace of Islamophobia or racism in the CTSA or in any of its supporting documents; rather,

¹⁶³ Ruth Blakeley, Ben Hayes, Nisha Kapoor, Arun Kundnani, Narzanin Massoumi, David Miller, Tom Mills, Rizwaan Sabir, Katy Sian and Waqas Tufail, 'Leaving the War on Terror A Progressive Alternative to Counter-Terrorism Policy', (2019) Transnational Institute <https://www.tni.org/files/publication-downloads/leaving_the_war_on_terror_online.pdf> accessed 20 February 2020

¹⁶⁴ MP Ben Wallace, 'Oral evidence: Freedom of speech in universities', Joint Committee on Human Rights, (HC 589, Wednesday 7 February 2018) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/freedom-of-speech-in-universities/oral/78267.html>> accessed 19 February 2020

¹⁶⁵ Ibid

¹⁶⁶ Ibid

¹⁶⁷ Rupert Sutton, 'Myths and Misunderstandings: Understanding Opposition to The Prevent Strategy', The Henry Jackson Society, (September 2016), <<http://henryjacksonsociety.org/wp-content/uploads/2016/10/Myths-and-Misunderstandings-PREVENT-Report-Final-29.09.2016.pdf>> accessed 18 February 2020

¹⁶⁸ Steven Greer and Lindsey Bell, 'Counter-Terrorist Law in British Universities: A Review of the "Prevent" Debate', [2018] Public Law 84

documents repeatedly stress the need for proportionality and highlight that the target is not Muslims as a whole but only a tiny dangerous minority.¹⁶⁹

However, there are considerably more academics who argue that Prevent does instantiate these problems. It has been argued that the discourse, classifications, indicators and categories used to ‘detect’ extremism ‘share a conceptual familiarity with 19th century race-thinking and positivist criminology’ such as the works of Cesare Lombroso, which was used to ‘justify racist policies through the creation of a seemingly “natural” division of races.’¹⁷⁰ The Prevent policy claims that there is no single profile of an extremist, yet in the Channel awareness training packages the profiling of Muslims is explicit.¹⁷¹ Furthermore, instances that show race-thinking plays a part in Prevent referrals are well documented. For example, in Bedfordshire primary school, a teacher called the police because two children had been given plastic toy guns as presents. The Central Bedfordshire Council Local Education Authority (LEA) acknowledged that ‘the school, whose teachers were attempting to act in accordance with the Government’s Prevent guidance, would not have called police if a white child had received a toy gun’.¹⁷² Recently a report drafted by a number of leading academics on counter-terrorism argued that Prevent’s almost entire focus on Muslims does amount to a form of racial profiling.¹⁷³ It also asserted that it ‘is one of the main channels by which Islamophobia has been embedded within, and enacted by, the British state’.¹⁷⁴

Even if it is argued that the CTSA and supporting documents of Prevent are well intentioned and not racist or Islamophobic, in practice it has the potential to be misused

¹⁶⁹ Ibid

¹⁷⁰ Katy Sian (n162) p2

¹⁷¹ Ibid

¹⁷² Liberty, ‘Prevent duty must be scrapped: LEA admits discrimination after teachers call police over seven-year-old boy’s toy gun’, (27 January 2017) <<https://www.libertyhumanrights.org.uk/news/press-releases-and-statements/prevent-duty-must-be-scrapped-lea-admits-discrimination-after>> accessed 19 February 2020

¹⁷³ Ruth Blakeley, Ben Hayes, Nisha Kapoor, Arun Kundnani, Narzanin Massoumi, David Miller, Tom Mills, Rizwaan Sabir, Katy Sian and Waqas Tufail, ‘Leaving the War on Terror A Progressive Alternative to Counter-Terrorism Policy’, Transnational Institute (July 2019), <https://www.tni.org/files/publication-downloads/leaving_the_war_on_terror_online.pdf> accessed 20 February 2020

¹⁷⁴ Ibid

by racists and Islamophobes to cause harm to people. It is not difficult to envisage its misapplication, especially when previous counter-terrorism measures have been misapplied, such as stop and search, which have been largely based on racial profiling.¹⁷⁵ The Stephen Lawrence Inquiry in 1999 pointed towards ‘institutional racism’ in the police force.¹⁷⁶ Racial profiling may not always be a conscious decision, as the former chair of the Black Police Association, Superintendent Leroy Logan, found:

As a Sergeant, I was in the back of a car and a female white officer on seeing a black person driving a very nice car just said ‘I wonder who he robbed to get that?’, and she then realised she was actually voicing an unconscious assumption.¹⁷⁷

On the face of it, Prevent has a positive goal of preventing radicalisation and claims that it targets all threats of terrorism and extremism, but critics such as Qurashi argue that counter-terrorism practices, and in particular the Prevent strategy, ‘target Muslims in general, and in many cases where there is no suspicion or evidence of criminal activity’.¹⁷⁸ Prevent, he argues, is divisive, as the focus of ‘British values’ creates the narrative that certain people ‘do not authentically know how to practice Britishness’, which accentuates the ‘otherness’ of Muslims, normalises Islamophobia and narrows ‘the public perception of Muslims down to terrorist violence’.¹⁷⁹ Katherine E. Brown also notes that often the discourses that state agencies use to justify areas of policy focus on the language of security, threat and danger, which ‘frame Muslim communities not simply as problem communities but as security concerns’, and as a result their loyalty is questioned.¹⁸⁰ Brown argues that the official narrative around Prevent, which asserts

¹⁷⁵ See: Equality and Human Rights Commission, ‘Stop and think A critical review of the use of stop and search powers in England and Wales’, (March 2010), p5

<https://www.equalityhumanrights.com/sites/default/files/ehrc_stop_and_search_report.pdf>

accessed 12 February 2020

¹⁷⁶ Sir William Macpherson, ‘The Stephen Lawrence Inquiry’, (Cm 4262-I, February 1999)

¹⁷⁷ Ibid

¹⁷⁸ Fahid Qurashi, ‘The Prevent strategy and the UK ‘war on terror’: embedding infrastructures of surveillance in Muslim communities’, (2018) 4 Palgrave communications 1

¹⁷⁹ Ibid

¹⁸⁰ Katherine E. Brown, ‘Contesting the Securitization of British Muslims -Citizenship and Resistance’ (2010) 12 Interventions 171

that certain 'perverted' or 'radical' forms of Islam may lead to terrorist activity, suggests that there are 'Good Muslims' and 'Bad Muslims', which has the effect of creating suspicion around those who adhere to Islam as susceptible to the terrorist message.¹⁸¹ According to Arun Kundnani, the distribution of Prevent funding 'in direct proportion to the numbers of Muslims in their area' is a clear indication that the Muslim population is seen as a suspect community.¹⁸² Furthermore, Tufyal Choudhury and Helen Fenwick point out the dilemma that policymakers and operatives must grapple with:

It is an inescapable fact that the majority of those suspected of terrorist activities are Muslim, and that counter-terrorism measures are likely to target Muslims. Clearly, however, those measures will be counter-productive if they make ordinary British Muslims, who are of course just as affected by the terrorist threat as anyone else, feel they are constantly under suspicion.¹⁸³

The empirical research conducted by Choudhury and Fenwick shows that Muslim organisations did in fact show reluctance in engaging with Prevent due to 'the feeling that it was treating Muslims as a threat and labelling all Muslims as potential terrorists'.¹⁸⁴ According to Christina Pantazis and Simon Pemberton, replacing the Irish with Muslims as the new suspect community may serve 'to undermine national security rather than enhance it', as it creates a sense of grievance among Muslims, which could serve as a recruitment tool for terrorist organisations.¹⁸⁵

¹⁸¹ Ibid

¹⁸² Arun Kundnani, 'Spooked! How not to prevent violent extremism', (2009) Institute of Race Relations < <https://www.kundnani.org/wp-content/uploads/spooked.pdf> > accessed 03 April 2023; also see: Karen Kellard, Leighton Mitchell and David Godfrey, 'Preventing violent extremism pathfinder fund: guidance note for government offices and local authorities in England', Department for Communities and Local Government, (December 2008), <<https://lemosandcrane.co.uk/resources/DCLG-PreventingViolentExtremismPathfinderFund.pdf>> accessed 20 February 2020

¹⁸³ Tufyal Choudhury and Helen Fenwick, 'The impact of counter-terrorism measures on Muslim communities', Equality and Human Rights Commission (2011), <<https://www.equalityhumanrights.com/sites/default/files/research-report-72-the-impact-of-counter-terrorism-measures-on-muslim-communities.pdf>> accessed 18 February 2020

¹⁸⁴ Ibid

¹⁸⁵ Christina Pantazis and Simon Pemberton, 'From the 'Old' to the 'New' Suspect Community Examining the Impacts of Recent UK Counter-Terrorist Legislation' (2009) 49, RIT. J. CRIMINOL. 646

Pantazis and Pemberton's narrative that Muslims are the new suspect communities has been critiqued by academics such as Francesco Ragazzi, in favour of a more refined understanding of how suspicion works in counter-terrorism programmes.¹⁸⁶ For Ragazzi, there are three categories of suspicion: (a) the 'trusted' Muslims, who actively support and collaborate with the state in counter-terrorism efforts; (b) the 'victim' Muslims, who are at risk of becoming radicals; and (c) the 'risky' Muslims, who are radicals and extremists. Ragazzi argues that since current neoliberal societies not only govern through repressive regimes, but also through empowerment, self-rule and freedom,¹⁸⁷ counter-terrorism is carried out in collaboration with the 'trusted' Muslim population.¹⁸⁸ It curtails authorised political space to 'trusted' Muslim voices and discredits and silences dissenting voices as political enemies.¹⁸⁹ Ragazzi argues that these categories of suspicion are not based upon ideological or religious orientation, but rather on alignment with the bureaucratic or political requirements of the moment.¹⁹⁰ Hence, the border between the 'trusted' and the 'risky' is extremely fine, to the extent that 'trusted' Muslims of yesterday can become 'risky' tomorrow and vice versa, based upon a shift in political requirements.¹⁹¹ If 'trusted' Muslims fail to align with the political interests of government, then they can be shifted to the 'victim' or 'risky' category.¹⁹² Hence, Ragazzi adopts a Foucauldian analysis and argues that counter-terrorism efforts should be seen as enactment of a 'technique of government', which is grounded in the differential

¹⁸⁶ Ragazzi has critically critiqued this narrative on the grounds that it is only a partial account of counter-terrorism efforts. It misses two crucial aspects of counter-terrorism policies: first, it overlooks the heterogeneity of the Muslim 'community' and second it does not account for the involvement and support of a portion of the Muslim population. See: Francesco Ragazzi, 'Suspect Community or Suspect Category? The Impact of Counter-Terrorism as 'policed Multiculturalism'' (2016) 42 *Journal of ethnic and migration studies* 724; Francesco Ragazzi, 'Counter-radicalisation, Islam and Laicite: policed multiculturalism in France's Banlieues' (2022) *Ethnic and Radical Studies* 1

¹⁸⁷ Francesco Ragazzi, 'Suspect Community or Suspect Category? The Impact of Counter-Terrorism as 'policed Multiculturalism'' (2016) 42 *Journal of ethnic and migration studies* 724, p 731

¹⁸⁸ *Ibid*, p 732

¹⁸⁹ *Ibid*, p 737

¹⁹⁰ *Ibid*, p 732

¹⁹¹ *Ibid*, p 733

¹⁹² *Ibid*, p 734

treatment of Muslims as ‘trusted’, ‘victims’ and ‘risky’, which he refers to as ‘policed multiculturalism’.¹⁹³

Although government ministers such as Wallace have tried to provide assurances that ‘Prevent is not a spying scheme’,¹⁹⁴ news reports with an alternative narrative seem to dominate. For example, in 2010, the *Guardian* reported that in two Muslim areas approximately 150 car number plate recognition cameras were installed that were ‘paid for by government anti-terrorism fund’.¹⁹⁵ Police sources were quoted as saying that the initiative sought ‘to monitor a population seen as “at risk” of extremism’.¹⁹⁶ A classified strategic police document that was leaked on the internet showed how intelligence was gathered for Prevent purposes using stop and search powers, which was directed at all members of the community.¹⁹⁷ This raised concerns among academics that ‘all members of the community are being surveilled and treated as suspected or potential terrorists’.¹⁹⁸

It has been argued that surveillance fosters and promotes discrimination in society by dividing society into those that are ‘okay’ and those that are ‘suspicious’.¹⁹⁹ The exponential rate at which surveillance capacities have grown allows systems to ‘sort and sift populations, to categorize and to classify, to enhance the life chances of some and to retard those of others’.²⁰⁰ Hence, in the debate on balancing civil liberties and security, it must be recognised that real diminution in liberty might affect those labelled

¹⁹³ Ibid, p 733

¹⁹⁴ Ben Wallace (n164)

¹⁹⁵ Paul Lewis, ‘Surveillance cameras in Birmingham track Muslims’ every move’, *The Guardian* (4 June 2010) <<https://www.theguardian.com/uk/2010/jun/04/surveillance-cameras-birmingham-muslims>> accessed 20 February 2020

¹⁹⁶ Ibid

¹⁹⁷ Association of Chief Police Officers (Terrorism and Allied Matters), ‘Business Area - Police Prevent Strategy – Partners Briefing’ (27 March 2008) <<https://www.scribd.com/document/35833660/ACPO-Police-Prevent-Strategy>> accessed 20 February 2020

¹⁹⁸ Rizwaan Sabir, ‘Blurred lines and false dichotomies: Integrating counterinsurgency into the UK’s domestic “war on terror”’, (2017) 37 (2) *Critical Social Policy* 202

¹⁹⁹ William Vlcek, ‘Surveillance to Combat Terrorist Financing in Europe: Whose Liberty, Whose Security?’ (2007) 16:1 *European Security* 99

²⁰⁰ David Lyon, ‘Surveillance Society: Monitoring everyday life’, (first published 2001, Buckingham and Philadelphia Open University Press 2005) p4

as 'suspicious' more than those labelled as 'okay'.²⁰¹ At times, surveillance is also followed by risk assessments performed by individuals, conveniently referred to as 'control workers'.²⁰² The UK Government's Prevent policy has been described as a way of coercing educators and other professionals to enrol as 'control workers' to effectively perform a security role and risk assessment of students.²⁰³

Tarek Younis and Sushrut Jadhav argue that there is insufficient evidence to associate an individual with political violence due to healthcare needs.²⁰⁴ Yet according to the Prevent strategy, the Government regards the NHS as a crucial partner in the Prevent programme because of the 'very high numbers of people who come into contact with health professionals'.²⁰⁵ Thus, Younis and Jadhav suggest that the logic behind Prevent is 'of big data and surveillance superimposed upon standard risk assessments',²⁰⁶ which is referred to as 'algorithmic autoimmunity' by Heath-Kelly.²⁰⁷ Heath-Kelly argues that there seems to be some development in profiling and monitoring under the counter-terrorism programme from the original racial and religious profiling under Prevent that led to suspect communities, to the monitoring of *all* persons.²⁰⁸ According to Heath-Kelly's research, it seems that the NHS's staff training is not designed to look for terrorist profiles or indicators; rather, they are required, without comprehensive expertise, to refer patients to increase the amount of data forwarded to the security services.²⁰⁹ In

²⁰¹ Jeremy Waldron, 'Security and Liberty: The Image of Balance', (2003) 11, *The Journal of Political Philosophy* 191

²⁰² Nikolas Rose describes Control workers as having 'the administration of marginalia, ensuring community protection through the identification of the riskiness of individuals, actions forms of life and territories'. See: Nikolas Rose, 'Government and Control', (2000) 40 *British journal of criminology* 321, p333

²⁰³ Keith Spiller, Imran Awan and Andrew Whiting, 'What does terrorism look like?: university lecturers' interpretations of their Prevent duties and tackling extremism in UK universities', (2018) 11 *Critical Studies on Terrorism* 130

²⁰⁴ Younis T and Jadhav S, 'Islamophobia in the National Health Service: An Ethnography of Institutional Racism in PREVENT's Counter-radicalisation Policy' (2020) 42 *Sociology of health & illness* 610, p 611

²⁰⁵ HM Government (n47) para. 10.143

²⁰⁶ *Ibid*

²⁰⁷ Charlotte Heath-Kelly, 'Algorithmic Autoimmunity in the NHS' (2017) 48 *Security dialogue* 29

²⁰⁸ *Ibid*, p30

²⁰⁹ *Ibid*, p42

the new approach, suspects are not isolated from the mass population using profiles and pre-determined 'characteristics' of radicalisation for subsequent application of surveillance. Instead, the diverse heterogeneous dataset on everyone's contact with the NHS is viewed as having the 'potential to reveal new patterns and connections between previously disparate factors through digital analytic techniques of partitioning and re-assembly'.²¹⁰ Thus, surveillance is being rethought and extended to the entire population to produce terrorist profiles, rather than the norm of using pre-determined profiles to deploy surveillance.²¹¹ However, Heath-Kelly also argues that this does not necessarily mean that other profiling techniques, such as race and religiosity, are irrelevant in surveillance judgments within the UK security practice.²¹²

Irrespective of how the Prevent duty is framed and how surveillance has extended to the whole population, Younis and Jadhav argue that NHS staff still draw upon a race frame in determining who is a radical, as they are encouraged to make referrals based on intuition and gut feelings.²¹³ Younis and Jadhav found that race and 'colour-blindness'²¹⁴ were omnipresent in Prevent training and policy.²¹⁵ Moreover, the active negation of race and religion in Prevent training, such as reminding staff to not associate radicalisation to mosque attendance or reminding staff that everyone is vulnerable to radicalisation, is what Younis and Jadhav describe as 'performative colour-blindness'.²¹⁶ Correcting a prejudicial stereotype by reminding staff to 'not associate radicalisation to mosque attendance', for example, has a performative purpose as it presents the Government as having addressed the possibility of Islamophobia in Prevent referrals.²¹⁷ However, Younis and Jadhav argue that by adding such reminders into training material,

²¹⁰ Ibid, p30

²¹¹ Ibid, p31

²¹² Ibid, p31

²¹³ Tarek Younis and Sushrut Jadhav (n204)

²¹⁴ They define colour-blindness as 'the position whereby race is dismissed or minimised in social interactions, either by rejecting the possibility of white privilege or by diminishing the importance of racism in social structures'. Colour-blindness sustains racist structures and protects the powerful against the charge of racism. See: Ibid, p 612

²¹⁵ Ibid, p 612

²¹⁶ Ibid, p 620

²¹⁷ Ibid, p 616

the Government is admitting the possibility that staff may view Islamic practices as genuine risk factors of radicalisation.²¹⁸

These are significant issues that need to be addressed, but in the context of universities, the more important concern is whether Prevent is likely to have a negative impact on freedom of speech and academic freedom. Although some have denied the possibility of Prevent impacting free speech,²¹⁹ commentators such as Lucia Zedner argue that discharging the Duty has proven fraught in every institution and in the university context it has been most complex and controversial, as it quickly runs up against countervailing rights to freedom of speech and academic freedom.²²⁰ According to Joanna Gilmore, the introduction of the Prevent duty may have led to hesitancy in students undertaking modules that challenge and question existing orthodoxies and state-led definitions of terrorism, as well as the legitimacy of official counter-terrorism responses.²²¹ The concern of Prevent having an impact on freedom of speech is further explored in subsequent chapters. This chapter is intended to introduce the Duty and some of the debates surrounding it, not to be a comprehensive chapter that covers all aspects of the debate.

CONCLUSION

This introduction to the Prevent duty has shown that the meaning of terrorism and its threat is a social construct, which has been shaped by the surrounding discourse. It has shown that in the two phases of terror threat, the UK has seen a large expansion of terror legislation, most of which is comprised of emergency legislations, which have been scrutinised for being unnecessary and generated in haste. One of the most

²¹⁸ Ibid, p 616

²¹⁹ Steven Greer and Lindsey Bell, 'Six myths about the Prevent duty in universities', *Times Higher Education* (April 9, 2018) <<https://www.timeshighereducation.com/blog/six-myths-about-prevent-duty-universities>> accessed 03 April 2023; Rupert Sutton, 'Myths and Misunderstandings: Understanding Opposition to The Prevent Strategy', Henry Jackson Society (September 2016) <<http://henryjacksonsociety.org/wp-content/uploads/2016/10/Myths-and-Misunderstandings-PREVENT-Report-Final-29.09.2016.pdf>> accessed 18 February 2020

²²⁰ Lucia Zedner, 'Counterterrorism on Campus' (2018) 68 *University of Toronto Law Journal* 545

²²¹ Joanna Gilmore, 'Teaching terrorism: the impact of the Counter-Terrorism and Security Act 2015 on academic freedom' (2017) 51 *Law teacher* 515

controversial pieces of legislation is the Counter-Terrorism and Security Act 2015, which introduced measures such as the power to seize travel documents, Temporary Exclusion Orders and the Prevent duty. The context and the backdrop of the Prevent duty was, as argued by the then Government, the unprecedented threat of Islamist ideology from ISIS influencing home-grown terrorists. Universities were seen as breeding grounds for this ideology and external speakers were seen as radicalising students.

This discourse was built by thinktanks, such as Quilliam, Student Rights and CSC, who contributed to the Government's narrative that universities were places of radicalisation, in particular by extremist external speakers. Their research methods and biases have been criticised by the academic community; nonetheless, their findings form the evidence backbone of the Government's narrative. Even after the statutory Prevent duty, Student Rights has argued that extremist speakers still visit universities and thus universities are failing in their Duty. On the other hand, universities have denied that they are platforms for radicalisers. Moreover, HEFCE and OfS reports show that universities are compliant and not failing in their duties.

This chapter has shown that the discourse by thinktanks has shaped the Government's understanding of radicalisation and where it is found. Through a Foucauldian lens, such constructions do not simply represent reality as it is; rather they shape it. As such, the Prevent duty can be viewed as the outcome of this discourse that constructed universities as places of radicalisation. Equally, the HEFCE and OfS reports can also be viewed in the same light as being constructive of the opposite narrative. The analysis in this chapter led to the following sub-questions:

In light of their experiences, do UM consider that universities are breeding grounds for radicalisation and extremism?²²²

How can the views of UM be reconciled with the competing arguments that universities are either failing to implement the Prevent duty for external speaker events (as advanced by, for example Student Rights/Quilliam), or almost entirely compliant with the Prevent duty (as noted by OfS/HEFCE)?²²³

²²² This question is explored in Chapter Eight.

²²³ This question is explored in Chapter Thirteen.

Chapter Two

RADICALISATION

INTRODUCTION

If radicalisation, which is broadly defined as a process that leads to terrorist violence, can be identified and understood, then from a utilitarian perspective it could provide an important tool to aid universities and other specified bodies in implementing the Prevent duty. This would enable them to identify people at an early stage in the process, in the hope of preventing them from being drawn into terrorism. However, it has proven to be a very contentious term, with some academics, such as Anthony Richards, arguing it is 'ill-defined' and not 'a particularly useful concept'.¹ Other social-psychologists have presented theoretical models of the radicalisation process, which in turn have also been scrutinised by academics, such as Michael King and Donald Taylor.² However, Prevent, as a counter-terrorism strategy, is based on the premise that a radicalisation process exists and that there are certain factors that could lead to it. Unpacking this concept and process is crucial in uncodifying the terrorism legislation and understanding the rationale behind it. Therefore, this chapter will: first, analyse radicalisation as a concept, which will include its definition; second, examine the factors of radicalisation in the Government's narrative as well as assessing theories and arguments that support this narrative; and finally, present a critique of the radicalisation process.

2.1 CONCEPT OF RADICALISATION

The meaning of 'radicalisation' has altered over time. Prior to 2001, it was used to refer to a person's shift towards more radical politics whilst not specifically referring to Muslims. Alex Schmid points out that the term 'radical' shifted in its connotation from liberal, anti-clerical, pro-democratic progressive thought in the 19th century to the current anti-liberal, fundamentalist, anti-democratic and repressive agenda.³ By 2004,

¹ Anthony Richards, 'The Problem with Radicalisation: the Remit of Prevent and the Need to Refocus on Terrorism in the UK', (2011) 87 *International Affairs* 143, p152

² Michael King and Donald M. Taylor, 'The Radicalisation of Homegrown Jihadists: A Review of Theoretical Models and Social Psychological Evidence', (2011) 23 *Terrorism and Political Violence* 602

³ Alex P. Schmid, 'Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review', *International Centre for Counter-Terrorism (The Hague)*, 2013)

the term had come to focus on the psychological or theological processes that lead Muslims towards extremist views.⁴ After the September 11 attacks in 2001, the term 'radicalisation' was used whenever experts or officials wanted to talk about 'what goes on before the bomb goes off'.⁵ The initial purpose of using this term, according to Peter Neumann, was that following 9/11, it was difficult to talk about the root causes of terrorism because it was seen as 'an effort to excuse and justify the killing of innocent civilians'.⁶ Hence, Neumann argues that the use of the notion of radicalisation allowed a discussion of the underpinning political, economic, social and psychological forces of terrorism.⁷ Thus, the focus shifted from terrorist acts to 'opinions, views and ideas' that may lead to terrorism.⁸

However, radicalisation and its related terms, such as de-radicalisation, counter-radicalisation and anti-radicalisation, are conceptualised and used differently in different disciplines, making it ill-defined and deeply contested.⁹ Mark Sedgwick argues that the term 'radical' has three different meanings, depending upon three different contexts: the security context, the integration context, and the foreign-policy context.¹⁰ He argues that:

<https://www.icct.nl/download/file/ICCT-Schmid-Radicalisation-De-Radicalisation-Counter-Radicalisation-March-2013.pdf> accessed 15 April 2020

⁴ Arun Kundnani, 'Radicalisation: The Journey of a Concept', (2012) 54 *Institute of Race Relations* 3

⁵ Peter R. Neumann, 'Perspectives on Radicalisation and Political Violence: Papers from the First International Conference on Radicalisation and Political Violence', the International Centre for the Study of Radicalisation and Political Violence (London, 17–18 January 2008) <<http://icsr.info/wp-content/uploads/2012/10/1234516938ICSRPerspectivesonRadicalisation.pdf>> accessed 30 April 2017

⁶ *Ibid*

⁷ *Ibid*

⁸ Magnus Hornqvist and Janne Flyghed, 'Exclusion or Culture? The Rise and the Ambiguity of the Radicalisation Debate', (2012) 5 *Critical studies on terrorism* 319

⁹ Laura G. E. Smith, Leda Blackwood & Emma F. Thomas, 'The Need to Refocus on the Group as the Site of Radicalization', (2020) 15 *Perspectives on Psychological Science* 327

¹⁰ Mark Sedgwick, 'The Concept of Radicalization as a Source of Confusion', (2010) 22 *Terrorism and Political Violence* 479

In the same way that a group or individual that is a problem in integration terms may not be a threat in security terms, a group or individual that is a threat in security terms may not be a problem in integration terms.¹¹

Therefore, a radical from one perspective may not be a radical from another, and analysts often differ in perspective and conceptualisation. As such, Schmid describes the experience of searching for the meaning of radicalisation, its causes and how to de-radicalise as frustrating.¹² Some academics assert that the term 'radicalisation' is mostly employed in a way that suggests it is a self-evident concept, or it is described in a circular fashion: 'a radical is someone who has radical ideas or who has been radicalised'.¹³ Moreover, the plethora of varied radicalisation definitions makes it difficult to have meaningful discussions, because it is never clear whether everyone is talking about the same thing. A few definitions are mentioned below to demonstrate the above points.

The European Commission defines it as a 'process in which an individual or a group embraces a radical ideology or belief that accepts, uses or condones violence, including acts of terrorism within the meaning of the Directive on combating terrorism, to reach a specific political or ideological purpose'.¹⁴ This definition is worded in a circular fashion, as it defines 'radicalisation' as embracing a 'radical' ideology. Nonetheless, the wording is such that it does not exclusively apply to one identified group of people, unlike the definition by Sam Mullins, which exclusively regards radicalisation as a problem among Muslims. Mullins defines it as 'the process of coming to adopt militant Islamist ideology'.¹⁵

¹¹ Ibid

¹² Alex P. Schmid (n3)

¹³ Minerva Nasser-Eddine, & Bridget Garnham, Katerina Agostino and Gilbert Caluya, 'Countering Violent Extremism (CVE) Literature Review', Counter Terrorism and Security Technology Centre- Australian Government, Department of Defence (March 2011)

<https://www.researchgate.net/publication/235024824_Countering_Violent_Extremism_CVE_Literature_Review> accessed 15 April 2020

¹⁴ European Commission, 'Migrant and Home Affairs: Prevention of Radicalisation'

<https://ec.europa.eu/home-affairs/what-we-do/policies/counter-terrorism-and-radicalisation/prevention-radicalisation_en> accessed 15 April 2020

¹⁵ Sam Mullins, 'Iraq versus lack of integration: understanding the motivations of contemporary Islamist terrorists in Western countries', (2012) 4 Behavioral Sciences of Terrorism and Political Aggression 110

Additionally, both of the above definitions submit that radicalisation, as a process, leads to violence or militancy, which is very different to the broad definition by Greg Hannah *et al.* that states that it is a 'process whereby individuals transform their worldview over time from a range that society tends to consider to be normal into a range that society tends to consider to be extreme'.¹⁶ Radicalisation according to this definition could include accepting a non-violent peaceful view that is 'outside the range of what society considers normal'. Similarly, the definition by Anja Dalgaard-Nielsen does not connect radicalisation to violence or terrorism; it states that radicalisation is 'a growing readiness to pursue and support far-reaching changes in society that conflict with, or pose a direct threat to, the existing order'.¹⁷ The differences between these definitions are substantial enough to argue that they are not talking about the same type of radicalisation.

On the one hand, some analysts of radicalisation support broad definitions in the context of terrorism. For example, Tinka Veldhuis and Jørgen Staun postulate that current knowledge of sociological and psychological processes leading up to violence or terrorism is too limited, and as such answers should be sought from wider related areas, of which non-violent radicalisation is one.¹⁸ On the other hand, Neil Bennett posits that the problem with broad definitions is that although they may be well-suited to reflect the dynamic nature of terrorism, they do little more than show 'an increased commitment to unspecified ideas which may be benign and even transitory'.¹⁹

¹⁶ Greg Hannah, Lindsay Clutterbuck, Jennifer Rubin, 'Radicalization or Rehabilitation - Understanding the Challenge of Extremist and Radicalized Prisoners', RAND Corporation (2008)

<https://www.rand.org/content/dam/rand/pubs/technical_reports/2008/RAND_TR571.pdf> accessed 15April 2020

¹⁷ Anja Dalgaard-Nielsen, 'Violent Radicalization in Europe: What We Know and What We Do Not Know' (2010) 33 *Studies in Conflict & Terrorism* 797, p798

¹⁸ Tinka Veldhuis & Jørgen Staun, 'Islamist Radicalisation: A Root Cause Model', Netherlands Institute of International Relations Clingendael (October 2009)

<https://www.diis.dk/files/media/publications/import/islamist_radicalisation.veldhuis_and_staun.pdf> accessed 15April 2020

¹⁹ Neil Bennett, 'One Man's Radical: The Radicalisation Debate and Australian Counterterrorism Policy' (2019) 15 *Security Challenges* 47, p49

Furthermore, broad definitions pose ‘the risk of criminalising legitimate political opinions that merely differ from normative social thinking’.²⁰

The problem with broad definitions is that they can result in indicating an individual who simply rejects the status quo, which does not have to be in a violent or problematic manner. Yet in the context of counter-terrorism, someone who is deemed to be radicalised may also be on their way to becoming a terrorist.²¹ In other words, talking about non-violent radicalisation in the context of terrorism studies creates the illusion that adopting a view that is ‘outside the range of what society considers normal’,²² or a view that supports ‘far-reaching changes in society and conflicts with the existing order’²³ is somehow connected to terrorism. This creates a grey area between violent and non-violent radicalisation and distinguishing between the two is not always an easy task. Historically, valuable advancements have been made in society by radicals, such as women’s right to vote, which resulted from the then-radical campaigning done by the suffragettes. Broad definitions would risk labelling such developments as somehow connected to terrorism.

For the purposes of this study, UK Government’s definition is employed, which states that radicalisation is ‘the process by which people come to support terrorism and violent extremism and, in some cases, then to join terrorist groups’.²⁴ Since the focus of this project is on Prevent, which is the UK Government’s strategy in countering terrorism, choosing the Government’s definition of radicalisation over others is not only apt, but it also provides a good starting point to analyse the factors of radicalisation in the Government’s model.

²⁰ Ibid, p49

²¹ Jamie Bartlett and Carl Miller, ‘The Edge of Violence: Towards Telling the Difference Between Violent and Non-Violent Radicalisation’, (2012) 24 *Terrorism and Political Violence* 1

²² As defined in Greg Hannah, Lindsay Clutterbuck, Jennifer Rubin, ‘Radicalization or Rehabilitation - Understanding the Challenge of Extremist and Radicalized Prisoners’, RAND Corporation (2008) <https://www.rand.org/content/dam/rand/pubs/technical_reports/2008/RAND_TR571.pdf> accessed 15 April 2020

²³ As defined in Anja Dalgaard-Nielsen (n17) p798

²⁴ HM Government, *Pursue Prevent Protect Prepare - The United Kingdom’s Strategy for Countering International Terrorism* (Cm 7547, 2009) p82

In summary, the concept of radicalisation is the focus of extensive amounts of controversy in academic literature. To the extent that some academics have asserted that radicalisation is a myth and the term has been misappropriated by the British Government.²⁵ Others have said, ‘the process it describes in theory cannot be found in actual social practices’.²⁶ Besides the fact that there is no consensus over its definition and the concept is relative in that it evolves as the norms of society evolve,²⁷ its evidence base is also contested. King and Taylor have argued that while there are many theories on the radicalisation process, ‘yet paradoxically, very little empirical data exists on the psychology of those who become radicalised’.²⁸ These theories have emerged from a number of disciplines within social sciences and humanities, which reflect the debates that are occurring in their respective disciplines, as opposed to ‘formal propositions that have been empirically and conclusively tested’.²⁹ The next section will analyse the factors of radicalisation in light of some of these theories.

2.2 THEORIES AND FACTORS OF RADICALISATION

Participation in any collective action is highly unlikely for a rational human being, as non-participants also reap the benefits from a collective good without incurring costs, such

²⁵ Andrew Hoskins and Ben O’Loughlin, ‘Media and the Myth of Radicalisation’ (2009) 2 War, Media and Conflict 107

²⁶ Didier Bigo, Laurent Bonelli, Emmanuel-Pierre Guittet and Francesco Ragazzi, ‘Preventing and Countering Youth Radicalisation in the EU’, Policy Department C – Citizens’ Rights and Constitutional Affairs, European Parliament (2014) p31

<[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/509977/IPOL-LIBE_ET\(2014\)509977_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/509977/IPOL-LIBE_ET(2014)509977_EN.pdf)> accessed 01 May 2017

²⁷ Michele Groppi, ‘An Empirical Analysis of Causes of Islamist Radicalisation: Italian Case Study’, (2017) 11 Perspectives on Terrorism 68

²⁸ Michael King and Donald M. Taylor, ‘The Radicalisation of Homegrown Jihadists: A Review of Theoretical Models and Social Psychological Evidence’ (2011) 23 Terrorism and political violence 602, p603

²⁹ Minerva Nasser-Eddine, & Bridget Garnham, Katerina Agostino and Gilbert Caluya, ‘Countering Violent Extremism (CVE) Literature Review’, Counter Terrorism and Security Technology Centre- Australian Government, Department of Defence (March 2011) p10

<https://www.researchgate.net/publication/235024824_Countering_Violent_Extremism_CVE_Literature_Review> accessed 15April 2020

as loss of time, income or life.³⁰ So, some social scientists argue that individuals participate in terrorism only if the benefits resulting from their involvement outweigh the costs.³¹ However, since the goals of international terrorists, such as ISIS, may be to establish a global Islamic state, the 'self-sacrifice' of individual suicide bombers seems irrational, as no rational person can expect to establish a global state with a suicide bomb. This raises the question: why do terrorists, who are not irrational beings, participate in such acts when their actions costs them their time, income and lives with little to no benefit?

Attempts to answer this question have resulted in a plethora of radicalisation theories with substantial differences between them. At times the radicalisation process is viewed as a pyramid, where the bottom layer is the community, the middle layer is those who support a political cause by action or protest without violence, whilst the top layer is those who actively engage in violence.³² Early interpretations of this model suggested that people rose through the stages of the pyramid to get to the top, which was implied in the '-isation' of the word radicalisation.³³ It has also been described as 'the motion towards an extreme position that may or may not involve the possibility of a violent resolution'.³⁴ The Government's model also describes a process in which a person moves along a conveyor belt of radicalisation to terrorism.³⁵

Fahad Ahmad and Jeffrey Monaghan map out criminological theories that inform radicalisation studies, showing that there is a broad spectrum of theories.³⁶ On the one hand, certain theories treat radicalisation as an identifiable object by highlighting

³⁰ Dipak K. Gupta, 'Exploring Roots of Terrorism', in Toro Bjorgo (ed) *Root Causes of Terrorism* (Routledge 2005) p17

³¹ Ibid, p17

³² Samuel J. Leistedt, 'Behavioural Aspects of Terrorism' (2013) 228 *Forensic Science International* 21

³³ Ibid

³⁴ Orla Lynch, 'British Muslim Youth: Radicalisation, Terrorism and the Construction of the Other' (2013) 6 *Critical Studies on Terrorism* 241, p242

³⁵ Fahid Qurashi, 'The Prevent strategy and the UK 'war on terror': embedding infrastructures of surveillance in Muslim communities' (2018) 4 *Palgrave Communications* 1

<https://doi.org/10.1057/s41599-017-0061-9>

³⁶ Fahad Ahmad and Jeffrey Monaghan, 'Mapping Criminological Engagements Within Radicalisation Studies' (2019) 59 *British Journal of Criminology* 1288

identifiable causes; these are the 'realist' theories.³⁷ On the other hand, there are 'constructivist' theories that shy away from identifying causes, lack neat boundaries and do not classify radicalisation as a movement towards extreme belief or violence, but instead regard it as a discursive formation.³⁸ Furthermore, some of these realist and constructivist theories are 'individualist' as they provide an individual-centred analysis, where radicalisation is thought to be driven by individual traits, and less attention is given to environmental forces.³⁹ Whereas others are 'structuralist' because they have a greater focus on environmental and social factors than personal characteristics and traits.⁴⁰

Although the primary and central focus of this chapter is on the factors of radicalisation as presented in official Government documents, it will also respectively analyse other literature and theories of radicalisation as reference points if they involve similar factors to the Government's model. Therefore, this next section is divided into two main parts: (a) the Government's factors of radicalisation, with supporting arguments and theories; and (b) the arguments of scholars who contest and critique radicalisation and its causative factors.

2.2.1 FACTORS OF RADICALISATION

The Government asserts that there are a number of factors involved in the radicalisation process, and they are: (a) a persuasive ideology, which 'draws upon an interpretation of religion and a view of history and contemporary politics to legitimise terrorism';⁴¹ (b) ideologues and social networks 'who promote that ideology and help those prepared to support it';⁴² (c) individuals vulnerable 'to violent extremist messaging for a range of personal reasons, variously relating to issues of identity, faith, frustrated ambition, migration and displacement';⁴³ (d) 'absence of resilience (and in some cases

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

⁴¹ HM Government (n24) p83

⁴² Ibid

⁴³ Ibid

tacit support) in vulnerable communities’;⁴⁴ and (e) ‘real or perceived grievances, some international and some local, including in particular: a perception that UK foreign policy is hostile to Islam’.⁴⁵

It must be pointed out that, although these are labelled as the factors of radicalisation, the Government has not presented them as a process that has stages, even though radicalisation is described as a ‘process’ in official documents. Therefore, how the Government sees the stages of the process remains unclear. However, the Prevent Channel’s vulnerability assessment framework alludes to a process, which will be discussed later in this chapter. The next section will consider each of the five factors in turn.

2.2.1.1 PERSUASIVE IDEOLOGY

The first factor in radicalisation, according to the Government, is the existence of a persuasive extreme ideology that tries to justify terrorism. Not only does the CONTEST Strategy 2011 assert that ‘radicalisation is being driven by ideology’,⁴⁶ but also several debates in the House of Commons and Lords have identified Islamist ideology as the cause of international terrorism and radicalisation.⁴⁷ Julian Lewis, for example, argued:

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ HM Government, ‘CONTEST the United Kingdom’s strategy for Countering terrorism’ (Cm 8123, 2011) Section 5.11

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97995/strategy-contest.pdf> accessed 11 February 2020

⁴⁷ Hazel Blears, for example, argued ‘[d]oes he [another member of Parliament] accept that one of the reasons that many of the people who are born and brought up in this country and have lived here for very many years then decide to go to Syria, or to create a terrorist plot here in Britain, is that they have been influenced by an ideology based on hatred and a complete rejection of other people unless they agree 100% with their very narrow world view? We have debated whether we use the word “combating” or “countering” in relation to this ideology, which has its roots in Salafi thinking. It is about a violent version of Islam that supposedly justifies this kind of terrorist activity. There is quite a lot of research on this’. See: Hazel Blears, Counter-Terrorism and Security Bill’s Committee Stage, HC Deb 16 December 2014, vol 589, col 1327. Hazel Blears also referenced the works of Quilliam and Ed Hussain, all of which highlight the Salafi Jihadi Ideology as the root cause of Islamist terrorism. See: Hazel Blears, Counter-Terrorism and Security Bill’s Committee Stage, HC Deb 16 December 2014, vol 589, col 1313;

We need to try to create an atmosphere and a climate that is totally hostile to the propagation of the basic extreme ideology so that it becomes increasingly difficult to find anyone who is on that path to radicalisation because the whole concept of the ideology is anathema to society as a whole, or will be by the time we have finished.⁴⁸

Some theories of radicalisation place ideology at the centre of their models. For example, Mitchell Silber and Arvin Bhatt argue that ‘ideology is the bedrock and catalyst for radicalization. It defines the conflict, guides movements, identifies the issues, drives recruitment, and is the basis for action’.⁴⁹ There is wide support for this view among those involved in counter-terrorism. Charles Farr, the head of the Office for Security and Counter-Terrorism, argued:

In my experience, looking at people who have been convicted for terrorist offences in this country since 9/11—over 200—ideology is always an influence. Therefore, when we come to construct a Prevent strategy designed to stop radicalisation we need to do something to challenge the ideology, and we sometimes call it the single narrative, that terrorist organisations deploy around the world in a variety of different media forms to influence people and to try to recruit them to their cause.⁵⁰

The lack of religious knowledge and poor education about the Quran, especially among the third wave of Islamist terrorists, is argued by Marc Sageman to make them

Theresa May argued: ‘We have significantly reformed the Prevent pillar of the counter-terrorism strategy so that it tackles the ideology behind the threat. See: Theresa May, Counter-Terrorism and Security Bill, Second Reading, HC Deb 2 December 2014, vol 589, col 208

Dr Lewis, Counter-Terrorism and Security Bill, HC Deb 16 December 2014, vol 589, col 1317

⁴⁹ Mitchell D. Silber and Arvin Bhatt, ‘Radicalization in the West: The Homegrown Threat’, New York City Police Department (2007) p16 <https://seths.blog/wp-content/uploads/2007/09/NYPD_Report-Radicalization_in_the_West.pdf> accessed 12 April 2020

⁵⁰ House of Commons Communities and Local Government Committee, *Preventing Violent Extremism Sixth Report* (2009-10, HC 65) Ev79, Q391

<<https://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomloc/65/65.pdf>> accessed 03 May 2017

vulnerable to extreme interpretations of the Quran.⁵¹ For example, in order to justify suicide attacks, the terrorist ideology rebrands it as martyrdom, which is seen as a noble cause in the Quran.⁵² However, a thorough understanding of the Islamic tradition reveals that suicide is strongly condemned,⁵³ and taking one life is regarded equally as evil as taking the life of the whole of humanity.⁵⁴ The intelligence agencies in Europe, holding a similar viewpoint, consider the terrorist ideology to be a 'cut and paste variety' of Islam, which centres on the Iraq war and cartoon controversy, rather than a well-defined ideology.⁵⁵ The distinction between Islam as a faith and Islamism is often drawn in counter-terrorism discussions. For example, David Cameron, when serving as Prime Minister, argued:

That is the existence of an ideology, Islamist extremism. We should be equally clear what we mean by this term, and we must distinguish it from Islam. Islam is a religion observed peacefully and devoutly by over a billion people. Islamist extremism is a political ideology supported by a minority. At the furthest end are those who back terrorism to promote their ultimate goal: an entire Islamist realm, governed by an interpretation of Sharia.⁵⁶

The role of ideology, based on counter-terrorism literature and official Government documents, can be summarised as follows. The Islamist ideology is based upon establishing a state governed by Sharia, for which the whole world is divided into two parts: the Muslim states and the non-Muslim states. It uses the absolutist and polarising

⁵¹ Marc Sageman, *Leaderless Jihad: Terror Networks in the Twenty-First Century* (University of Pennsylvania Press 2008) p159

⁵² The Quran states: 'And do not say about those who are killed in the way of Allah that they are dead. Rather, they are alive, but you perceive it not'. See: Quran, chapter al-Baqarah, verse 154, <<https://quran.com/2/154>> accessed 10 June 2017

⁵³ The Prophet has been quoted as saying 'Whoever kills himself with something in this world will be punished with it on the Day of Resurrection', Al-Bukhari, Chapter on Good Manners and Form, <<https://sunnah.com/bukhari/78/132>> accessed 18 June 2017

⁵⁴ See: Quran, al-Maidah, verse 32 <<https://quran.com/5?startingVerse=32>> accessed 03 April 2023

⁵⁵ Jamie Bartlett and Carl Miller (n21)

⁵⁶ David Cameron, 'PM's speech at Munich Security Conference' (5 February 2011) <<https://www.gov.uk/government/speeches/pms-speech-at-munich-security-conference>> accessed 06 May 2017

rhetoric of ‘us and them’, without any shades of grey, where the ‘us’ refers to the Muslim world and ‘them’ refers to the non-Muslim world and ‘western establishments’ that are regarded as the source of all evil.⁵⁷ The argument follows that when frustrations are constructed into ‘us and them’ narratives and painted in vivid colour and images by leaders, it gives rise to political violence,⁵⁸ where militant jihad is depicted as a religious duty on all Muslims with reward in the afterlife.⁵⁹ The role of this ideology in radicalisation is very clearly stated in the official Government documents as follows:

[R]adicalisation, in this country, is being driven by an ideology that sets Muslim against non-Muslim, highlights the alleged oppression of the global Muslim community and which both obliges and legitimises violence in its defence.⁶⁰

Furthermore, some explanations of this ideology highlight that this prejudiced approach is extended to also target those Muslims that differ from this Islamist view, using the dangerous ‘takfiri’ ideology that condemns people to death for apostasy or for being a ‘kafir’.⁶¹ The difference between ‘us’ and ‘them’ is then further reinforced using the concepts of al-wala and al-bara, which can be translated as ‘loyalty and disavowal’.⁶² Al-wala refers to loyalty towards God, Islam and other Muslims who form part of the Ummah (the Nation), whilst al-bara refers to disavowal of anything un-Islamic according to their standards, which includes disbelief, disbelievers, apostates, democracy, secularism and nationalism.⁶³ The Islamist narrative first asserts that all crimes against Muslims are an attack on the global Muslim community – the Ummah – and then it depicts those who avenge the sufferings as heroes.⁶⁴

⁵⁷ Jerrold M. Post, ‘The Socio-Cultural Underpinnings of Terrorist Psychology’, in Tore Bjorgo (ed) *Root Causes of Terrorism* (Routledge 2005) p54

⁵⁸ Dipak K. Gupta (n30) p19

⁵⁹ HM Government (n24)

⁶⁰ HM Government, *Prevent Strategy* (Cm 8092, 2011) para 5.25

⁶¹ Kafir translates as ‘disbeliever’ – a term used ‘to dehumanise non-Muslims and Muslims who disagree with their views’. See: Jamie Bartlett and Carl Miller (n21)

⁶² Mohamed Bin Ali, *The Roots of Religious Extremism – Understanding the Salafi Doctrine of Al-Wala’ wal Bara’* (Imperial College Press Insurgency and Terrorism Series 2016)

⁶³ Ibid, page 3

⁶⁴ Oliver Roy, ‘Radicalisation and De-radicalisation’, in Peter R. Neumann, Jacob Stoil and Dina Esfandiary (eds) *Perspectives on Radicalisation and Political Violence: Papers from the First International*

The ideology behind radicalisation is often termed the ‘Salafi ideology’, as Jocelyne Cesari postulates that extreme ideology, especially the Salafi doctrine, provides ‘the same religious framework that is used by radical groups such as al-Qaeda’.⁶⁵ Marc Sageman attributes the spread of the Salafi ideology to the Government of Saudi Arabia, who invested heavily in the late 1970s in building mosques throughout the world and spreading the conservative form of Islam, which he argues is consistent with the global jihadi ideology attempting to build a Salafi utopia.⁶⁶

The above section shows that there are a large number of terrorism analysts who hold the same view as the Government that a Salafi extremist ideology plays a substantial role in radicalisation. The next section will analyse the second factor in the Government’s radicalisation narrative, which suggests that this ideology needs ideologues and networks to promote it.

2.2.1.2 IDEOLOGUES AND NETWORKS

The role of terrorist networks is thought to be important in understanding why people show commitment to terrorism. Martha Crenshaw argues that the combination of ‘commitment, risk, solidarity, loyalty, guilt, revenge and isolation’, which are found in terrorist networks, make it difficult for the terrorist to change direction and leave terrorism.⁶⁷ Within these networks it is thought that ideologues, or pre-eminent leaders in religious fundamentalist extremist groups, play a crucial role in indoctrination, as they are seen as being the authentic interpreter of God.⁶⁸ For example, according to Gupta, the perpetrators of the 9/11 attacks were inspired by a group of Islamic preachers and

Conference on Radicalisation and Political Violence (The International Centre for the Study of Radicalisation and Political Violence 2008) < <https://www.nonviolent-conflict.org/wp-content/uploads/2016/11/Perspectives-on-Radicalisation-Political-Violence.pdf> > accessed 03 April 2023

⁶⁵ Jocelyne Cesari, ‘Muslims in Europe and the Risk of Radicalism’, in Rik Coolsaet (ed) *Jihadi Terrorism and the Radicalisation Challenge in Europe* (Ashgate Publishing Limited 2008) p98

⁶⁶ Marc Sageman, *Leaderless Jihad - Terror Networks in the Twenty-First Century* (University of Pennsylvania Press 2008) p110; Tarik Fraihi, ‘De-Escalating Radicalisation: The Debate within Muslim and Immigrant Communities’, in Rik Coolsaet, *Jihadi Terrorism and the Radicalisation Challenge in Europe* (Ashgate Publishing Limited 2008) p131

⁶⁷ Martha Crenshaw, ‘The Causes of Terrorism’ (1981) 13 *Comparative Politics* 379, p397

⁶⁸ Jerrold M. Post (n57) p58

revolutionaries including Osama bin Laden.⁶⁹ The four main thinkers that are usually identified as leading ideologues for terrorists are Ibn Taymiyya, Sayyid Qutub, Muhammed Ibn Abdul Wahhab, and Abdullah Azzam.⁷⁰ The Government's Prevent Strategy asserts that:

Radicalisation is about 'who you know'. Group bonding, peer pressure and indoctrination are necessary to encourage the view that violence is a legitimate response to perceived injustice. We have also seen evidence to support this theory from classified Government reporting.⁷¹

This narrative seems to suggest that there is top-down influence and indoctrination by ideologues and radicalisers in group settings, which suggests that those who are 'recruited' lose their individual identities and are indoctrinated with an extreme alternative. However, other analysts, such as Laura Smith *et al.*, argue that people engage with extremist groups because their personal experiences are validated and recognised by the group, which can become a self-defining moment for the individual.⁷² Therefore, it is not just a top-down approach, but a more complicated group dynamic, where the individual's perceptions become part of the shared identity when other group members validate them. However, it is not the case that Smith *et al.* reject the role of ideologues, rather they argue that some specific individuals will emerge from social interaction as those who play a pivotal role in shaping and facilitating the collectivisation of grievances.⁷³

Apart from the traditional training camps, the internet is a significant way of networking, where media forums have become the new institutions of radicalisation, creating a new breed of 'self-recruited wannabes'.⁷⁴ Sarita Yardi and Danah Boyd argue that online networks are built by users when they actively seek out those who support their views

⁶⁹ Dipak K. Gupta (n30) p19

⁷⁰ Jamie Bartlett and Carl Miller (n21)

⁷¹ HM Government (n60) para 5.23

⁷² Laura G. E. Smith, Leda Blackwood & Emma F. Thomas, 'The Need to Refocus on the Group as the Site of Radicalization' (2020) 15 *Perspectives on Psychological Science* 327

⁷³ *Ibid*

⁷⁴ Robyn Torok, 'Developing an explanatory model for the process of online radicalisation and terrorism' (2013) 2 *Security Informatics a Springer Open Journal* 1

and corroborate their opinions, which leads to increases in opinion extremity, as they gain more confidence after learning that others share their views.⁷⁵ Therefore, it would seem that social media and online forums are the new battlegrounds for hearts and minds.⁷⁶ According to Frank Foley, the internet has three central roles for freelance terrorists: (a) it provides motivation through propaganda; (b) it provides technology that shows how to make things; and (c) it is a way of communication that does not require a physical meeting.⁷⁷ Thus, even the ‘lone actor’ terrorists, who may be physically isolated, are not isolated psychologically, as they can share their experiences and understanding with others online.⁷⁸ However, Sageman seems to take a slightly different view regarding online radicalisation:

No matter how important for propaganda purposes these passive websites are, they are not the engine of radicalization. People in general do not change their minds or harden their views by reading newspaper articles or books. They usually read what conforms to their original bias, and thereby only confirms their views, which were created elsewhere.... These sites merely reinforce already made-up minds. ⁷⁹

Nonetheless, Sageman’s argument does not alter the Government’s narrative that the internet has a role to play in the radicalisation process, be it the role of the engine for radicalisation, as argued by the Government, or the reinforcement of radical and extreme ideas, as argued by Sageman. Although he points out that there are some counter-terrorism analysts who are unconvinced that online relationships can produce the intensity of trust and emotions essential to sacrificing oneself for a cause, he argues that many psychological studies have shown ‘that online feelings are stronger in almost every measurement than offline feelings’.⁸⁰

⁷⁵ Sarita Yardi and Danah Boyd, ‘Dynamic Debates: An Analysis of Group Polarization over Time on Twitter’ (2010) 30 *Bulletin of science, technology & society* 316

⁷⁶ Robyn Torok, (n74) p8

⁷⁷ Frank Foley, *Countering Terrorism in Britain and France* (Cambridge University Press 2013) p24

⁷⁸ Laura G. E. Smith, Leda Blackwood & Emma F. Thomas (n72)

⁷⁹ Marc Sageman (n66) p118

⁸⁰ *Ibid*, p119

Some theories place more focus on group processes compared to the individual. For example, in the ‘situated social interaction’ theory presented by Smith *et al.*, individual risk factors, such as vulnerability, social isolation and grievance, are regarded distal to the radicalisation process, whilst group socialisation, where idiosyncratic and individual thoughts are endorsed by others, are regarded as proximal factors.⁸¹ The actual process of radicalisation, they argue, happens in group socialisation, where two important processes take place: (a) social interaction increases consensus over certain perspectives, which they refer to as the process of ‘consensualization’; and (b) through social interaction individual experiences are ‘collectivised’, where it is asserted that these experiences of grievances happen systematically to Muslims as a group.⁸²

In any case, the above suggests that many counter-terrorism analysts support the view of Government that extremist ideologues and networks have a significant role to play in radicalisation. The next section will analyse the third factor of radicalisation in the Government’s narrative, which is vulnerability.

2.2.1.3 VULNERABLE INDIVIDUALS

The third factor in the Government’s radicalisation narrative is vulnerability. There are a number of theories that seek to explain what makes people vulnerable to radical ideas and violence, of which three will be the subject of discussion in this section. The first theory, which is supported by Prevent practitioners, states that some critical life events, such as a breakup in the family unit, may reduce resilience and make a person vulnerable to radicalisation.⁸³ Quintan Wiktorowicz developed the argument by introducing the term ‘cognitive opening’, which refers to someone being receptive to other views and perspectives due to a psychological crisis in which previously held beliefs are shaken.⁸⁴ This in turn makes a person vulnerable, as he or she starts religiously seeking to find

⁸¹ Laura G. E. Smith, Leda Blackwood & Emma F. Thomas (n72)

⁸² Ibid

⁸³ Daniel Peddell, Marie Eyre, Michelle McManus, Jim Bonworth, ‘Influences and Vulnerabilities in Radicalised Lone-actor Terrorists: UK Practitioners Perspectives’ (2016) 18 *International Journal of Police Science & Management* 63

⁸⁴ Quintan Wiktorowicz, ‘Joining the Cause: Al-Muhajiroun and Radical Islam’ (2004)

<<http://insct.syr.edu/wp-content/uploads/2013/03/Wiktorowicz.Joining-the-Cause.pdf>> accessed 03

answers and is exposed to extremist groups and networks.⁸⁵ Rudolph Peters suggests that the terrorist Mohammed Bouyeri, who killed the Dutch film-maker Theo van Gogh, had a cognitive opening in 2001 when he served a prison sentence and lost his mother in the same year, which supposedly resulted in him setting out on a 'quest for the truth'.⁸⁶ In 2003, his application for government funding to set up a club for Moroccan youth was declined, which, according to Peters, may have further adversely affected his trust in the Dutch political system and Dutch society in general.⁸⁷ It was then noted that in the same year his contact with the Syrian preacher Abu Khaled el-Essa intensified and later documents were found containing verses in Arabic and Dutch regarding unbelief, idolatry and jihad, stored in directories referring to Abu Khaled el-Essa.⁸⁸ Peters argues that it is plausible that these were used for teaching purposes, and familiarising Bouyeri with the works of Sayyid Qutb and Abul Ala Mawdudi.⁸⁹

The Second theory of what makes people vulnerable is based on identity crises. It is often claimed that children of immigrants suffer from an identity crisis that makes them vulnerable to terrorism, for example David Cameron argued:

Some young men find it hard to identify with the traditional Islam practiced at home by their parents, whose customs can seem staid when transplanted to modern Western countries. But these young men also find it hard to identify with Britain too, because we have allowed the weakening of our collective identity. Under the doctrine of state multiculturalism, we have encouraged different cultures to live separate lives, apart from each other and apart from the mainstream. We've failed to provide a vision of society to which they feel

⁸⁵ Ibid, p1

⁸⁶ Rudolph Peters, 'Dutch Extremist Islamist: Van Gogh's Murderer and His Ideas', in Rik Coolsaet (ed) *Jihadi Terrorism and the Radicalisation Challenge in Europe* (Ashgate Publishing Limited 2008)

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid

they want to belong. We've even tolerated these segregated communities behaving in ways that run completely counter to our values.⁹⁰

The Government's Prevent Strategy also argues this point:

Some recent academic work suggests that radicalisation occurs as people search for identity, meaning and community. It has been argued in particular that some second or third generation Muslims in Europe, facing apparent or real discrimination and socio-economic disadvantage, can find in terrorism a 'value system', a community and an apparently just cause. We note that organisations working on Prevent have also found evidence to support the theory that identity and community are essential factors in radicalisation.⁹¹

A recurring question in terrorism literature is whether Muslim identities are primarily oriented towards states of residence or whether they transcend national boundaries based on agendas defined in terms of Islam.⁹² Policy-makers and law enforcement officers 'often see Muslim transnational affiliations as indicators of potential terrorism linkages', and thus the question of identity becomes a question of loyalty.⁹³

The third theory suggests that vulnerability could be a result of mental illnesses, depression or paranoia. The notion that there is a 'terrorist personality' has today been abandoned and its historical research is seen as being biased,⁹⁴ as Crenshaw argues that the outstanding common characteristic of terrorists is their normality.⁹⁵ Nonetheless, psychologists have been keen in this area of study to ascertain whether or not there is a link between mental illness and terrorism, as well as finding other external motivators that would explain the process of radicalisation. Terror acts, such as suicide bombings,

⁹⁰ David Cameron, 'PM's speech at Munich Security Conference' (5 February 2011)

<<https://www.gov.uk/government/speeches/pms-speech-at-munich-security-conference>> accessed 06 May 2017

⁹¹ HM Government (n60) para 5.22

⁹² Peter Mandaville, 'Muslim Transnational Identity and State Responses in Europe and the UK after 9/11: Political Community, Ideology and Authority' (2009) 35 *Journal of Ethnic and Migration Studies* 491

⁹³ *Ibid*, p492

⁹⁴ Samuel J. Leistedt, 'Behavioural Aspects of Terrorism' (2013) 228 *Forensic science international* 21

⁹⁵ Martha Crenshaw, (n67) p390

seem to go against all notions of self-preservation, hence, it is commonly thought that the person must be cut off from reality and suffering from mental illness.⁹⁶ A study involving 608 participants from Pakistani and Bangladeshi family origins, aged 14-45, living in Bradford and London, found that depressive symptoms, which indicate mild depression, 'were common among those showing the most sympathy towards violent protest and terrorism'.⁹⁷

Furthermore, Tim Aistrophe argues that in radicalisation discourse, paranoia, or conspiracy theories such as that the CIA or Israel's intelligence agency Mossad blew up the World Trade Centre and the West is waging a war on Islam, is often a key motivator in the process of radicalisation, which is thought to have the effect of suspiciousness, irrationality and abnormality.⁹⁸ Aistrophe refers to this type of discourse as the 'Muslim paranoia narrative', which can be heard in many official talks, such as David Cameron's speech in July 2015. Cameron said, whilst mentioning intolerant ideas that create a climate for extremists to flourish:

And ideas also based on the conspiracy that Jews exercise malevolent power; or that Western powers, in concert with Israel, are deliberately humiliating Muslims, because they aim to destroy Islam. In this warped worldview, such conclusions are reached that 9/11 was actually inspired by Mossad to provoke the invasion of Afghanistan; that British security services knew about 7/7, but didn't do anything about it because they wanted to provoke an anti-Muslim backlash. And like so many ideologies that have existed before – whether fascist or communist – many people, especially young people, are being drawn to it.⁹⁹

⁹⁶ Samuel J. Leistedt (n94)

⁹⁷ Kamaldeep Bhui, Brian Everitt and Edgar Jones, 'Might Depression, Psychosocial Adversity, and Limited Social Assets Explain Vulnerability to and Resistance Against Violent Radicalisation?', (2014) 9 PLoS ONE 1 e105918 <<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0105918>> accessed 03 April 2023

⁹⁸ Tim Aistrophe, 'The Muslim Paranoia Narrative in Counter-Radicalisation Policy', (2016) 9 Critical Studies on Terrorism 182

⁹⁹ David Cameron, 'Extremism: PM Speech' (20 July 2015) <<https://www.gov.uk/government/speeches/extremism-pm-speech>> accessed 18 June 2017

According to this narrative, it is argued that individuals become irrational, suspicious and abnormal due to paranoia, and that makes them susceptible to radicalisation. Barack Obama also argued this same point in 2015:

There's a strain of thought that ... does buy into the notion that the Muslim world has suffered historical grievances – sometimes that's accurate – does buy into the belief that so many of the ills in the Middle East flow from a history of colonialism or conspiracy; does buy into the idea that Islam is incompatible with modernity or tolerance, or that it's been polluted by Western values. So those beliefs exist. In some communities around the world they are widespread. And so, it makes individuals – especially young people who already may be disaffected or alienated – more ripe for radicalization.¹⁰⁰

All of the three theories, based on critical life events, identity crises and mental illness, among other factors, are utilised in the vulnerability assessment framework that is adopted by Channel¹⁰¹ as 'engagement factors' also known as 'psychological hooks'.¹⁰² The Home Office has further issued guidance, that even when these factors are not clearly visible in someone, 'there are a number of behaviours and other indicators that

¹⁰⁰ Barack Obama, Closing of the Summit on Countering Violent Extremism, U.S. Embassy & Consulates in Indonesia (18 February, 2015) <<https://id.usembassy.gov/remarks-by-the-president-in-closing-of-the-summit-on-countering-violent-extremism/>> accessed 18 June 2017

¹⁰¹ The Channel is a key element of the Government's Prevent strategy that states it uses a multi-agency approach to provide support to those that are seen to be at risk of radicalisation. <<https://www.gov.uk/government/publications/channel-and-prevent-multi-agency-panel-pmap-guidance#:~:text=Channel%2FPMAP%20is%20about%20ensuring,involvement%20in%20criminal%20terrorist%20activity.>> accessed 03 April 2023

¹⁰² The framework lists the following factors: 'feelings of grievance and injustice; feeling under threat; a need for identity, meaning and belonging; a desire for status; a desire for excitement and adventure; a need to dominate and control others; susceptibility to indoctrination; a desire for political or moral change; opportunistic involvement; family or friends involvement in extremism; being at a transitional time of life; being influenced or controlled by a group; [and] relevant mental health issues'.

See: HM Government, 'Channel: Vulnerability assessment framework' (October 2012) <http://course.ncalt.com/Channel_General_Awareness/01/resources/docs/vul-assessment.pdf> accessed 23 May 2017

may indicate their presence'.¹⁰³ The official Government documentation shows the complicated web of vulnerability factors, which do not necessarily mean that a person is vulnerable to terrorism, but are intended to be indicators that they may be. These indicators are based upon theories found in academic literature; however, they have faced great criticism, which will be discussed later in this chapter.

2.2.1.4 ABSENCE OF RESILIENCE

The fourth factor in the Government's radicalisation narrative is the absence of community resilience to counter radicalisation. Ann Masten *et al.* describe resilience as 'the process of, capacity for, or outcome of successful adaptation despite challenging or threatening circumstances'.¹⁰⁴ Community resilience has also been described as those factors in a community that promote safety and buffer against harms, such as injury, violence and adversity.¹⁰⁵ This resilience to terrorist ideology and propagandists, according to the Government, increases when there is a stronger sense of belonging and citizenship.¹⁰⁶ As such, social isolation forms part of the vulnerability criteria used by Prevent practitioners to identify those at risk of being drawn into terrorism.¹⁰⁷

¹⁰³ For example, the indicators that show engagement with an extremist group, cause or ideology include: spending increasing time in the company of other suspected extremists; changing their style of dress or personal appearance to accord with the group; their day-to-day behaviour becoming increasingly centred around an extremist ideology, group or cause; loss of interest in other friends and activities not associated with the extremist ideology, group or cause; possession of material or symbols associated with an extremist cause (e.g. the swastika for far right groups); attempts to recruit others to the group/cause/ideology; or communications with others that suggest identification with a group/cause/ideology'. *ibid*

¹⁰⁴ Ann S. Masten, Karin M. Best and Norman Garmezy, 'Resilience and Development: Contributions from the Study of Children Who Overcome Adversity' (1990) 2 *Development and Psychopathology* 425, p245

¹⁰⁵ Rashid Ahmed, Mohamed Seedat, Ashley van Niekerk, Samed Bulbulia, 'Discerning Community Resilience in Disadvantaged Communities in the Context of Violence and Injury Prevention' (2004) 34 *South African Journal of psychology* 386

¹⁰⁶ HM Government (n60) para 6.21

¹⁰⁷ Daniel Peddell, Marie Eyre, Michelle McManus, Jim Bonworth, 'Influences and Vulnerabilities in Radicalised lone-actor Terrorists: UK Practitioners Perspectives', (2016) 18 *International Journal of Police Science & Management* 63

Arguably, the 'absence of community resilience' in the Government's narrative of radicalisation factors seems to be rooted in the criminological theory of 'social control'. This theory traces back to Travis Hirschi, who postulates that people who have stronger social bonds and are better connected are less willing to do delinquent acts than those with a weaker social bond, due to the negative consequences from such behaviour.¹⁰⁸ More recently, Heidi Ellis and Saida Abdi build on this theory and argue that resilience in communities is based upon three critical types of social connections – social bond, social bridging and social linking,¹⁰⁹ which the following discussion will explore.

Firstly, a strong 'social bond' between members of a community, which, also according to Christian Sonn and Adrian Fisher, can serve as a protective resource in mitigating the negative effects of oppression in society.¹¹⁰ Therefore, strong social bonds within a community play a part in mitigating the effects of Islamophobia, discrimination, social exclusion and other similar real or perceived grievances; thus, the people that are involved with their community are less likely to commit criminal acts.¹¹¹

Secondly, 'social bridging' between different communities that are dissimilar, has also been argued to be essential in building resilience in communities. The experience of belonging to a wider community encourages tolerance, diversity and acceptance, which

¹⁰⁸ Hirschi based his model on four elements: attachment, commitment, involvement and belief. In short, he argued that attachment and emotional connection with others makes people sensitive to their opinions, and since a delinquent act can lead to disapproval by them, people are less likely to commit such acts. Likewise, long-term commitment to educational or occupational goals can act as a deterrent from delinquent acts that could jeopardise those goals. Similarly, involvement in activities after school or job reduces the time for such acts. And lastly, greater belief in the moral validity of the law was associated with lower levels of delinquency.

Travis Hirschi, *Causes of Delinquency* (Berkeley: University of California Press, 1969); See also Barbara J. Costello and John H. Laub, 'Social Control Theory: The Legacy of Travis Hirschi's Causes of Delinquency' (2020) 3 Annual Review of Criminology 21

¹⁰⁹ B. Heidi Ellis and Saida Abdi, 'Building Community Resilience to Violent Extremism Through Genuine Partnerships' (2017) 72 American Psychological Association 289

¹¹⁰ Christopher C. Sonn and Adrian T. Fisher, 'Sense of Community: Community Resilient Responses to Oppression and Change' (1998) 26 Journal of Community Psychology 457; also See: B. Heidi Ellis and Saida Abdi (n109)

¹¹¹ Kimberly Kempf-Leonard, Nancy A. Morris, *Social Control Theory* (Oxford University Press 2012)

in turn creates societies that are more united and resilient to terrorism and hate crime.¹¹² The Government also argues the same point:

Building community cohesion is about creating strong and positive relationships between people of different backgrounds, including those from different ethnic and cultural backgrounds and from different faith communities. By focusing on what people have in common as well as on the value of diversity, community cohesion can foster a shared vision of the future and sense of belonging ... [where] extremist messages are less likely to find support and are more easily isolated.¹¹³

Social connections were also shown to be important in the study done by Kamaldeep Bhui, Brian Everitt and Edgar Jones, which found that, among their 608 participants, those with a greater number of social contacts were associated with more condemnation of terrorism.¹¹⁴ Moreover, social isolation does not always have to be a type of solitude, but can be insulation from alternative viewpoints and competing rationalities, which can be self-imposed by individuals who 'spend large amounts of time online engaging with radical materials'.¹¹⁵

Thirdly, 'social linking', which is a social connection between communities and governing bodies, is thought to play a vital role in creating resilience. Social linking is vertical linkage as opposed to social bridging, which is horizontal linkage. It is thought that building trust as well as a sense of common purpose between government agencies, such as the police, and minority communities ensures that avenues of reporting risk and seeking advice from authorities are kept healthy.¹¹⁶ As part of social linking, grievances, such as Islamophobia and discrimination, which can create conditions for violent extremism, need to be resolved by government agencies, in order to build community resilience.¹¹⁷ As such, this factor is connected to the next factor for radicalisation in the Government's

¹¹² B. Heidi Ellis and Saida Abdi (n109)

¹¹³ HM Government (n24) p84

¹¹⁴ Kamaldeep Bhui, Brian Everitt and Edgar Jones (n97)

¹¹⁵ Robyn Torok (n74) p6

¹¹⁶ B. Heidi Ellis and Saida Abdi (n109)

¹¹⁷ *ibid*

theory, which is that the terrorist ideology and ideologues exploit the grievances of vulnerable individuals.

2.2.1.5 GRIEVANCES

In line with the Government's understanding, some theorists have also suggested grievance as a factor in radicalisation. Crenshaw, for example, describes grievances as 'the first condition that can be considered a direct cause of terrorism'.¹¹⁸ Social movements are developed to redress these grievances, and 'terrorism is then the resort of an extremist faction of this broader movement'.¹¹⁹ Pantazis and Pemberton have argued that to ignore 'grievances is to ignore the important lessons from the Irish conflict'.¹²⁰

Many theorists start with grievance as the first stage in the process. For example, Randy Borum identifies four observable stages in the process of radicalisation. In the first – 'it's not right' – stage, an undesirable condition or event is identified as grievance.¹²¹ In the second – 'it's not fair' – stage, the individual frames the condition as an injustice, which facilitates feelings of resentment and injustice.¹²² In the third – 'it's your fault' – stage, the extremists hold a person or group responsible, who are identified as potential targets.¹²³ In the fourth – 'you're evil' – stage, the individual deems those that are responsible for the injustice as evil.¹²⁴ This ascription has the effect of justifying aggression and violence towards those labelled as evil people by dehumanising them.

Likewise, Fathali Moghaddam also highlights feelings of deprivation and grievances at the ground level of his radicalisation theory, known as the 'Staircase to Terrorism':

¹¹⁸ Martha Crenshaw (n67) p383

¹¹⁹ Ibid

¹²⁰ Christina Pantazis and Simon Pemberton, 'From The 'Old' to The 'New' Suspect Community - Examining the Impacts of Recent UK Counter-Terrorist Legislation' (2009) 49 *British journal of criminology* 646, p660

¹²¹ Randy Borum, 'Understanding the Terrorist Mind-set' (2003) 72 *FBI law enforcement bulletin* 7, p7

¹²² Ibid, p8

¹²³ Ibid

¹²⁴ Ibid

To understand those who climb to the top of the staircase to terrorism, one must first comprehend the level of perceived injustice and the feelings of frustration and shame among hundreds of millions of people down at the ground floor.¹²⁵

Individuals who seek solutions and fight perceived injustices climb to the first floor of Moghaddam's staircase, where he argues that if 'paths to individual mobility are seen to be open, there is far less tendency to attempt non-normative actions'.¹²⁶ However, if social mobility or procedural justice is not available on this floor, individuals move up the 'Staircase to Terrorism' and a target, usually the United States, is blamed. Those individuals who seek to physically displace the aggression 'climb more steps to try to take action against perceived enemies'.¹²⁷ This model also suggests that the starting point of radicalisation is identification of a grievance.

Official documentation often draws connections between grievances and radicalisation, for example the Prevent Strategy states, 'approval of violent extremism is higher ... for people from lower income and socio-economic groups',¹²⁸ which subtly suggests that grievances, such as economic deprivation, have a role in the radicalisation process. Whilst it may seem that many terrorists have not come from deprived backgrounds and do not seem to have suffered a great deal of personal grievances, yet have gone on to do acts of terrorism, Javier Argomaniz and Orla Lynch posit that grievances can be adopted vicariously if people feel that they are part of a community that is impacted.¹²⁹ This theory suggests that individuals may be affected by foreign and distant grievances, which are constructed as altruistic in the perpetrator's mind to help those suffering directly from the grievance.¹³⁰ This notion is further backed by Derek McGhee, who argues that the idea of 'one Ummah' – one nation – cannot be ignored, which is

¹²⁵ Fathali M. Moghaddam, 'The Staircase to Terrorism - A Psychological Exploration' (2005) 60 *American Psychologist* 161, p162

¹²⁶ *Ibid*, p163

¹²⁷ *Ibid*, p164

¹²⁸ HM Government (n60) para 5.18

¹²⁹ Javier Argomaniz and Orla Lynch, 'Introduction to the Special Issue: The Complexity of Terrorism – Victims, Perpetrators and Radicalisation', (2018) 41 *Studies in Conflict & Terrorism* 491

¹³⁰ *ibid*

expressed as solidarity with oppressed Muslims, domestically as well as internationally.¹³¹ This point was also recognised by Charles Farr, who said:

Deprivation can be a driver for radicalisation amongst those who are not themselves deprived. In other words, people do tend to look around the world and can get motivated towards radicalisation by a perception of the treatment that Muslim communities are receiving.¹³²

The video statement by Mohammad Sidique Khan, one of the 7 July London bombers, demonstrates that the motivation behind the attack was the perceived injustice on Muslims internationally caused by the UK Government.

Your democratically elected governments continuously perpetuate atrocities against my people all over the world. And your support of them makes you directly responsible, just as I am directly responsible for protecting and avenging my Muslim brothers and sisters. Until we feel security, you will be our targets. And until you stop the bombing, gassing, imprisonment and torture of my people we will not stop this fight. We are at war and I am a soldier. Now you too will taste the reality of this situation.¹³³

Although this statement links the foreign policy to injustices faced by Muslims globally, the Government has given contradictory messages regarding the effects of the foreign policy as a grievance. On the one hand the Foreign Secretary in 2006, Margaret Beckett, described drawing a connection between government policy and terrorism as the

¹³¹ Derek McGhee, *The End of Multiculturalism? Terrorism, Integration and Human Rights* (Open University Press 2008) p64

¹³² Communities and Local Government Committee, *Preventing Violent Extremism*, Sixth Report (2009-10, HC 65) Ev80

<<https://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomloc/65/65.pdf>> accessed 03 May 2017

¹³³ House of Commons, 'Report of the Official Account of the Bombings in London on 7th July 2005' (May 2006, HC 1087) p19

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/28837/1087.pdf> accessed 15 April 2020

'gravest possible error'.¹³⁴ She further argued that the blame belonged to those who 'wantonly want to take innocent lives'.¹³⁵ On the contrary, the Prevent Strategy asserts that:

Issues which can contribute to a sense that Muslim communities are being unfairly treated include ... UK foreign policy, notably with regard to Muslim countries, the Israel-Palestine conflict and the war in Iraq.¹³⁶

In any case, a combination of personal grievances coupled with the idea that Muslims are one pain-sharing Ummah is regarded as a leading factor in radicalisation. Sageman makes this point using a case study on Ahmed Omar Saeed Sheikh. He documents that Omar had confessed to being radicalised because of bullying he had faced at school in London.¹³⁷ Sageman also documents his diary concerning his feelings after watching a documentary that depicted Bosnian Muslims being castrated in camps by Serbs.¹³⁸ Omar then became involved in refugee work helping aid convoys to Bosnia, with a charity called Convoy of Mercy.¹³⁹ Assad Khan, a trustee of that charity, explained, concerning injustices in Bosnia, Kashmir and Palestine, that:

There are people going to all these places because they believe their fellow Muslims are suffering.... There are many things happening in the world that make Muslims angry. Some of us choose to put our energies into humanitarian relief work, others choose to fight.¹⁴⁰

¹³⁴ Ned Temko, 'Beckett rejects link between foreign policy and terrorism', *The Guardian* (Sunday 13 August 2006) <<https://www.theguardian.com/uk/2006/aug/13/terrorism.politics>> accessed 03 May 2017

¹³⁵ Ibid

¹³⁶ HM Government (n60) para 5.27

¹³⁷ Marc Sageman (66) p12

¹³⁸ Ibid

¹³⁹ Sean O'Neill, 'Public schoolboy who turned to terror', *The telegraph* (16 July 2002), <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/1401571/Public-schoolboy-who-turned-to-terror.html> (04/05/2017)

¹⁴⁰ Marc Sageman (n66) pp15-16

Omar, later, travelled to Afghanistan for arms training and joining the fighters.¹⁴¹ Sageman argues that this account of Omar suggests that the terrorist's interpretation on world events appeals to Muslims as it 'resonates with their personal experiences of discrimination and economic exclusion'.¹⁴²

Rice posits that terrorism is a by-product of perceived indignities in repressive environments that cause anger, humiliation and shame in segments of the Muslim community.¹⁴³ Using Bin Laden's interviews, Rice argues that the motivation for his terrorism was the view that 'Muslims are still being humiliated whether it is in Kashmir or Palestine or in Iraq' and his war was about reclaiming Muslim Pride.¹⁴⁴ This argument is closely tied with Agnew's general strain theory, which argues that 'strains or stressors increase the likelihood of negative emotions like anger and frustration. These emotions create pressure for corrective action, and crime is one possible response'.¹⁴⁵ Agnew explains:

Anger fosters crime because it disrupts cognitive processes in ways that impede noncriminal coping; for example, it leads individuals to disregard information that may help resolve the situation, and it reduces the ability to clearly express grievances. Anger also reduces the actual and perceived costs of crime; for example, angry individuals are less likely to feel guilty for their criminal behaviour because they believe that the injustice they suffered justifies crime. Finally, anger energises the individual for action, creates a sense of power or control, and creates a desire for revenge or retribution – all of which lead individuals to view crime in a more favourable light.¹⁴⁶

¹⁴¹ Ibid, p15

¹⁴² Ibid, p163

¹⁴³ Stephen K. Rice, 'Emotions and Terrorism Research: A Case for Social-Psychological Agenda', (2009) 37 *Journal of Criminal Justice* 248

¹⁴⁴ Ibid

¹⁴⁵ Robert Agnew, 'Building on the Foundation of General Strain Theory: Specifying the types of Strain Most Likely to Lead to Crime and Delinquency' (2001) 38 *Journal of Research in Crime and Delinquency* 319, p319

¹⁴⁶ Ibid, p327

Nonetheless, the above discussions have shown that the five factors of radicalisation in the Government's narrative have support from radicalisation theories. However, the next section will demonstrate that other academics have been highly critical of this process and question the lack of evidence behind the theories that support the factors.

2.3 CRITICISMS ON THE RADICALISATION PROCESS

Chapter One highlighted that Prevent has led to the creation of suspect communities. This section adds to that account by postulating that it is the radicalisation narrative within Prevent that disproportionately targets the Muslims and creates suspect communities. Although, the Government says that their deradicalisation programs also target far-right extremism, the vast majority of the radicalisation theories and arguments frame the issue as a Muslim problem. Charles Farr, Director General of the Office for Security and Counter Terrorism (OSCT) at the Home Office, summarises the logic behind why the Muslim community should be under surveillance:

It is a simple statement of fact that al-Qaeda tends to focus for its recruitment operations on people in Muslim communities of a variety of different kinds and, of course, not just in this country but in every other country in Europe and across the world. Inevitably, if you start with al-Qaeda you tend to begin to look at the constituencies that they focus on, and that means Muslim communities.¹⁴⁷

Steven Greer, on the contrary, argues that it is problematic to argue that the Muslim community has become suspect, as Muslims are as divided over interpretations of Islam, race, ethnicity and national origins as they are united by a common faith; thus 'it is extremely doubtful if there is a "Muslim community in Britain" in any meaningful sense'.¹⁴⁸ However, this argument is problematic not only because Muslims do share a sense of identity, but also because it seems to imply that the term Muslim does not indicate a particular community or group, yet in formulating his argument Greer is able

¹⁴⁷ 147 Communities and Local Government Committee, *Preventing Violent Extremism*, Sixth Report (2009-10, HC 65) Ev72

<<https://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomloc/65/65.pdf>> accessed 30 September 2021

¹⁴⁸ Steven Greer, 'Human Rights and the Struggle Against Terrorism in the United Kingdom' (2008) 2 *European Human Rights Law Review* 163

to identify this group using the word 'Muslims' and describe them as divided. Moreover, Farr's justification for targeting the Muslim community with surveillance by in the above quote is evidence that this community does exist and it is under suspicion.

Furthermore, the Institute for Policy Research & Development has argued that, as there is no single typical pathway to violent extremism and terrorists fit no single demographic profile, all Muslims irrespective of their gender, class, age and locality are seen as potentially at risk, and that leads to the danger of criminalising the entire community.¹⁴⁹ Much of the earlier official literature seems to suggest that since the nature of the dominant threat is specifically al-Qaeda inspired, broadening the focus of Prevent may 'add further complication and confusion to an already complicated arena'.¹⁵⁰

In spite of the fact that grievances can be found in all types of communities and ethnicities, only Muslim grievances form one of the factors at the core of most radicalisation theories and discourses. A particular exceptionalism is applied to the Muslim youth population, who are portrayed as being disenfranchised from mainstream society, because of grievances based on underprivileged local situations and poor prospects all around.¹⁵¹ This emphasis in most radicalisation theories only serves to maintain suspicions surrounding the Muslim youth.

Similarly, the vulnerability second or third-generation Muslims in Europe due to identity crises is a description that only fits the Muslim population. These population characteristics, as opposed to individual characteristics of perpetrators of terrorism, are seen as clear indicators of radicalisation of the Muslim youth, without question, evidence or analysis.¹⁵² This is despite the fact that the Home Office Citizenship Survey, April—June 2007 showed that the vast majority of ethnic minorities had 'very strong' or 'fairly strong' feelings of belonging to the UK.¹⁵³ With 91% of Bangladeshi, 89% of Indian, 87% of Pakistani, 85% of Black Caribbean and 84% of Black African people identifying themselves as British.¹⁵⁴ Yet, the radicalisation discourse has become entangled with

¹⁴⁹ Communities and Local Government Committee (n147) Ev 125

¹⁵⁰ Ibid, p23

¹⁵¹ Orla Lynch (n34)

¹⁵² Ibid

¹⁵³ Communities and Local Government Committee (147) p26

¹⁵⁴ Ibid

notions of integration, segregation and Britishness regarding the Muslim youth. Generalised suspicion of the whole community stems from the assumption of vulnerability due to heritage or transnational connections. Arguably, the radicalisation discourse does not reflect the complexity and multifaceted identities of the Muslim youth and fails to take into account that Muslims could be very patriotic to their state of residence whilst showing support to a transnational cause, such as the freedom and human rights of Palestinians or Kashmiris. It risks conflating genuine concern and protest regarding transnational human rights violations as grievances and signs of radicalisation.

Although the Government now regards far-right terrorism as a growing issue, radicalisation theories have failed to consider terrorism perpetrated by non-Muslims. Arun Kundnani argues that the question which every radicalisation process is trying to answer is why some individual Muslims support an extremist interpretation of Islam that leads to violence, which ignores any terrorism not carried out by Muslims.¹⁵⁵ Therefore, it can be argued that not only is this a discriminatory approach to a problem which is not limited to Muslims, but also the results will have limited benefit, due to the narrow and limited approach in dealing with only Muslim perpetrators of terrorism and ignoring non-Muslim perpetrators. Thus, it is not surprising that academics have argued that policies based on these untested hypotheses have led to the creation of a 'suspect community' – the Muslim community. Some of the radicalisation literature seems to regard the ordinary common meeting places of Muslims, such as mosques, cafes, cab driver hangouts, hookah (water pipe) bars, butcher shops and book stores, as 'radicalisation incubators',¹⁵⁶ which only serves to encourage surveillance of the general places where Muslims socialise and congregate.

Moreover, it is questionable whether these radicalisation factors lead to terrorism or support for terrorism. Bartlett and Miller have argued that conclusions are drawn by radicalisation theorists without comparing their cases to 'the hundreds of thousands of people who experience the same permissive factors, came into contact with the same people, read the same books, and had the same background, but were radicalised, or

¹⁵⁵ Arun Kundnani, 'Radicalisation: The Journey of a Concept' (2012) 54 Institute of Race Relations 3

¹⁵⁶ Mitchell D. Silber and Arvin Bhatt, 'Radicalization in the West: The Homegrown Threat', New York City Police Department (2007) <https://seths.blog/wp-content/uploads/2007/09/NYPD_Report-Radicalization_in_the_West.pdf> accessed 12 April 2020

not, in a very different way'.¹⁵⁷ Surprisingly, this point was also acknowledged by the Home Office in 2011:

The empirical evidence base on what factors make an individual more vulnerable to [al-Qaeda] influenced violent extremism is weak. Even less is known about why certain individuals resort to violence, when other individuals from the same community, with similar experiences, do not become involved in violent activity.¹⁵⁸

According to a two-year fieldwork study conducted in the United Kingdom, Canada, Denmark, France and the Netherlands, focusing on home-grown al-Qaeda-inspired terrorism, the claims often used to explain terrorism also apply to the wider non-violent population, which debunks 'what are essentially empirically flimsy stereotyping of violent radicalisation'.¹⁵⁹ For example, it was found that anti-government sentiments and anger at Western foreign policy are not unique to terrorists, but may be common among general Muslims, which can be seen in the form of participation in protests against the Iraq War.¹⁶⁰ In other words, for the vast majority of the Muslim population these factors do not lead to support for terrorism, yet these factors do bring them under suspicion.

As such, the risks and benefits of using these factors need to be weighed, especially when their presence does not cause most Muslims to become radicals who support terrorism, but they do cause distress and are discriminatory. The radicalisation discourses can be counter-productive, polarise debates and lead to the spreading of 'dangerous antagonistic positions across our European societies that damage social cohesion'.¹⁶¹ Analysts of Prevent have argued that while the discourse has not directly

¹⁵⁷ Jamie Bartlett and Carl Miller, 'The Edge of Violence: Towards Telling the Difference Between Violent and Non-Violent Radicalisation' (2012) 24 *Terrorism and Political Violence* 1

¹⁵⁸ Tony Munton; Alison Martin; Theo Lorenc; Isaac Marrero-Guillamon; Farah Jamal; Angela Lehmann; Chris Cooper; and Matthew Sexton, 'Understanding vulnerability and resilience in individuals to the influence of Al Qa'ida violent extremism' (Home Office Occasional paper 98, 2011)

¹⁵⁹ Jamie Bartlett and Carl Miller (n157)

¹⁶⁰ Ibid

¹⁶¹ Didier Bigo, Laurent Bonelli, Emmanuel-Pierre Guittet and Francesco Ragazzi, *Preventing and Countering Youth Radicalisation in the EU*, [2014] Policy Department C – Citizens' Rights and

contributed to the escalation of violence per se, it has led to damaged relations between the state and Muslim communities across Europe.¹⁶² Feelings of being suspected serve little purpose other than to add another item to the grievance list and reinforce the al-Qaeda narrative that the West treats Muslims unjustly.

In addition to creating a suspect community, the radicalisation discourse has a number of other weaknesses. The Salafi ideology is regarded as only having the effect of leading people to terrorism, whilst the efforts of many Salafis in challenging the ISIS and al-Qaeda narrative is ignored. For example, Muhammad ibn Haadee, a Salafi scholar who is promoted by the Salafi Centre in Manchester,¹⁶³ has said:

As for these individuals (Meaning: ISIS, ISIJ, Al Qaeda and all other terrorist groups) they are only callers to Fitna (disorder and mayhem). And that which they call Jihad, is in reality disorder and mayhem. Whether they like it or not we say it loudly it is disorder and mayhem.¹⁶⁴

Another Salafi scholar promoted by the Salafi Centre in Manchester, Abd al-Muhsin al-Abbaad, after hearing that some people had made the pledge of allegiance to al-Baghdadi, has been quoted to say, 'they have pledged allegiance to the devil'.¹⁶⁵ The Brixton Salafi mosque boasts that 'it has been at the forefront of directly taking on

Constitutional Affairs, European Parliament

<[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/509977/IPOL-LIBE_ET\(2014\)509977_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/509977/IPOL-LIBE_ET(2014)509977_EN.pdf)> accessed 01 May 2017

¹⁶² Ibid

¹⁶³ The Salafi Centre of Manchester, 'Statements of the Salafi Scholars against ISIS -The Khawaarij of Syria and Iraq' (Salafi Centre, August 31, 2014) <<http://www.salaficentre.com/2014/08/statements-of-the-salafi-scholars-against-isis-the-khawaarij-of-syria-and-iraq/>> accessed 09 May 2017

¹⁶⁴ Muhammad bin Haadee, 'ISIS is a terrorist organization', (Masjid Tawheed wa Sunnah, June 21 2014) <<http://mtws.posthaven.com/isis-is-a-terrorist-organization-explained-by-shaykh-muhammad-bin-haadee>> accessed 09 May 2017

¹⁶⁵ Abdul-Mushin al-Abbaad, 'Shaykh Abdul-Muhsin: Those Who Have Given Bay'ah to al-Baghdadi (ISIS) Haven Given Bay'ah to a Shaytan (Devil)' (Takfiris.com, 07 July 2014) <<http://www.takfiris.com/takfir/articles/avc wd-shaykh-abdul-muhsin-those-who-have-given-bayah-to-al-baghdadi-isis.cfm>> accessed 09 May 2017

extremism head-on before it became a fashion trend to do so post 9/11'.¹⁶⁶ The Salafi publication titled 'A Compilation of Statements of the Salafi Scholars Regarding ISIS/ISIL – The So-Called Islamic State of Iraq and Sham'¹⁶⁷ is clear evidence that many adherents of the Salafi ideology also reject terrorism. Moreover, the Salafis of Brixton Mosque were at the frontline of the struggle against extremists such as Abu Hamza and Abu Qatada. Abdul Haq al-Ashanti, who did media work for the mosque, said that Abu Hamza and Abu Qatada 'would view us as being moderate and weak and sell-outs – stooges to different governments'.¹⁶⁸ The radicalisation narrative fails to explain why so many Salafis don't become terrorists. Jonathan Githens-Mazer and Robert Lambert, who undertook a case study on the Adam brothers,¹⁶⁹ argued that although both brothers attended a Salafi-inspired religious circle in east London and were inspired by Abu Hamza's politics, conventional wisdom fails to explain how the brother who was less exposed to key ideas of Abu Hamza became a terrorist whilst the other, who was more exposed, did not.¹⁷⁰

The above discussion does not totally reject the influence of Salafi ideology on terrorists, but it shows that the Salafi ideology, albeit puritanical, conservative and easily adaptable to the extremist agenda, can also be adapted to challenge the terrorist narrative. Therefore, it may be the case that the Salafi ideology is used to justify a violent political act, as opposed to being the cause of the violent act. Hence, it is suggested that any act of terrorism is 'a quintessentially political act taken in the name of a group based on

¹⁶⁶ Brixton Mosque, 'The Westminster Attack' (24 March 2017) <<http://brixtonmasjid.co.uk/the-westminster-attack/>> accessed 09 May 2017

¹⁶⁷ SalafiManhaj, 'The ISIS Papers - A Compilation of Statements of the Salafi Scholars Regarding ISIS/ISIL [The So-Called "Islamic State of Iraq and Sham]', (SalafiManhaj, 2014) <http://download.salafimanhaj.com/pdf/SalafiManhaj_ScholarsOnISIS.pdf> accessed 09 May 2017

¹⁶⁸ SW Londoner, 'Brixton mosque works with police in bid to combat radical ideologies as ISIS 'viral terrorism' spreads Online' (June 22 2015) <<http://www.swlondoner.co.uk/brixton-mosque-works-with-police-in-bid-to-combat-radical-ideologies-as-isis-viral-terrorism-spreads-online/>> accessed 09 May 2017

¹⁶⁹ The Adam brothers were Lamine and Rahman. Lamine, the older brother, took the greatest interest in the Salafi teachings of Islam, whilst the younger brother, Rahman, was less fluent in the teachings of Abu Hamza.. However, it was Rahman who went on to attempt a terrorist attack.

¹⁷⁰ Jonathan Githens-Mazer and Lambert, 'Why Conventional Wisdom on Radicalisation Fails: The Persistence of a failed discourse' (2010) 4 International Affairs 889

ethnicity, religion, nationalism or ideological orientation'.¹⁷¹ The Salafi ideology may be easily exploitable by the terrorists in furthering their goals; nevertheless, it is common among the non-radicalised Muslim population. Therefore, placing the Salafi ideology at the heart of the radicalisation process is in essence placing a large number of non-radicalised Muslims under suspicion of support for terrorism.

Likewise, vulnerability to radicalisation due to mental illness has been heavily discredited as a factor. The House of Commons report that analysed the background of the 7 July attackers pointed out that 'there is little in their backgrounds which marks them out as particularly vulnerable to radicalisation'.¹⁷² Many academics and researchers have argued that the vast majority of terrorists have not been emotionally disturbed or irrational individuals and nor is it likely that such individuals would be permitted to join terrorist organisations as they themselves would represent a security risk, and could not be reliable in following through with the plots without weakening the whole operation.¹⁷³ Martha Crenshaw argues that it is important to include strategic reasoning as one of the motivations for terrorism, at least as 'an antidote to stereotypes of terrorists as irrational fanatics'.¹⁷⁴ The strategic planning of the 7 July bombings in London, as well as Twin Towers attack, suggests that the perpetrators could not have been medically insane or cut off from reality.¹⁷⁵ This view is also supported by a report published by the European Parliament, which states that 'one pitfall of the conventional wisdom about radicalisation is to explain the process in terms of mental and social fragility, abnormality or irrationality'.¹⁷⁶ According to Mullins the vast majority of

¹⁷¹ Dipak K. Gupta (n30) p16

¹⁷² House of Commons (n133) p26

¹⁷³ Jerrold M. Post (n57) p54

¹⁷⁴ Martha Crenshaw, 'The logic of Terrorism: Terrorist Behavior as a Product of Strategic Choice', in Walter Reich (ed) *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind* (Woodrow Wilson Center Press 1990) p24

¹⁷⁵ Samuel J. Leistedt, 'Behavioural Aspects of Terrorism' (2013) 228 *Forensic science international* 21

¹⁷⁶ Didier Bigo, Laurent Bonelli, Emmanuel-Pierre Guittet and Francesco Ragazzi (n161)

terrorists appear to be psychologically normal, even if a few do suffer from mental illness.¹⁷⁷

However, some analysts have distinguished the lone-actor terrorist, who may commit atrocities because of vulnerability due to a mental illness, from those that act as part of an organised group, who are mainly rational and calculated individuals.¹⁷⁸ According to recent research, which looked at how Prevent practitioners perceived radicalisation among lone-actor terrorists, mental health was seen as a significant factor in personal vulnerability.¹⁷⁹ Analysts who regard mental illness as a factor assert that personal qualities or needs that might lead individuals to join violent extremist groups are often overlooked by scholars, who focus more on the terrorists' instrumental goals, such as political grievances.¹⁸⁰

In any case, it may be argued that although it is possible that lone-actor terrorists may suffer from mental illness, there is not sufficient evidence or empirical case studies to prove the effects of mental illness on vulnerability to radicalisation. It is often argued that the absence of reliable evidence in terrorism studies results in distorted findings. Jamie Bartlett and Carl Miller highlight that radicalisation research is often focused on a small group of known terrorists from which most conclusions about the causes of terrorism are drawn, whilst not having a comparison group of non-terrorists.¹⁸¹ Githens-Mazer and Lambert have argued that 'radicalisation is a research topic plagued by

¹⁷⁷ Sam Mullins, 'Iraq Versus Lack of Integration: Understanding the Motivations of Contemporary Islamist Terrorists in Western Countries', (2012) 4 Behavioral sciences of terrorism and political aggression 110

¹⁷⁸ Michel Benezech and Nicholas Estano, 'A` la recherche d'une a^me: psychopathologie de la radicalisation et du terrorisme - The Quest for a Soul: Psychopathology of Radicalisation and Terrorism', (2016) 174 Annales Me´ dico-Psychologiques 235

¹⁷⁹ Daniel Peddell, Marie Eyre, Michelle McManus, Jim Bonworth, 'Influences and Vulnerabilities in Radicalised lone-actor Terrorists: UK Practitioners Perspectives', (2016) 18 International Journal of Police Science & Management 63

¹⁸⁰ Jessica Stern, 'Radicalization to Extremism and Mobilization to Violence: What Have We Learned and What Can We Do about It?' (2016) 668 The ANNALS of the American Academy of Political and Social Science 102

¹⁸¹ Jamie Bartlett and Carl Miller, 'The Edge of Violence: Towards Telling the Difference Between Violent and Non-Violent Radicalisation' (2012) 24 Terrorism and political violence 1

assumptions and intuition, unhappily dominated by conventional wisdom rather than systematic scientific and empirically based research'.¹⁸²

The above discussion demonstrates that it is difficult to argue that these factors are causes of radicalisation, especially when they are very common among the non-radicalised peaceful Muslim population. This prevalence also reduces their utility as indicators of radicalisation, as they do not help in identifying who is on their way to become a terrorist. Yet academics have noted that the negative effect of the radicalisation discourse is the creation of suspect communities with increased surveillance.¹⁸³ The radicalisation narrative is likely to reduce political activism, such as public protests by the Muslim youth, for fear of being seen as 'potentially radicalised' and 'automatically associated with terrorism'.¹⁸⁴ The study carried out by Lynch of 66 Muslim youths, community workers and police, shows that many Muslims expressed reluctance in becoming involved in any form of political or social oppositional activity, such as anti-war demonstrations, out of fear of being associated with anti-Britishness and Islamic radicalism or extremism.¹⁸⁵

Suraj Lakhani noted, in his study on the implementation of the UK's Prevent Strategy, that potential respondents shied away from the study due to both a lack of trust and sensitivity to the issues around the topic of terrorism.¹⁸⁶ The widespread fears of spying and surveillance under the Prevent programme serve to alienate individuals and deter organisations from becoming involved in productive work in their communities.¹⁸⁷ The radicalisation narrative is said to stigmatise groups of Muslims through a process of differentiating between 'good Muslims' and 'bad Muslims', supporting those who

¹⁸² Jonathan Githens-Mazer and Lambert, 'Why Conventional Wisdom on Radicalisation Fails: The Persistence of a failed discourse' (2010) 86 *International affairs* (London) 889

¹⁸³ See section 1.4.1 of Chapter One

¹⁸⁴ Orla Lynch, 'British Muslim Youth: Radicalisation, Terrorism and the Construction of the Other', (2013) 6 *Critical studies on terrorism* 241

¹⁸⁵ *Ibid*

¹⁸⁶ Suraj Lakhani, 'Preventing Violent Extremism: Perceptions of Policy from Grassroots and Communities', (2012) 51 *Howard Journal* 190

¹⁸⁷ *Communities and Local Government Committee* (n147) p17

support the Government's political projects, and suppressing those who critically engage with policies that affect Muslims.¹⁸⁸

CONCLUSION

This chapter has demonstrated a number of important points from key literature on radicalisation. First, that there is no consensus over the definition of radicalisation, which means that (a) it is deeply contested, and (b) not all radicalisation theorists are talking about the same thing. Moreover, the far-reaching scope of some definitions may lead to the criminalisation of radical thought even if it is not violent. Second, this chapter has shown that there are a number of theories and case studies that lend support to the Government's discourse on the factors of radicalisation. However, the lack of an empirical evidence base for these factors and theories means that their generalisations are problematic. It is difficult to pinpoint the causes that lead people to support terrorism. The effectiveness and utility of these factors as indicators or viable explanations of radicalisation is problematic, since they are too common in the general, peaceful, non-radicalised population.

This chapter has also demonstrated that although the Government recognises the threat from far-right terrorists, yet the discourse and the theories of radicalisation are heavily skewed towards Muslims and can have the consequence of creating a suspect community. Hence, the effects of radicalisation discourse may be little more than adding another complaint to the list of grievances, which is counterintuitive and counterproductive to the cause of countering terrorism.

¹⁸⁸ Jonathan Githens-Mazer and Lambert (n182)

Chapter Three

EXTREMISM

The aim of this chapter is two-fold: first, to analyse and critique the definition of extremism to gain a better understanding of what university administration staff are required to risk assess. Second, to evaluate the rationale behind challenging non-violent extremism as part of the Prevent duty and to critically assess the practicalities of risk assessing non-violent extremism for university administration staff. Thus, this chapter is divided into two main sections. The first part of the chapter will critique the definition of extremism that is provided under the Prevent duty, as well as considering the practical implications of the definition. The second part of the chapter will critically analyse the rationale behind including the risk assessment of non-violent extremism as part of the Duty. It will show that violent and non-violent extremism are terms that are contested and ambiguous.

In order to address the above issues, this chapter will examine not only the academic literature, but also analyse Parliamentary debates surrounding the introduction of the Counter Terrorism and Security Act 2015 (CTSA). It is also important to highlight that most Parliamentary references to extremism within Hansard are from debates in the House of Lords rather than the House of Commons. This is because the accompanying guidance to the CTSA, which makes reference to extremism, was released too late to be debated in the House of Commons. The draft guidance was issued in late December 2014,¹ and as a result it was only discussed in the Report stage in the House of Commons on 7 January.² The third reading also fleetingly took place on the same day and the Bill was passed to the House of Lords.³ Therefore, the debate around extremism and universities mainly took place in the House of Lords. Arguably this speedy process did constrain Parliament's scrutiny of the Bill and the guidance, which was a concern that was also raised by members in the House of Commons.⁴

¹ HM Government, *Prevent duty guidance: a consultation* (HM Government, December 2014)

<https://democracy.havering.gov.uk/documents/s13757/Item%206.3%20Guidance.pdf> accessed 05 April 2021

² Counter-Terrorism and Security Bill, Report Stage, HC Deb 7 Jan 2015, vol 590, col 317

³ Counter-Terrorism and Security Bill, Third Reading, HC Deb 7 Jan 2015, vol 590

⁴ Diana Johnson, Labour MP for Kingston upon Hull North, argued in the Committee stage:

3.1 EXTREMISM AND PREVENT GUIDANCE

Section 26 (1) of the CTSA, which establishes the statutory Prevent duty, requires specified authorities to prevent people being drawn into terrorism. Since the CTSA does not mention extremism, it can be argued that the duty under CTSA is regarding terrorism and is not a free-standing duty with regards to extremism per se.⁵ Rather, universities have to consider extremism when doing their risk assessments under the Prevent duty, based upon its accompanying guidance. Paragraph 11 of the Prevent Duty Guidance for Higher Education (HEPDG) suggests that before hosting external speakers, universities need to consider ‘carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups’.⁶ Paragraph 19 of the HEPDG states that the duty involves ‘not just violent extremism but also non-violent extremism’.⁷ The definition of extremism has also been drafted to include non-violent extremism through its broad terms, as the next section will show.

3.1.1 DEFINITION OF EXTREMISM

Although the concept of ‘extremism’ has become firmly embedded within Government counter-terrorism discourse, there is a lack of clarity on what the term means in practice.⁸ This chapter will use the definition of extremism set out in Paragraph 7 of the Revised Prevent Guidance for England and Wales, which states that extremism is:

It is extremely unfortunate that the Government have not published draft guidance to aid our considerations. We have no problem with the principle of a general duty to prevent terrorism, but that could mean a number of things. It is therefore essential that we have access to the guidance, so that we can debate what is in it. See: Diana Johnson, HC Deb 16 Dec 2014, vol 589, Cols 1334-1335

⁵ Jack Anderson, ‘Extremism in the Further Education Sector’, [2016] Encyclopedia of Local Government Law Bulletin 8

⁶ Home Office, ‘Prevent duty guidance: for higher education institutions in England and Wales’, (Updated 10 April 2019) <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 08 July 2020

⁷ Ibid

⁸ For example, Baroness Warsi argued in the House of Lords: ‘[T]here are a number of definitions of extremism currently in government working documents. For example, the definition in the extremism

Vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas.⁹

Although this definition is central to the implementation of the statutory Prevent duty, it has been widely criticised as ambiguous and lacking in legal certainty.¹⁰ During the passage of the Counter-Terrorism and Security Bill, the Government was questioned for clarity, but sufficient clarity was not provided.¹¹ Research by the Policy Institute at King's College London, for example, indicates widespread scepticism from practitioners and the wider public on the utility of the definition.¹² Their findings show that only half of the practitioners found the extremism definition 'helpful' or 'very helpful'. Seventy-four practitioners either found the definition 'very unhelpful' or 'unhelpful'. Thirty-one Practitioners found it 'neither helpful nor unhelpful', and 10 responses were 'blank'. From the public, three quarters found it 'unhelpful' or 'very unhelpful'.¹³

task force paper after the tragic killing of Drummer Lee Rigby is different to that in the Prevent guidelines.' See: Baroness Warsi, HL Deb 28 Jan 2015, vol 759, col 212

⁹ Home Office, 'Revised Prevent duty Guidance for England and Wales' (Updated 1 April 2021) <<https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales>> accessed 05 April 2023

¹⁰ David Lowe, for example, describes it as 'subjective, awkward and opaque'. See: David Lowe, 'Prevent Strategies: The Problems Associated in Defining Extremism: The Case of the United Kingdom', (2017) 40 *Studies in Conflict & Terrorism* 917

¹¹ Lord Roberts, for example, argued in the House of Lords: 'I have tried to get the Government to define what someone has to say to be considered an extremist under these provisions. I understand that they had a very helpful discussion on what an extremist is. The Minister knows that I have not received a satisfactory answer'. See: Lord Roberts, HL Deb 13 Jan 2015, vol, 758, cols 738-739

¹² The researchers conducted an analysis of 2,835 responses to an online call for evidence on extremism, from which 2,580 responses were from the public and 255 from practitioners or organisations who identified themselves as working in countering extremism. See: Benedict Wilkinson and Armida van Rij, 'An analysis of the Commission for Countering Extremism's call for evidence – Report 1: Public understanding of extremism', The Policy Institute, King's College London (September 2019) <<https://www.kcl.ac.uk/policy-institute/assets/wp1-final-report.pdf>> (accessed 09 September 2020)

¹³ Ibid, p10

Much of the criticism of the definition of extremism in the Prevent guidance has been directed towards the broad terms used within the definition – namely fundamental British values, democracy and rule of law. The following sections will examine each of these concepts in turn.

3.1.1.1 FUNDAMENTAL BRITISH VALUES

The phrase ‘fundamental British values’ is an inherently problematic concept. As Lowe has pointed out, the term inherently discounts one of the states that make up the United Kingdom, i.e. Northern Ireland.¹⁴ Moreover, the notion that there exists a set of ‘values’ that are uniquely ‘British’ is questionable. In the context of counter-terrorism, presenting extremism as in opposition to fundamental ‘British’ values creates the impression that foreign value systems are not only different, but also part of the problem of extremism and terrorism, even though values such as democracy, rule of law, individual liberty and tolerance are also claimed by many non-British states.¹⁵ It is also possible to infer from the word ‘including’ that there are more fundamental British values, which are not mentioned in the guidance – a point raised by Baroness O’Loan in the House of Lords:

It refers to opposition to British values, including democracy and the rule of law, but it is not exclusive. Universities will have to work out what other values are included in this definition.¹⁶

Adding to the opaqueness is the fact that even the values that are mentioned, namely democracy and the rule of law, are in themselves contested and open to interpretation, as this next section will show.

3.1.1.2 DEMOCRACY

Loveland posits that modern Britain is considered democratic, but if this assumption is further analysed, different conclusions will arise about how democratic a country Britain

¹⁴ David Lowe, ‘Prevent Strategies: The Problems Associated in Defining Extremism: The Case of the United Kingdom’ (2017) 40 *Studies in conflict and terrorism* 917

¹⁵ See: for example: Claire E Crawford, ‘Promoting fundamental British values in schools: a critical race perspective’ (2017) 37 *Curric Perspect* 197

¹⁶ Baroness O’Loan, HL Deb 28 Jan 2015, vol 759, col 229

is, because the essential features of a democratic state are not agreed upon.¹⁷ Walter Bryce Gallie classifies democracy as a 'contested concept', which according to him has many different uses and 'there is no one clearly definable general use of any of them which can be set up as the correct or standard use'.¹⁸ Moreover, each party continues to maintain that their interpretation of this term 'is the correct or proper or primary, or the only important, function which the term in question can plainly be said to fulfil'.¹⁹ Bernard Crick also advances the same view:

Many meanings attach to the word democracy. If there is one true meaning then it is indeed, as Plato might have said, stored up in heaven; but unhappily has not yet been communicated to us. The word is what some philosophers have called 'an essentially contested concept', one of those terms we can never all agree to define in the same way because the very definition carries a different social, moral, or political agenda. But somehow, nowadays at least, we cannot live without it.²⁰

Since the term lacks any objective reality, even military regimes and dictatorships have attempted to characterise their own oppressive regimes as democracies in order to justify their repressive practices.²¹ The label's positive connotations have led to it being appropriated by a wide range of politicians with varying convictions and practices for their own actions.²² Michael W. Spicer asserts 'democracy is not simply descriptive but also appraisive or evaluative in character, that it is subject to competing or rival descriptions, and that it is open or susceptible to changes in its meaning over time'.²³

¹⁷ Ian Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction* (8th edn, Oxford University Press 2018) p4

¹⁸ Walter Bryce Gallie, 'Essentially Contested Concepts', (1956) 56 *Proceedings of the Aristotelian Society* 167, p168

¹⁹ *Ibid*, 168

²⁰ Bernard Crick, *Democracy: A Very Short Introduction* (Oxford University Press 2002) p1

²¹ *Ibid*, p2; Michael W. Spicer, 'What Do We Mean by Democracy? Reflections on an Essentially Contested Concept and Its Relationship to Politics and Public Administration' (2019) 51 *Administration and Society* 724

²² Philippe C. Schmitter, Terry Lynn Karl, 'What Democracy Is... and Is Not' (1991) 2 *Journal of Democracy* 75

²³ Michael W. Spicer (n21) p726

Commentators such as Claire Crawford have been highly critical of portraying democracy as an inherently British value; arguing that Britain was once a colonial power that was involved in slavery and racism.²⁴

3.1.1.3 RULE OF LAW

Whilst including vocal or active opposition to the 'rule of law' in the definition of extremism may seem appropriate at first glance, as David Lowe argues this term 'may not be as axiomatic as one may first think'.²⁵ Ian Loveland argues that, just like democracy, the rule of law does not have a single meaning and far from being a legal rule, it is a moral principle that varies on people's moral positions.²⁶ It is based upon people's preferences about 'what government can do and how government can do it'.²⁷ Richard Bellamy posits that political theorists view 'rule of law' with suspicion, because it is, at times, used as mere political rhetoric through which 'governments assert the legitimacy of all their actions' and failure to comply with their decisions will lead 'to anarchy and the end of law'; and at other times, it is argued 'with some notion of good or just law'.²⁸

The lack of uniformity over what 'rule of law' meant was manifested in the 2000 US Presidential Election, when the accuracy and reliability of the technology used to count votes in the State of Florida was disputed, and the outcome of the election was decided in favour of George Bush by the Supreme Court in *Bush v. Gore*.²⁹ Jeremy Waldron points out that the willingness to take political issues to court was seen as a tribute to the rule of law, whilst at the same time the litigation also undermined the rule of law, since the

²⁴ Claire E Crawford, 'Promoting fundamental British values in schools: a critical race perspective' (2017) 37 *Curric Perspect* 197

²⁵ David Lowe, 'Prevent Strategies: The Problems Associated in Defining Extremism: The Case of the United Kingdom' (2017) 40 *Studies in conflict and terrorism* 917, p922

²⁶ Ian Loveland (n17)

²⁷ *Ibid*

²⁸ Richard Bellamy, 'The rule of Law' in Richard Bellamy and Andrew Mason (eds) *Political Concepts* (Manchester University Press 2003) p118

²⁹ *Bush v. Gore* (2000) 531 U.S. 98

parties were unwilling to let any legal decision stand.³⁰ Nonetheless, the rule of law was invoked by both parties whenever it suited them:

‘The Rule of Law’ sounded grand, certainly; but at the end of the day, many will have formed the impression that the utterance of those magic words meant little more than ‘Hooray for our side!’³¹

The term ‘rule of law’ is mentioned in Part 1 of the Constitutional Reform Act 2005, but it is not defined. Lord Bingham attributes the absence of a definition to the possibility that it may have been considered ‘too clear and well-understood’ for a statutory definition, or on the contrary, and more likely it could have been left out due to ‘the extreme difficulty of formulating a succinct and accurate definition’.³² The lack of a statutory definition, twinned with differences in its understanding from a political philosophy standpoint, creates a lot of confusion over what it stands for.

Nonetheless, in relation to the UK’s constitution it is used as a legal principle and not just a political philosophy.³³ As such, there have been attempts to describe what it stands for as a legal principle, but as Mark Elliott and Robert Thomas highlight ‘[o]ne of the many oddities of the rule of law is that most people agree that it is a good thing while disagreeing sharply about what it means’.³⁴

One of the noteworthy contributions was made by Lord Bingham, who sees rule of law as a set of collective principles, or ‘as an envelope that contains a set of more specific principles’.³⁵ Lord Bingham outlined eight sub-rules, which he argued fall under rule of law. First, ‘the law must be accessible and so far as possible intelligible, clear and predictable’.³⁶ Second, ‘questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion’.³⁷ Third, ‘the laws of the land

³⁰ Jeremy Waldron, ‘Is The Rule of Law an Essentially Contested Concept (In Florida)?’ (2002) 21 *Law and philosophy* 137

³¹ *Ibid*, p139

³² Lord Bingham, ‘The Rule of Law’ (2007) 66 *Cambridge Law Journal* 67, p68

³³ Mark Elliott and Robert Thomas, *Public Law* (Third Edition, Oxford University Press 2017) p66

³⁴ *Ibid*, page 65

³⁵ *Ibid*

³⁶ Lord Bingham (n32), p69

³⁷ *Ibid*, p72

should apply equally to all, save to the extent that objective differences justify differentiation'.³⁸ Fourth, 'the law must afford adequate protection of fundamental human rights'.³⁹ Fifth, 'means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve'.⁴⁰ Sixth, 'that ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred and without exceeding the limits of such powers'.⁴¹ Seventh, 'adjudicative procedures provided by the state should be fair'.⁴² Eighth, 'compliance by the state with its obligations in international law, the law which whether deriving from treaty or international custom and practice governs the conduct of nations'.⁴³

The same set of eight sub-rules were quoted by Dominic Grieve QC in a speech in 2013 when he was the Attorney General, showing its acceptance.⁴⁴ However, Lord Bingham did not intend his understanding to be final and absolute, rather, as he points out, that his understanding may 'wilt or die'.

So it is not perhaps premature to attempt to define what, in this country, today, is meant by the existing constitutional principle of the rule of law, recognising of course, as a serving judge necessarily must, that any thoughts he proffers may wilt or die in the light of future adversarial argument in a concrete case.⁴⁵

Thus, there is considerable confusion over the meaning of rule of law in legal philosophy. In public law, Lord Bingham has provided a description, but it is still subject to possible alterations and debate.

In short, not only are concepts such as democracy and rule of law lacking in sufficient clarity for legal certainty, it is also unclear what the term 'fundamental British values'

³⁸ Ibid, p73

³⁹ Ibid, p75

⁴⁰ Ibid, p77

⁴¹ Ibid, p78

⁴² Ibid, p80

⁴³ Ibid, p81

⁴⁴ Dominic Grieve, 'The Rule of Law and the Prosecutor' (9 September 2013)

<<https://www.gov.uk/government/speeches/the-rule-of-law-and-the-prosecutor#:~:text=In%20his%202010%20book%20Lord,publicly%20administered%20in%20the%20courts>> accessed 08 August 2020

⁴⁵ Lord Bingham (n32) p69

means in practice. This can lead to lack of uniformity in application and arbitrary decisions. What constitutes extremism for one person may not be so for another, 'and the political standpoint or benchmark through which the extremist idea is assessed matters greatly to any review's outcome'.⁴⁶ As Rachel Briggs questioned, 'who decides on the degree of extremism that is to be tackled?', or 'what kind(s) of extremism should be considered dangerous in a national security context?'⁴⁷ Given that university administration staff are duty bound to assess the risk of extremism for external speaker events, it is important to consider the practical implications of the definition in the higher education context.

3.1.2 PRACTICAL IMPLICATIONS

Those that are tasked with assessing extremism by using the above definition, such as university administration staff, will have to decide whether or not certain views fall under this definition. The practical difficulties of implementing a policy based on such ambiguous concepts was highlighted by Baroness Brinton in 2015, during the passage of the Counter-Terrorism and Security Bill:

How do individuals in institutions decide what is or is not extremism? This is madness. It is the sort of thing that is done in haste. ... It is utterly impractical.⁴⁸

In a similar vein, the Joint Committee on Human Rights has argued:

Broad terms such as 'extremist' or 'radical' are not capable of being defined with sufficient precision to enable universities to know with sufficient certainty whether they risk being found to be in breach of the new duty...⁴⁹

Moreover, as noted earlier, the list of fundamental British values is not exclusive, which leaves significant discretion to the decision maker. This can have important implications on how it is implemented. According to Lowe, the divergence of opinion resulting from

⁴⁶ Agnes Callamard, 'Religion, Terrorism and Speech in a 'Post-Charlie Hebdo' World' (2015) 10 Religion and Human Rights 207, p213

⁴⁷ Rachel Briggs, 'Community engagement for counterterrorism: lessons from the United Kingdom' (2010) 86 International Affairs 971, p975 (n47)

⁴⁸ Baroness Brinton, HL Deb 13 Jan 2015, vol 758, col 759

⁴⁹ Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Security Bill* Fifth Report (2014 – 15, HL 86, HC 859) p34

the debates around the meaning of democracy and rule of law make it difficult for those employed in the specified authorities to determine ‘if what they are witnessing amounts to a level of extremism where they should take action’.⁵⁰ Arguably, it would be extremely difficult for university administration staff to identify extremism when political, philosophical and religious views across many issues are sharply divided.⁵¹ Besides, not all administration staff will have a legal or philosophical background to be in a position to easily make such judgement calls. This can force administration staff in universities to make decisions that are outside their expertise and more political policy decisions.⁵² Thus, the ambiguity of these concepts allows them to be used arbitrarily and selectively,⁵³ which in the words of Agnes Callamard ‘leaves them open to interpretation and thus potential abuse’.⁵⁴

The dangers of having terms that are not sufficiently defined were highlighted by the UK’s Independent Reviewer of Terrorism Legislation, Max Hill QC, who pointed out that ‘[e]xtremism is abhorrent, but if you get the mesh of the net wrong – in other words if you define your terms badly – that net will catch huge areas of free speech including the general political arena’.⁵⁵ This is not a new concern, but was raised during the debates in House of Lords in 2015. Baroness Sharp argued:

[W]here there is not clarity in definition, it leaves a great deal to the judgment of those expected to implement these duties. That in itself poses problems, both for those in the process of implementing them and those who, perhaps further down the line or on the panel, will have to make assessments about those seen to be vulnerable to terrorism. And what does “being drawn into terrorism” mean? There are problems here for those who need to interpret the legislation.⁵⁶

⁵⁰ David Lowe (n25) p922

⁵¹ Jack Anderson (n5) p6

⁵² Baroness O’Loan, HL Deb 28 Jan 2015, vol 759, col 229

⁵³ Joshua Skoczylis and Sam Andrews, ‘A conceptual critique of Prevent: Can Prevent be saved? No, but...’ (2020) 40 *Critical Social Policy* 350

⁵⁴ Agnes Callamard (n46) p213

⁵⁵ Sam Mullins and Max Hill, ‘Interview with Max Hill, QC, Independent Reviewer of Terrorism Legislation for the United Kingdom’ (2018) 12 *Perspectives On Terrorism* 63, p70

⁵⁶ Baroness Sharp, HL Deb 28 Jan 2015, vol 759, col 224

The debates in the House of Lords demonstrate that the lack of clarity was foreseen as being problematic for universities. Baroness Lister, for example, argued that the lack of clarity would make it difficult for universities to know ‘whether they risk being found to be in breach of the new duty’.⁵⁷ Further, she asserted that ‘[w]hen we pressed the Minister, in his oral evidence to the committee, on where the lines were to be drawn, he left us none the wiser’.⁵⁸ It is not only the case that the Government was unable to provide sufficient precision during the debates, but the Prevent training for education providers also lacked in clarity, as pointed out by Baroness Sharp:

A number of members [from the Association of School and College Leaders] had received the Prevent training in their schools and colleges, and while some found it helpful, others found that it was so vague in respect of what to look for that they felt even less confident about the duty after going through the training.⁵⁹

The above has shown that, due the lack of precision in the definition and boundary of extremism, it is difficult establish that a particular view will fall under the Prevent definition of extremism, and it risks arbitrary decisions being made. If extremism, which includes non-violent extremism, is so difficult to define and its use is likely to prove difficult in universities, then this raises the question of how do university administration staff view the duty to risk assess extremism. Thus, one of the aims of this project is to assess the views of university administration staff, through empirical data, regarding how they risk assess extremism, as highlighted in the methodology chapter. The next section will analyse and critique the rationale behind extending the remit of the Prevent duty to assessing extremism.

3.2 THE RATIONALE AND ITS CRITIQUE

This section will start by presenting the background and rationale for including non-violent extremism under Prevent, as presented in official documents and academic writings. Then it will present an analysis of this rationale as well as assessing the practical

⁵⁷ Baroness Lister, HL Deb 28 Jan 2015, vol 759, col 226; the same point was also argued by Baroness Sharp, see: HL Deb, 28 Jan 2015, vol 759, col 207

⁵⁸ Baroness Lister, HL Deb 28 Jan 2015, vol 759, col 226

⁵⁹ Baroness Sharp of Guildford, HL Deb, 28 Jan 2015, vol 759, col 207

problems associated with it, which will build on the critique in the first part of this chapter.

3.2.1 BACKGROUND AND RATIONALE

In 2003, the CONTEST Strategy document was only nine pages long and focussed exclusively on terrorism and violent extremism, with no mention of ‘non-violent extremism’.⁶⁰ The document exclusively focused on reducing the risk from al-Qaeda terrorism. The Prevent strand in the 2003 document advanced, ‘we will need to do more to Prevent [*sic*] the radicalisation of Muslim youth in the UK [and] resolve international causes of tension, engage with and support reform in the Islamic world, e.g. Madrassas’.⁶¹ In 2006, the CONTEST Strategy also considered the threat from Northern Ireland, however, international terrorism, described as Islamist terrorism, was highlighted as the predominant threat and the main focus of the strategy:

Terrorism is not a new phenomenon: for example, the UK experienced repeated domestic terrorist attacks as a result of the long-running troubles in Northern Ireland. The principal current terrorist threat is from radicalised individuals who are using a distorted and unrepresentative version of the Islamic faith to justify violence. Such people are referred to in this paper as Islamist terrorists.⁶²

The focus was on violent extremism and terrorism, with no official policy regarding non-violent extremism. In 2007, according to Farr, the then Director General of the Office for

⁶⁰ The document in 2003 was kept confidential until it was revealed through a freedom of information request. See: SACC, ‘Whitehall releases 2003 Counter Terrorism Strategy’ (13 December 2016) <<https://www.sacc.org.uk/press/2016/whitehall-releases-2003-counter-terrorism-strategy>> accessed 29 August 2020. The 2006 CONTEST Strategy document also confirms that the foundations of the Strategy were laid down in 2003. See: HM Government, *Countering International Terrorism: The United Kingdom’s Strategy* (Cm 6888, 2006)

⁶¹ SACC (n60)

⁶² HM Government (n60); Also see: Jason Burke, ‘The murder that shattered Holland’s liberal dream’, *The Guardian* (7 November 2004) <<https://www.theguardian.com/world/2004/nov/07/terrorism.religion>> accessed 06 August 2020; BBC News, ‘Madrid train attacks’, <<http://news.bbc.co.uk/1/shared/spl/hi/guides/457000/457031/html/>> accessed 06 August 2020; BBC News, ‘7 July London bombings: What happened that day?’ <<https://www.bbc.co.uk/news/uk-33253598>> accessed 06 August 2020

Security and Counter-Terrorism,⁶³ the Government had many discussions with Muslim organisations concerning the CONTEST strategy. Farr argues, rather vaguely, that ‘many people’ said the following to the Government:

Listen: there is not such a thing as an ideology of violent extremism. There are ideologies of extremism which lend themselves to violence and by limiting yourself to challenging violent extremism you are operating too far down the conveyor belt of radicalisation. If you wait till that point it is too late.⁶⁴

Farr suggests that, initially, the Government ‘half accepted’ the advice and decided that it would be too difficult to explain ‘how a counter-terrorism strategy could have at its heart countering the ideology of extremism’, and thus the focus did not shift from violent extremism.⁶⁵ However, he describes that after ‘literally hundreds of community interactions’, the salient advice they had received from a lot of people was to challenge non-violent extremism, which was viewed to not directly espouse violence but create an environment in which violence became acceptable.⁶⁶ In 2008, the same view was echoed by Jacqui Smith, the former British Home Secretary, who argued that the counter-terrorism strategy had to extend to challenging non-violent extremism, which ‘may not explicitly promote violence, but ... can create a climate of fear and distrust where violence becomes more likely’.⁶⁷ Thus, the Government undertook a review of Prevent in 2009,⁶⁸ which resulted in the strategy changing. The remit of counter-terrorism was expanded first by the amended Prevent Strategy in June 2011 and then

⁶³ The Office for Security and Counter-Terrorism was set up with the responsibility for developing the CONTEST Strategy and it was placed in the Home Office. Therefore, it places Charles Farr, being the Director General, the best person to describe the background and reason behind the change in policy.

⁶⁴ House of Commons Home Affairs Committee, *Project CONTEST: The Government’s Counter-Terrorism Strategy* Ninth Report (2008–09, HC 212) Ev 26

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Alan Travis, ‘Time to tackle the non-violent extremists, says Smith’, *The Guardian* (11 Dec 2008) <<https://www.theguardian.com/uk/2008/dec/11/counter-terrorism-strategy-extremists>> accessed 09 August 2020

⁶⁸ Paul Bowers, ‘Preventing violent extremism’ (House of Commons Library, Standard Note: SN05993, 2013)

the updated CONTEST strategy a month later, to include preventing non-violent extremism.⁶⁹ It argued:

We believe that Prevent work to date has not clearly recognised the way in which some terrorist ideologies draw on and make use of extremist ideas which are espoused and circulated by apparently non-violent organisations, very often operating within the law. ... But preventing radicalisation must mean challenging extremist ideas that are conducive to terrorism and also part of a terrorist narrative.⁷⁰

In an attempt to justify this approach the latest version of the Guidance on the Prevent duty argues ‘some people who join terrorist groups have previously been members of extremist organisations and have been radicalised by them’.⁷¹ The definition of extremism, which was discussed in the first section of this chapter, was then drafted and it includes non-violent extremism.

This definition is loaded with liberal values, such as democracy, rule of law, tolerance, and individual liberty, because extremism was attributed to a failed multiculturalism policy by Cameron in 2011, who argued for ‘a much more active, muscular liberalism’.⁷² An approach which had at its heart active promotion of liberal values and was ‘unapologetic about its values and philosophical position’.⁷³ Extremism was argued to weaken the social fabric of society and allow violence to happen unchallenged, and thus terrorism and murderous hate crime attacks were viewed as the ‘dangerous consequence[s] of allowing extremist ideas to go unchallenged’.⁷⁴

⁶⁹ HM Government, *Prevent Strategy* (Cm 8092, 2011); HM Government, *CONTEST the United Kingdom’s strategy for Countering terrorism* (Cm 8123, 2011)

⁷⁰ HM Government, *CONTEST the United Kingdom’s strategy for Countering terrorism* (Cm 8123, 2011) para 5.3

⁷¹ Home Office (n9) para 7

⁷² David Cameron, ‘PM’s speech at Munich Security Conference’ (5 February 2011)

<<https://www.gov.uk/government/speeches/pms-speech-at-munich-security-conference>> accessed 10 August 2020

⁷³ Jim Jose, ‘A liberalism gone wrong? Muscular liberalism and the quest for monocultural difference’ (2015) 21 *Social identities* 444, p445

⁷⁴ HM Government, *Counter-Extremism Strategy* (Cm 9148, 2015) para 7

Thus, the official view of the Government describes non-violent extremism as being ‘conducive to terrorism’,⁷⁵ and as something that weakens the social fabric of society and allows violence to go unchallenged.⁷⁶ Cameron also described the extremist ideology, albeit non-violent, as the ‘root cause’, where terrorism is its symptom.⁷⁷ Other protagonists of this view have used different terms to describe non-violent extremism, however, all of them essentially imply the same thing; non-violent extremism is the starting point of radicalisation that leads to terrorism. For example, Syed Farid Alatas, an associate professor of sociology at the National University of Singapore,⁷⁸ describes that there as a ‘slippery slope’ from non-violent extremism to terrorism, which may be peaceful in orientation, but is inappropriate for a progressive society.⁷⁹ Schmid, former Officer-in-Charge of the Terrorism Prevention Branch of the United Nations, argues that ‘even peaceful, apolitical, quietist Salafism⁸⁰ can serve as an “antechambre” to terrorism, acting de facto as a “conveyor belt” by facilitating socialisation to violent extremism in the form of terrorism’.⁸¹ The term ‘conveyor belt’ is widely used, for example, during the House of Commons debate, Dr Lewis argued:

It is fully understandable that a Government’s first concern has to be with the end of the conveyor belt at which fully formed terrorists spring into action ... But ... by the time we reach that end of the conveyor belt nothing can be done.⁸²

The argument being made was that counter-terrorism efforts should focus at the start of the ‘conveyor belt’ by tackling non-violent extremism, as opposed to the end of the

⁷⁵ HM Government (n70) para 5.3

⁷⁶ HM Government (n74) para 7

⁷⁷ Ibid, p5

⁷⁸ Alatas is not from the UK and his view may not have had a bearing on the decision of the UK Government to include non-violent extremism under the counter-terrorism strategy, however, his argument is the same argument used by the UK Government, even if it is different in wording.

⁷⁹ Syed Farid Alatas, ‘The perils of non-violent extremism’ (Today, 02 August 2016)

<<https://www.todayonline.com/commentary/perils-non-violent-extremism>> accessed 07 August 2020

⁸⁰ Salafism or the Salafi ideology is explained in the Radicalisation chapter.

⁸¹ Alex P. Schmid, ‘Violent and Non-Violent Extremism: Two Sides of the Same Coin?’ (International Centre for Counter-Terrorism – The Hague, May 2014) p5 <<https://www.icct.nl/download/file/ICCT-Schmid-Violent-Non-Violent-Extremism-May-2014.pdf>> accessed 07 August 2020

⁸² Dr Lewis, HC Deb 16 Dec 2014, vol 589, col 1316

'conveyor belt' where a terrorist attack takes place. Schmid also describes non-violent and violent-religious extremism as 'two sides of the same coin', arguing that 'non-violent extremists can easily transform into violent extremists'.⁸³ The difference between the non-violent extremists and violent extremists, in his view, is that the former only uses the 'pen' and the 'tongue', whereas the latter uses the 'gun' and the 'bullet'.⁸⁴ Farr described non-violent extremists as 'the large pool in which terrorists will swim', and argued that people may swim into the sharp end, and even if they do not, they create an environment which allows terrorists to operate with impunity.⁸⁵

In short, non-violent extremism is described as the 'root cause of terrorism', 'conducive to terrorism', 'weakens the social fabric of society', 'slippery slope to terrorism', 'conveyor belt to terrorism', 'antechambre to terrorism', 'the other side of the terrorism coin', 'the pool in which terrorists swim'; however, all of these terms imply the same meaning that non-violent extremism leads to terrorism. Therefore, this narrative seems to argue that focusing countering extremism efforts on non-violent extremism is tackling the problem from the root and can serve as a better method of prevention as opposed to preventing a fully developed terrorist.

Using the language of official documents, the argument can be summarised as follows, terrorists 'draw upon ideologies which have been developed, disseminated and popularised by extremist organisations that appear to be non-violent' and operate legally in the UK.⁸⁶ These non-violent ideologies 'can create an atmosphere conducive to terrorism and can popularise views which terrorists then exploit'.⁸⁷ Therefore, preventing terrorism and its support 'requires challenge to extremist ideas where they are used to legitimise terrorism and are shared by terrorist groups'.⁸⁸ In other words, in order to prevent people from climbing onto the 'radicalisation conveyor belt' in the first place, this atmosphere that is created by non-violent ideology needs to be challenged, and the best way to do so is by promoting 'active muscular liberalism'. For brevity, this

⁸³ Alex P. Schmid (n81) p5

⁸⁴ Ibid

⁸⁵ House of Commons Home Affairs Committee (n64) Ev 29

⁸⁶ HM Government, *Prevent Strategy* (Cm 8092, 2011) para 5.34

⁸⁷ Home Office (n9) para 8

⁸⁸ Ibid, para 8

argument will be referred to as the ‘Government’s argument’ in the following sections of this chapter, as they are the key protagonists of the argument, though it has also been advanced by others. Figure 3.1 is an illustration of the Government’s argument:

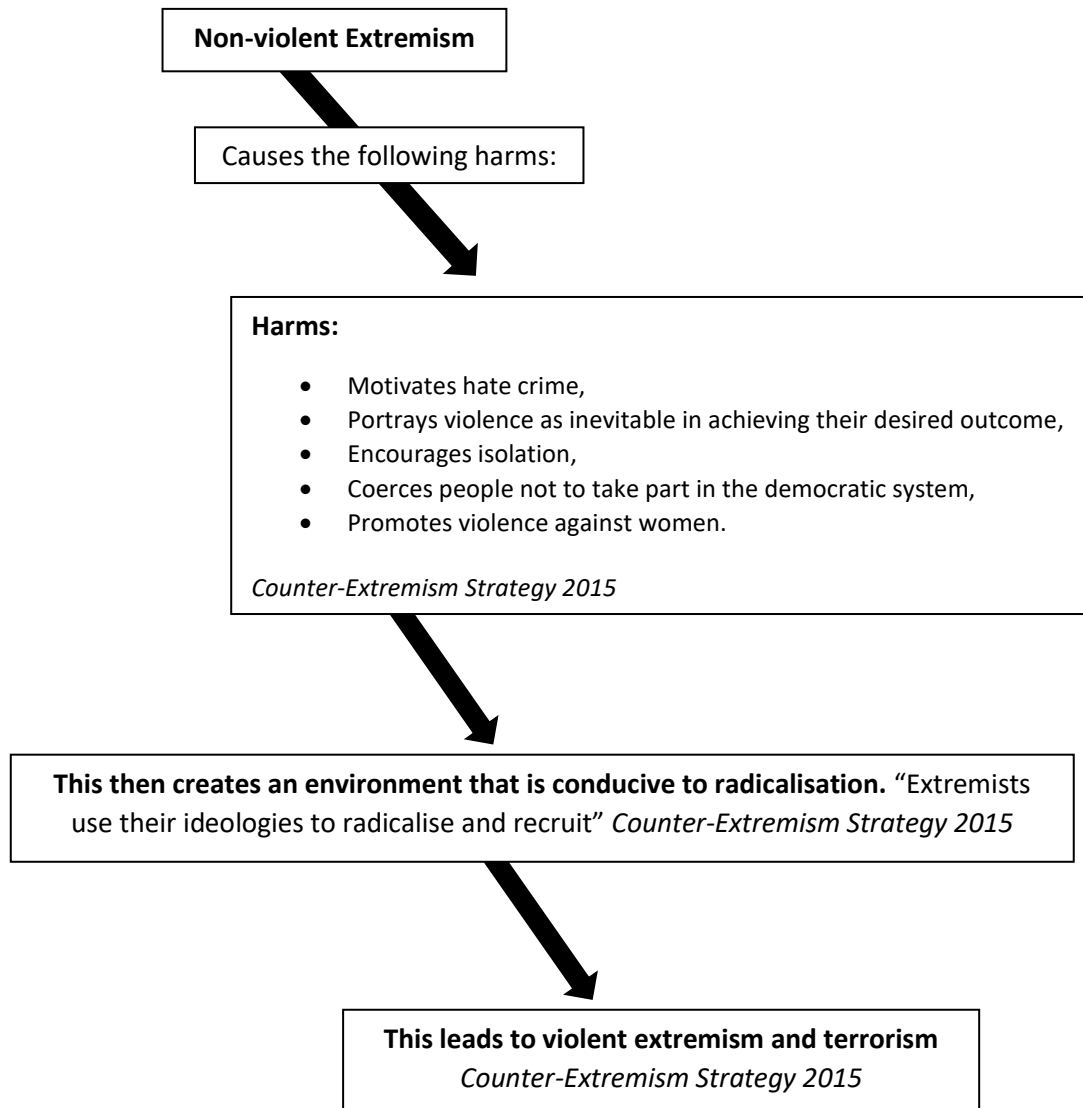


Figure 3.1 The Government’s argument

This argument has been critiqued on a number of grounds, which will be explored in the following section.

3.2.2 PROBLEMS WITH THE GOVERNMENT’S ARGUMENT

In order to critically probe the Government’s argument, the following section proceeds as follows: first, it will critique the rationale by showing that there are indicators in this narrative which suggest extremism is being conflated with terrorism; second, it will evaluate the view that extremism is the ‘root cause’ for terrorism and show that it is a

sweeping generalisation, which lacks an evidence base; third, it will demonstrate that calling extremism legal yet conducive to terrorism can be contradictory; fourth, it will analyse the more nuanced approach taken in the *Butt* case,⁸⁹ and show that it does not solve the practical issues with assessing extremism under Prevent; fifth, it will argue that this rationale could have two unwanted possible consequences, namely: a chilling effect on freedom of speech and academic freedom, and/or a tick-box approach to merely satisfying the bureaucratic system; and finally, it will argue that the inclusion of non-violent extremism has created pre-criminal spaces where individuals who are seen as ‘vulnerable to extremism’ may also be seen as potential criminals or terrorists.

3.2.2.1 CONFLATION OF ‘TERRORISM’ AND ‘EXTREMISM’

The relationship between the terms ‘terrorism’ and ‘extremism’ was a concern even in the lead up to the CTSA, when Baroness Brinton argued:

[T]he Bill itself talks mainly about “terrorism” while the statutory guidance talks about “extremism”, but the balance between the duty on extremism versus terrorism is quite distinct. I certainly cannot marry up the clauses in the Bill with some of what is set out in the guidance.⁹⁰

Recap Onursal and Daniel Kirkpatrick argue that in political discourse the signifiers for terrorism and extremism have converged and both concepts replicate the same frames of reference.⁹¹ They maintain that the two labels have increasingly become discussed together in parliamentary debates, where extremism is ‘subsumed under the wider discourse of terrorism’.⁹² This, they conclude, legitimises a wide range of practices under counter-terrorism, including responding to non-violent political expression without any consideration of its effectiveness in preventing terrorism.⁹³ An analysis of the political discourse also demonstrates that the two concepts can be easily conflated. For example, after the Woolwich attack in 2013, Cameron switched between terrorism and extremism

⁸⁹ The facts of the case are mentioned in section 3.2.2.4 of this chapter

⁹⁰ Baroness Brinton, HL Deb 28 Jan 2015, vol 759, col 216

⁹¹ Their empirical study looks into 1,037 parliamentary Hansards. See: Recep Onursal & Daniel Kirkpatrick, ‘Is Extremism the ‘New’ Terrorism? the Convergence of ‘Extremism’ and ‘Terrorism’ in British Parliamentary Discourse’ (2021) 33 *Terrorism and Political Violence* 1094

⁹² *Ibid*, p1102

⁹³ *Ibid*

in the same speech, as if they implied the same thing. When talking about the attack, he stated, ‘we will not be cowed by terror, and terrorists who seek to divide us will only make us stronger’.⁹⁴ He then went on to talk about the ‘threat of extremism’ in a manner that if the words were replaced with ‘threat of terrorism’, it would mean the same thing. He stated:

To tackle the threat of extremism, we must understand its root causes. Those who carried out this callous and abhorrent crime sought to justify their actions by an extremist ideology that perverts and warps Islam to create a culture of victimhood and justify violence. We must confront that ideology in all its forms. Since coming into government, we have ensured that the Prevent strategy focuses on all forms of extremism, and not just on violent extremism.⁹⁵

In describing the root cause of ‘the threat of extremism’ as ‘extremist ideology’, the Prime Minister appeared to suggest that the root cause of extremism is extremism itself. However, if the words ‘threat of extremism’ are replaced by ‘threat of terrorism’, the argument seems to fall in line with the Government’s narrative of extremism being the ‘root cause’ of terrorism. As the following section will illustrate, this claim is also problematic.

3.2.2.2 ROOT CAUSE

The claim of the Government that extremist ideology is the ‘root cause’ of terrorism⁹⁶ is extremely difficult to prove. On the contrary, many have argued that extremists can help in the prevention of terrorism, far from being the root cause. For example, Lambert,⁹⁷ the former head of the Muslim Contact Unit (MCU), a section of London Metropolitan Police, saw non-violent extremism as a solution rather than a problem in his report titled ‘Empowering Salafis and Islamists against Al-Qaeda: A London Counterterrorism Case

⁹⁴ David Cameron, HC Deb 3 June 2013, vol 563, col 1234

⁹⁵ David Cameron, HC Deb 3 June 2013, vol 563, col 1234

⁹⁶ Ibid

⁹⁷ Robert Lambert has been embroiled in controversy and scandals of undercover spying and forming relationships with protestors. However, he is being cited here as an alternative view to the Government’s argument, whilst acknowledging that there may be issues in him being a reliable source. See: Campaign Opposing Police Surveillance, ‘Who is Bob Lambert?’, (07 March 2015) <http://campaignopposingpolicesurveillance.com/2015/03/07/who-is-bob-lambert/> (08/09/2021)

Study'. The summary of his argument is that the strict non-violent Salafis and Islamists who hold extreme views are better suited to tackle violent extremism, through their knowledge of al-Qaeda activity and street credibility.⁹⁸ Hence, the MCU worked with Salafis and Islamist groups, who, Lambert argued, were better suited than the Sufis to help tackle the influence of al-Qaeda propaganda.⁹⁹

Similarly, in 2009, Farr identified Yusuf al-Qaradawi as 'a notorious Islamist preacher operat[ing] on al-Jazeera ... who holds views which are certainly extremist by the definition'.¹⁰⁰ Yet he also pointed out that 'Qaradawi is one of the most articulate critics of al-Qaeda in the Islamic world'.¹⁰¹ Thus, it can be argued that even though Qaradawi is seen as an 'extremist Islamist', it is difficult to suggest his views can be the 'root cause' of terrorism, especially when he is also seen as 'one of the most articulate critics of al-Qaeda'. Even though, the above examples are at most just anecdotal, nonetheless, they do show that, at least in these examples, non-violent extremists are fulfilling a role that is contrary to being a root cause for terrorism. Moreover, the evidence base for the Government's argument is also, at best, anecdotal. Hence, Lorenzo Vidino points out that there is a lack of empirical evidence for both views, and 'in some cases non-violent Islamist groups act as firewalls while in others as conveyor belts'.¹⁰²

Closer scrutiny of Cameron's speech reveals that, on the one hand, he uses the words 'root cause' to indicate extremist ideology, yet on the other hand, his argument is framed in language that suggests ideology is just a cover up, as opposed to being the cause. He states, '[t]hose who carried out this callous and abhorrent crime sought to justify their actions by an extremist ideology that perverts and warps Islam to create a culture of victimhood and justify violence'.¹⁰³ Although not explicitly stated, it implies that the actual cause of terrorism is something different and the ideology is merely deployed to cover up and justify terrorist actions to perhaps gain support. This weakens

⁹⁸ Robert Lambert, 'Empowering Salafis and Islamists against Al-Qaeda: A London Counterterrorism Case Study' (2008) 41 *Political Science and Politics* 31

⁹⁹ *Ibid*

¹⁰⁰ House of Commons Home Affairs Committee (n64) Ev 27

¹⁰¹ *Ibid*

¹⁰² Lorenzo Vidino, 'The Role of Non-Violent Islamists in Europe' (2010) 3 (11) *CTC Sentinel* 9

¹⁰³ David Cameron, HC Deb 3 June 2013, vol 563, col 1234

the narrative that non-violent extremism can be a 'root cause' of terrorism, if anything it suggests that it can be a 'cover up' for the real root cause. In addition, Rachel Briggs argues that 'there is no empirical evidence of a causal link between extremism and violent extremism'.¹⁰⁴

Anthony Richards posits that although terrorism is often linked to the ideology of its perpetrators, such as nationalist/separatist terrorism, left-wing terrorism, right-wing terrorism, religious terrorism and so on, those same ideologies are not in and of themselves intrinsically linked to terrorism.¹⁰⁵ Moreover, he suggests that terrorism could be carried out in pursuit of non-extremist doctrines, and conversely, non-extremist activity may be adopted in pursuit of extremist ideologies.¹⁰⁶ This blurs the connection between extremism and terrorism and makes it harder to argue one is the root cause of the other.

3.2.2.3 LEGAL OR ILLEGAL

Another problem with calling non-violent extremism the 'root cause' or 'conducive' to terrorism is that it gives the impression that non-violent extremism must be violent in nature and therefore illegal. However, non-violent extremism is regarded as being within the law, as this section will identify. This creates obscurity regarding the lawfulness of non-violent extremism. During the House of Lords debate on the Counter-Terrorism and Security Bill, Baroness Lister highlighted that non-violent extremism under UK law is not regarded as unlawful.¹⁰⁷ This is also the line of argument that the Organization for Security and Co-operation in Europe (OSCE) has taken:

Simply holding views or beliefs that are considered radical or extreme, as well as their peaceful expression, should not be considered crimes. "Radicalization" and "extremism" should not be an object for law enforcement counterterrorism measures if they are not associated with violence, or with another unlawful act

¹⁰⁴ Rachel Briggs (n47) p975

¹⁰⁵ For this reason, he argues, in terrorism studies literature, the concept of terrorism only refers to a particular method of violence, regardless of ideological cause for which it is deployed. See: Anthony Richards, 'From terrorism to 'radicalization' to 'extremism': Counterterrorism imperative or loss of focus?' (2015) 91 *International Affairs* 371

¹⁰⁶ *ibid*

¹⁰⁷ Baroness Lister, HL Deb 28 Jan 2015, vol 759, col 226

(e.g., incitement to hatred), as legally defined in compliance with international human rights law.¹⁰⁸

However, the Government's view of it being conducive to terrorism raises the question of why is it still considered lawful speech. Arguably, if it is conducive to terrorism, then it must be violent in nature and thus ought to be illegal. This same point was made by Richards, who argued that if non-violent extremism is culpable for terrorism, then it ceases to be non-violent.¹⁰⁹ If, on the contrary, non-violent extremism is actually non-violent in nature, then it is difficult to justify sanctioning it under counter-terrorism, which should be reserved for the most heinous of violent crimes. Thus, Richards argues that there are many public and political forums to challenge non-violent extremism other than the sphere of counter-terrorism, which should only be concerned with doctrines that are violent.¹¹⁰

If non-violent extremism is conducive to terrorism, but legal, then it is important to consider what distinguishes this from encouragement or glorification of terrorism – both criminal offences under Section 1 of the Terrorism Act 2006. The distinction between a speech act that is 'conducive to terrorism' and a speech act that is 'encouragement of terrorism' is not clear in practice, especially when the problem is compounded by the ambiguity in the definition of extremism, as noted earlier in section 3.1.1. A controversial opinion may be viewed differently by different people, based upon their varied moral, religious or political views. Since non-violent extremist speech is a grey area, which is lawful, yet considered conducive to the most ghastly of crimes, terrorism, it may lead to lack of student engagement on sensitive topics, out of fear of being labelled extremist. The possibility of impact on freedom of speech is fully explored in Chapter Five.

¹⁰⁸ Organization for Security and Co-operation in Europe, 'Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach' (February 2014) <<https://www.osce.org/files/f/documents/1/d/111438.pdf>> accessed 07 August 2020

¹⁰⁹ Anthony Richards (n105)

¹¹⁰ Ibid

3.2.2.4 A NUANCED RELATIONSHIP: BUTT V. SECRETARY OF STATE FOR THE HOME DEPARTMENT [2017] EWHC 1930

The above sections have shown that, in the Government's argument, there is a strong relationship between terrorism and non-violent extremism, which is viewed as being conducive to terrorism or the root cause of terrorism. However, in 2017, a more nuanced view of the relationship was provided by the High Court in *Butt v. Secretary of State for the Home Department*,¹¹¹ hitherto referred to as the *Butt* case, which suggested that non-violent extremism did not lead to terrorism in every case.

The facts of the case are that on 17 September 2015, the Prime Minister's Office released a press statement announcing the 'revised Prevent Duty Guidance'.¹¹² The press release referred to '70 events' that took place on campuses with speakers it argues were 'hate speakers', and Dr Salman Butt was named as one of them. Dr Butt challenged the lawfulness of the Prevent Duty Guidance documents and the collection, storage and dissemination of data by the Extremism Analysis Unit.¹¹³ In the *Butt* case, Ouseley J argued that the HEPDG 'is making the point that either form of extremism [violent and non-violent] *may* draw those exposed to it into terrorism'.¹¹⁴ In arguing so, the case also clarified that non-violent extremism did not necessarily draw people into terrorism, rather Ouseley J argued 'the CTSA ... shows a Parliamentary and Governmental view that non-violent extremism *can* draw people into terrorism'.¹¹⁵ Therefore, the Judge asserted that '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'.¹¹⁶

¹¹¹ *Butt v. Secretary of State for the Home Department* [2017] EWHC 1930 (Admin) , [2017] 4 W.L.R. 154

¹¹² HM Government, 'PM's Extremism Taskforce: tackling extremism in universities and colleges top of the agenda' (17 September 2015) <<https://www.gov.uk/government/news/pms-extremism-taskforce-tackling-extremism-in-universities-and-colleges-top-of-the-agenda>> accessed 08 September 2021; *Butt v. Secretary of State for the Home Department* [2017] EWHC 1930 (Admin) , [2017] 4 W.L.R. 154 [1]

¹¹³ *Butt v. Secretary of State for the Home Department* [2017] EWHC 1930 (Admin) , [2017] 4 W.L.R. 154 [2]

¹¹⁴ *Ibid*, para 30, emphasis added by the author.

¹¹⁵ *Ibid*, para 132 – 134. Emphasis on 'can' added by the author.

¹¹⁶ *Ibid*

To put the argument in simple terms, the Prevent duty as established in the CTSA was designed to prevent the process of being drawn into terrorism. If that process includes non-violent extremism then the requirements of the Duty and the Guidance extend to that; however, if some form of non-violent extremism does not form part of that process, then the Guidance does not extend to it, no matter how intrinsically undesirable it may seem.¹¹⁷ In 2019, the Court of Appeal also decided that Ouseley J was correct in his conclusions on this ground.¹¹⁸

This nuanced approach suggests that not all forms of non-violent extremism are conducive or root causes for terrorism. Rather, the duty only applies to those forms of non-violent extremism that have the risk of drawing people into terrorism. However, upon further probing, it still does not solve the problems surrounding distinguishing between the two types of non-violent extremism – one that leads to terrorism and one that does not – nor does it resolve the ambiguity of the terms used in the definition. How easy is it to decide whether or not a particular extreme view can draw people into terrorism, and who decides?

3.2.2.5 DISTINGUISHING THE ‘TYPES’ OF EXTREMISM

It is important to consider the practicality of differentiating between non-violent extremism that does draw people into terrorism and non-violent extremism that does not. In the Court of Appeal in 2019, Dr Butt argued:

The distinction between non-violent extremism which risks drawing others into terrorism and that which does not is impossible to draw in practice, particularly when the relevant decision in response to the Guidance must be made by RHEB staff, or others with widely differing degrees of experience.¹¹⁹

One of the key practical problems for university administration staff will be differentiating between religious orthodox views or cultural practices and extremism that does pose the threat of drawing people into terrorism. Floris Vermeulen postulates that by broadening the scope of extremism to include non-violent extremism, it

¹¹⁷ Ibid, para 29

¹¹⁸ *Regina (Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256, [2019] 1 W.L.R. 3873 [154] – [155]

¹¹⁹ Ibid, para 152

becomes 'difficult to distinguish real extremists from religious groups who choose to separate themselves from mainstream society merely because they are orthodox in a religious sense',¹²⁰ a problem that university staff could face. Religious orthodox groups could be classified as illiberal, inward-looking, without political goals, and solely concerned with sustaining their own way of life, but not necessarily in a problematic or violent manner.¹²¹

This can also be supported using the conclusion by Benedict Wilkinson and Armida van Rij from their analysis of 2,835 responses on extremism, which states that beliefs and behaviours that were overtly illegal were considered as extremism with some considerable consensus.¹²² However, respondents were less confident concerning beliefs and behaviours that moved away from illegality and instead were seen as immoral or unpalatable, such as challenging democracy or British values.¹²³ This shows that it is highly probable that university administration staff will also lack confidence in deciding what is extremism.

Moreover, the speech or view that is being assessed could pose challenges based upon how it is worded, as acknowledged by Ouseley J in the *Butt* case. He considered examples such as, 'calling for the peaceful and democratically chosen establishment of non-democratic regimes, whether a theocratic Sharia based regime or Soviet style communist or ideologically Fascist regime', which he argued 'raise obvious contradictions between aim and method'.¹²⁴ Nevertheless, later in the Judgement he indicated that a thorough analysis of language could help determine whether or not a non-violent view had the potential to draw people into terrorism. He posited that

¹²⁰ Floris Vermeulen, 'Suspect Communities—Targeting Violent Extremism at the Local Level: Policies of Engagement in Amsterdam, Berlin, and London' (2014) 26 *Terrorism and Political Violence* 286, p290

¹²¹ *ibid*

¹²² 2,580 responses were from the public and 255 from practitioners or organisations who identified themselves as working in countering extremism. See: Benedict Wilkinson and Armida van Rij, 'An analysis of the Commission for Countering Extremism's call for evidence – Report 1: Public understanding of extremism' (The Policy Institute, King's College London, September 2019)

<<https://www.kcl.ac.uk/policy-institute/assets/wp1-final-report.pdf>> accessed 09 September 2020

¹²³ *Ibid*

¹²⁴ *Salman Butt v. Secretary of State for the Home Department* [2017] EWHC 1930 (Admin), [2017] 4 W.L.R. 154 [31]

'language may or may not amount to non-violent extremism or risk drawing people into terrorism, depending on what is actually said about those matters'.¹²⁵ For example, opposition to UK foreign policy, or characterisation of homosexuality as a sin, could be expressed 'in language which was extreme, non-violent, and which depending on the words used could or could not risk drawing people into terrorism'.¹²⁶

However, Ouseley J acknowledged the weakness in using the language of the speaker as a gauge, because it could be 'too broad or insufficiently justified to warrant some particular interference', especially when 'the types or forms of non-violent extremism which risk drawing people into terrorism are not clearly delineated'.¹²⁷ He further added that there was the risk of arbitrariness if universities were left to discuss what constitutes extremism with Prevent co-ordinators in private.¹²⁸

Additionally, from a practical position, observing the language is not a simple solution to the problem of assessing whether or not a non-violent extremist view can draw people into terrorism, primarily because the decision to host an external speaker precedes their speech. As such, it is almost impossible to analyse their language prior to their talk on campus, unless their written speech is requested and assessed prior to the approval. The problem with requesting speeches for approval is that it is impractical and can have serious consequences on freedom of speech.¹²⁹ Likewise, tracking and observing the speaker's previous talks at other universities may also prove a difficult and time-consuming task. Furthermore, speakers may change their views over time and past talks may not be a true reflection of their current view.

Therefore, it is likely that university administration staff may find the task of measuring the risk of extremism difficult, burdensome and overly bureaucratic, which 'risks detracting from outcomes and wasting time and effort', as argued by Diana Johnson, MP

¹²⁵ Ibid, para 138

¹²⁶ Ibid, para 138

¹²⁷ Ibid, para 154

¹²⁸ Ibid, para 154

¹²⁹ Baroness O'Loan, HL Deb 28 Jan 2015, vol 759, cols 230 – 231; Lord Elystan-Morgan, HL Deb 28 Jan 2015, vol 759, col 246; Baroness Smith, HL Deb 28 Jan 2015, vol 759, col 249; Baroness O'Neill, HL Deb 4 Feb 2015, vol 759, cols 696 - 697

for Kingston upon Hull North, in the House of Commons.¹³⁰ The risk associated with burdensome and difficult risk assessments was poignantly stated as follows:

There is a real danger that the guidance could result in a series of time-consuming tick-box exercises performed by public bodies at all levels, without any improvement in the identification or understanding of violent extremism, and that is something we should all want to avoid. ... it is envisaged that those bodies — which are already over-stretched — should just check that processes have been followed.¹³¹

3.2.2.6 PRE-CRIMINAL SUSPECT COMMUNITIES

A final concern is that including the duty to risk assess and challenge non-violent extremism under counter-terrorism has the effect of stigmatising certain communities by creating pre-criminal spaces. Richards argues that due to there being no clear boundary where a peaceful citizen transitions to being a terrorist and no single clear pathway to terrorism, the UK counter-terrorism strategy tries to capture all potential trajectories at the earliest possible stage, no matter how varied or embryonic they are.¹³² The UK's counter-terrorism efforts have been able to do so through concepts such as non-violent extremism. The extremism narrative and the language used allows pre-criminal intervention, where counter-terrorism laws and interventions apply before any crime has taken place. Heath-Kelly argues that this can create 'a new category of offender, the pre-criminal "terrorist" requiring rehabilitation before they commit a crime'.¹³³ Since it is not possible to recognise the 'tipping point' of illiberal thought or

¹³⁰ Diana Johnson, HC Deb 7 Jan 2015, vol 590, col 320

¹³¹ Diana Johnson, HC Deb 7 Jan 2015, vol 590, col 319; Lord Lamont also eloquently made a similar point:

The guidance also mentions: "A system for assessing and rating risks". If ever I heard of a box-ticking exercise, it is "rating risks". Are people going to give someone seven out of 10 because he is more dangerous than someone who only gets five out of 10? This, I am afraid, reminds me of the FSA—or the FCA, as it now is—which thinks that it will somehow prevent a financial disaster if risks are rated on a scale of one to 10. (See: Lord Lamont, HL Deb 4 Feb 2015, vol 759, col 698)

¹³² Anthony Richards (n105)

¹³³ Charlotte Heath-Kelly, 'The geography of pre-criminal space: epidemiological imaginations of radicalisation risk in the UK Prevent Strategy' (2017) 10 *Critical Studies on Terrorism* 297, p307

behaviour into terrorism in the pre-criminal space, those who are seen as vulnerable may also be seen as potential terrorists.¹³⁴

By viewing the lack of 'Britishness' as a form of extremism that is intrinsically linked to the problem of terrorism, it makes 'the unknowable future actionable in the present', as it allows the identification of communities that appear to lack Britishness as potentially problematic.¹³⁵ Thus, placing non-violent extremism, with its broad language, at the foundation of the terrorist pyramid allows for counter-terrorism strategies to be deployed against a large number of people, who could principally reject al-Qaeda's methods.¹³⁶ By including non-violent extremism in the equation, the 'scope of risk assessment is rendered potentially unlimited for British Muslims' argues Richards.¹³⁷ The terms 'root cause' and 'conducive' have the potential to be seen as blaming law-abiding non-violent extremists for the crimes of terrorism perpetrated by others, even if they emphatically condemn and abhor them.¹³⁸

Even academics that generally support the Prevent duty, such as Greer and Bell, have questioned the inclusion of non-violent extremism in the counter-terrorism agenda, due to 'formidable problems in determining how it can be appropriately distinguished from the legitimate expression of unpalatable, though not violence or hatred espousing, views'.¹³⁹ Since the Prevent debate is bedevilled by considerable confusion regarding the distinction between counter-extremism and counter-terrorism, counter-extremism may well have a counter-productive effect on counter-terrorism, since 'the former is much more difficult to defend than the latter'.¹⁴⁰ They conclude that in their view 'the

¹³⁴ Ibid

¹³⁵ Thomas Martin, 'Governing an unknowable future: the politics of Britain's Prevent policy' (2014) 7 *Critical Studies on Terrorism* 62, p68

¹³⁶ Anthony Richards, 'Characterising the UK Terrorist Threat: The Problem with Non-Violent Ideology as a Focus for Counter-Terrorism and Terrorism as the product of 'Vulnerability'', (2012) 3 *Journal of Terrorism Research*

¹³⁷ Anthony Richards (n105)

¹³⁸ Ibid

¹³⁹ Steven Greer and Lindsey Bell, 'Counter-Terrorist Law in British Universities; A Review of the Prevent Debate' (2018) *Public Law* 84, p104

¹⁴⁰ Ibid

entire counter-extremism strategy could, and should, be abandoned'.¹⁴¹ In the words of Richards, 'counterterrorism should really be concerned with: countering terrorism' rather than countering extremism.¹⁴²

CONCLUSION

It can be concluded that the Government's change of approach to include non-violent extremism in the Prevent strategy was on the grounds that non-violent extremism was seen to create an environment that was conducive to terrorism and was at times referred to as the 'root cause' or 'antechambre' of terrorism. This chapter has shown that such an approach is lacking in evidence, as well as being besieged with practical complications and issues. The key conclusion that can be drawn from the discussion in this chapter is that, in universities, those who are appointed to assess and implement the Prevent duty, which includes risk-assessing non-violent extremism, may well find their job extremely difficult for a number of reasons.

First, many academics and members of the House of Lords have questioned the connection between non-violent extremism and terrorism, with some arguing that extremism is wrongly treated as if it is terrorism. If policy drafters and those implementing them in universities share the above view, then it could lead them to be overly strict and risk averse, with consequences for academic freedom and freedom of speech, which are explored in subsequent chapters.

Second, the definition of extremism and the terms used within it, such as fundamental British values, democracy and the rule of law, are ambiguous and contested concepts with widely differing understandings among scholars of legal philosophy. The opaqueness of the definition could lead to arbitrariness in decision making and pose difficulty in determining whether something is extreme and authorises an action under Prevent.

Third, assessing whether or not speech is extreme and, thus, warrants mitigation measures or restrictions, requires the language to be assessed by management in universities, which poses practical problems. For example, the assessment of an external

¹⁴¹ Ibid, p104

¹⁴² Anthony Richards (n105) p372

speaker request precedes the actual talk on campus, and, thus, it is hard to determine what will be said apart from perhaps the topic. Moreover, people constantly change and develop their ideas and views, and as such using previous talks to gauge future expressions may also be misleading. Likewise, requesting speeches in advance is also problematic, as many academics and speakers may not find sufficient time to prepare talks in advance, rather many prepare them on their way to the campus.

The above concluding remarks indicate the need to analyse how UM have been dealing with the issues highlighted above since Prevent became a statutory duty. Therefore, this chapter and the previous chapter raise the question of how, given the conceptual ambiguity surrounding Prevent, UM interpret radicalisation and extremism and understand the requirements of Prevent. Hence, these two chapters helped formulate the first part of the overarching research question and the formation of the following third sub-question:

How do UM understand the concept of 'extremism' and how is that understanding deployed in their event approval processes?¹⁴³

Next, this project will explore the concept of freedom of speech and its scope in order to determine the possible effects Prevent may have on it.

¹⁴³ This question is explored in Chapter Eight and Nine.

Chapter Four

FREEDOM OF SPEECH

Historically, freedom of expression within universities has been subject to extensive legal and philosophical debate. Its scope has changed over the years, with the most significant change in recent years coming in 2015, with the introduction of the Prevent duty on academic institutions. As the Prevent duty requires universities to risk assess events on campus and potentially ban extremist speakers and events, it has shifted the boundary of freedom of expression and reignited the academic debate within the area. Before engaging directly with this literature, it is important to explore the concept of freedom of speech as both a legal and philosophical construct, which will be the focus of this chapter. This chapter will progress by first exploring the legal definition and scope of freedom of speech, as derived from legislation and relevant international treaties. Second, it will analyse some of the philosophical arguments for the protection and limitation of this important right, recognising that philosophers have had substantial influence on lawyers and judges who have shaped the doctrine of freedom of expression.¹

4.1 LEGAL DEFINITION AND SCOPE

This section will explore and analyse the legal definition of freedom of expression under the European Convention on Human Rights (ECHR) (incorporated into domestic law by the Human Rights Act 1998 (HRA 1998)²) and the International Covenant on Civil and Political Rights (ICCPR).

Article 10 (1) of the ECHR states:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

¹ Lawrence Alexander and Paul Horton, 'The impossibility of a free speech principle', (1984) 78 Northwestern University Law review 1319, p1320

² Human Rights Act 1998, s.1.

Article 19 (2) of the ICCPR states:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 19 (2) of the ICCPR does not differ from the ECHR substantially, providing some degree of consistency on the legal definition of the right. Questions remain, however, about the application of these definitions in practice. This section examines four pertinent aspects of these definitions. Firstly, whether freedom of expression is a right that is held against public bodies only; secondly, the meaning of the term 'frontiers'; thirdly, the forms of expression that are protected; and fourthly, legitimate and illegitimate forms of interference.

4.1.1 HORIZONTAL AND VERTICAL EFFECT

With regards to the first issue, it would appear that the definition of freedom of expression only protects individuals from interferences by public bodies and therefore it is not enforceable *vis-à-vis* individuals. In other words, it does not seem to have a 'horizontal effect',³ but rather, it can be enforced against state organs and public bodies, which is a 'vertical effect'. Thus, these definitions do not seem to protect against breaches by non-state actors, such as criminal groups, who may be the cause of serious threats to people exercising their right to free speech. However, the threat from non-state actors is substantially different to the restrictions that are imposed by public bodies, as the threat to freedom of expression from criminal groups may be relatively short lived compared to the threat to freedom of expression from government policies. This is because criminal groups can be relatively swiftly dealt with using criminal charges and proceedings when caught, but such mechanisms do not exist in order to swiftly deal with unnecessary and disproportionate government policies. Rather, some Acts are repealed many years after they have become obsolete, unnecessary or have no practical

³ The extent to which the rights protected by the ECHR affect the development of legal relations between non-state actors is called the horizontal effect. See: Jane Wright, 'A damp squib? The impact of section 6 HRA on the common law: horizontal effect and beyond', [2014] Public law 289

utility.⁴ Therefore, it is argued that government policies and legislation are more likely to have a longer life span and are difficult to reverse, and as a result freedom of expression deserves special protection against unnecessary interferences from public authorities. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, in a report to the United Nations General Assembly, recognised the impact of non-state actors, such as ‘terrorists and criminal gangs’, on freedom of expression, but then went on to stress the importance of protecting citizens from unnecessary state interference in the right to freedom of expression as a reaction to the activities of such groups:

It is clear that non-State actors, such as terrorists or criminal gangs, are serious threats to many people exercising their right to expression, but the communications show how policies and laws against terrorism and other criminal activity risk unnecessarily undermining the media, critical voices and activists. They underscore how Governments and officials conflate calls for public debate with threats to public order, repressing legitimate opposition and undermining accountability. They show how official or clerical dogma often criminalizes critical discussion of religious ideas or officials. They illustrate the immense and growing threats to an open and secure Internet.⁵

Although the definitions imply that this right is enforceable against the state and not individuals, it would be incorrect to assume that there is no horizontal effect at all, as there is much debate in academic literature regarding the horizontal effect to some degree, due to Article 3 and 6 of the Human Rights Act 1998.⁶ However, the Joint Committee on Human Rights holds the opinion that ‘it is generally accepted that these provisions fall far short of full horizontal effect’.⁷ The limited horizontal effect is due to

⁴ See for example: The Law Commission and The Scottish Law Commission, *Statute Law Repeals: Twentieth Report Draft Statute Law (Repeals) Bill* (Cm 9059, 2015, SG/2015/60)

⁵ David Kaye, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (UN Human Rights Office, 6 September 2016, A/71/373) para 2

⁶ Gavin Phillipson, ‘The Human Rights Act, ‘Horizontal Effect’ and the Common Law: a Bang or a Whimper?’ (1999) 62 *Modern law review* 824; Jane Wright (n3)

⁷ Joint Committee on Human Rights, *The Meaning of Public Authority Under the Human Rights Act* Seventh Report (Session 2003-04, HL 39, HC 382) para 87

the fact that courts are public bodies, and therefore have the obligation to comply with Convention rights and to interpret legislation in accordance with Convention rights even in cases involving private bodies. This, according to the Joint Committee on Human Rights, has limited use:

[T]he lack of a cause of action to bring a case to court would mean that in many cases ‘horizontal’ application of Convention rights would be of little assistance to victims of a breach of Convention rights by a provider of a public service which was not a public authority.⁸

In other words, if a private body that provided a public service was in breach of a Convention right, bringing its case to court may prove difficult for reasons such as a lack of course of action, and thus enforcing the right horizontally would be difficult.

4.1.2 REGARDLESS OF FRONTIERS

The second aspect, which is evident in all human rights treaties and definitions, is that freedom of expression is protected ‘regardless of frontiers’. However, it is not immediately clear if this refers to national borders or a broader meaning which also includes non-physical frontiers. According to the United Nations Educational, Scientific and Cultural Organisation (UNESCO) ‘freedom of expression does not recognise national borders’⁹ and people have the ‘right to import newspapers from other countries or to use the internet to access content from around the world’.¹⁰ Similarly, the European Court of Human Rights (ECtHR) in *Association Ekin v France* stated that legislation specifically governing publications of foreign origin ‘appears to be in direct conflict with the actual wording of paragraph 1 of Article 10 of the Convention, which provides that the rights set forth in that Article are secured “regardless of frontiers”’.¹¹ This suggests that the ECtHR has interpreted ‘frontiers’ to mean national borders. However, questions remain about whether a broader understanding of ‘frontiers’ can be encompassed

⁸ Ibid, p31

⁹ UNESCO, ‘Freedom of Expression and Public Order Training Manual’ (UNESCO, 2015) p21
<https://unesdoc.unesco.org/ark:/48223/pf0000231305/PDF/231305eng.pdf.multi> accessed 06 April 2023

¹⁰ Ibid

¹¹ *Association Ekin v France* App no. 39288/98 (ECtHR, 17 July 2001), para 62

within the legal definition. The British philosopher Anthony Grayling, for example, has argued that in addition to literal borders of 'barbed wire and army-controlled checkpoints' the drafters also meant 'invisible borders of distortions, enforced silences and lies', which are frontiers imposed by controlling political and religious arrangements on free expression.¹² Religious sensibility, he declares, is currently one of the main frontiers, which is sometimes coupled with threats and violence to try to silence those who speak. Although this is taking the word 'frontier' beyond its literal and commonly understood meaning, it nonetheless furthers the cause of human rights to give it the wider meaning that Grayling has suggested. Furthermore, the wider meaning is not against, but complements, the purpose of the human rights conventions and treaties which protect freedom of expression. Even if the drafters of ECHR were referring only to national borders, the ECtHR's own jurisprudence has made clear that the Convention is a 'living instrument' and subject to new interpretations befitting the circumstances.¹³

4.1.3 SCOPE OF FREEDOM OF SPEECH

The third important aspect of the legal definition of freedom of expression is that it protects all forms of expression that can be said to be a means for receiving or imparting opinions, ideas or information. The ICCPR explicitly lists the forms of expression that are protected, such as oral, written, printed, artistic expressions or through any other chosen media. This suggests that every form of expression is protected under the ICCPR as the words 'through any other media of his choice' have a very wide scope. Although the ECHR is not explicit in this regard, ECtHR case law has clarified that all forms of expression which contribute to the exchange of ideas and opinions are protected. In *Muller v Switzerland*, the ECtHR stressed that works of arts such as paintings are protected for this same reason:

Those who create, perform, distribute or exhibit works of art contribute to the exchange of ideas and opinions which is essential for a democratic society. Hence

¹² Anthony Grayling, 'Regardless of frontiers' (Index on Censorship, 10 December 2008)

<<https://www.indexoncensorship.org/2008/12/regardless-of-frontiers/>> accessed 13 November 2016

¹³ *Tyrer v. the United Kingdom* App no. 5856/72 (ECtHR, 25 April 1978) para. 31

the obligation on the State not to encroach unduly on their freedom of expression.¹⁴

Otto-Preminger Institute v. Austria dealt with film as a protected form of expression.¹⁵ *Leroy v. France* case showed that cartoons can be expressions protected by this right.¹⁶ In *Perrin v United Kingdom*, the Internet was considered as a protected form of expression.¹⁷ Therefore, it is concluded that, from a legal perspective, the right to freedom of expression includes all forms of expression that ‘contribute to the exchange of ideas and opinions’, which would include paintings, films, books, pamphlets, internet, radio interviews and so on.

4.1.4 LIMITATION OF FREEDOM OF SPEECH

This leads to the final question regarding the legal definition of freedom of expression: whether or not there is scope for certain expressions to be limited or restricted. Although the treaties mention ‘without interference by public authority’,¹⁸ as the following section will illustrate, the drafters did not intend every interference from government to lead to a violation of freedom of expression. Rather, they were referring to *illegitimate* and *disproportionate* government interferences. Evidence for this is that the treaties have accommodated situations where freedom of expression may be legitimately restricted by government, such as paragraph 2 of Article 10 of the ECHR¹⁹ and Article 19 (3) of the ICCPR.²⁰

¹⁴ *Muller v Switzerland* App no. 10737/84 (ECtHR, 24 May 1988) para. 33

¹⁵ *Otto-Preminger-Institute v. Austria* App no. 13470/87 (ECtHR, 20 September 1994)

¹⁶ *Leroy v. France* App no. 36109/03 (ECtHR, 02 October 2008)

¹⁷ *Perrin v United Kingdom* App no. 5446/03 (ECtHR, 18 October 2005)

¹⁸ Article 10 (1) of the ECHR

¹⁹ Paragraph 2 of Article 10 ECHR states:

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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

²⁰ Article 19 (3) states:

It is also evident from ECtHR case law that not every expression ought to be protected. For example, incitement to violence²¹ and hate speech²² are not protected by the right to freedom of expression. The Strasbourg Court has argued that the wording of Article 10 (2) gives rise to some duties and responsibilities including:

... an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs²³

The rationale for limiting freedom of expression for hate speech and incitement to violence is that both infringe the rights of others; the protection of the rights of others is a legitimate aim for which freedom of expression can be limited under Article 10 (2) of the ECHR and Article 19 (3) of the ICCPR. However, due to the limited scope of a PhD project, the next sections will not engage with UN jurisprudence and instead will focus on UK and ECHR jurisprudence. The next section will consider the role of Article 10 (2) of the ECHR in assessing the legitimacy and proportionality of restrictions of freedom of expression.

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

²¹ In *Surek and Ozdemir v Turkey*, the Strasbourg Court said: ‘... where such remarks incite to violence against an individual or a public official or a sector of the population, the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of expression’. See: *Surek and Ozdemir v Turkey* App nos. 23927/94 and 24277/94 (ECtHR, 8 July 1999) para 60

²² In the *Gunduz v Turkey*, the court said: ‘... it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any “formalities”, “conditions”, “restrictions” or “penalties” imposed are proportionate to the legitimate aim pursued’. See: *Gunduz v Turkey* App no. 35071/97 (ECtHR, 4 December 2003) Para. 40

²³ *Gunduz v Turkey* App no. 35071/97 (ECtHR, 4 December 2003) para. 37

4.1.5 ROLE OF PARAGRAPH 2 OF ARTICLE 10

It is important here to understand the contents of Article 10 (2) as well as the method used by the Strasbourg Court in identifying restrictions as legitimate or illegitimate interference to freedom of expression. The ECtHR will first assess whether something is an infringement of the right to freedom of expression by analysing whether or not the expression contributes to the exchange of opinions and ideas. Once an infringement has been identified, the Court will assess whether or not that infringement satisfies the requirements of paragraph 2 of Article 10 of the ECHR. The Court will conclude a violation of Article 10 unless the restriction satisfies the requirements set out in paragraph 2. Paragraph 2 states:

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, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In order for a restriction to be legitimate it needs to fulfil the three-part test set out in this paragraph. In other words, the restriction should be: (a) 'prescribed by law'; (b) 'necessary in a democratic society'; and (c) pursuing a legitimate aim. Concerning the first part of the test, the European Commission on Human Rights points out that any restriction on freedom of expression, be it in written law or unwritten, will be 'prescribed by law', so long as it is adequately accessible and foreseeable.²⁴ With regards

²⁴ In *Observer and Guardian Newspapers v the United Kingdom*, European Commission on Human Rights said:

Any interference with freedom of expression must be prescribed by law. The word "law" in the expression "prescribed by law" covers not only statute but also unwritten law such as the law of contempt of court or breach of confidence in English common law. Two requirements flow from this expression, that of the adequate accessibility and foreseeability of law, to enable the individual to regulate his conduct in the light of the foreseeable consequences of a given action.

to the second part of the test, i.e. the restriction being necessary in a democratic society, the European Commission on Human Rights states that there must be a 'pressing need'.²⁵ In assessing whether or not a restriction was necessary, the courts apply a proportionality test, in order to ascertain whether or not the restriction was proportionate to the legitimate aims it pursues. Lord Reed summarised the four-step test for proportionality in the Supreme Court case *Bank Mellat v Her Majesty's Treasury (No 2)* as the following:

...it is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.²⁶

Finally, the last part of the test requires that any restriction on freedom of expression must be in pursuit of a legitimate aim specified in Article 10, paragraph 2.²⁷ Therefore, it can be said that not every interference from government is going to constitute a violation of freedom of expression as protected by the Convention, because the Convention allows for legitimate and proportionate restrictions that the Court will not find a violation for. The next section will explore the ECHR jurisprudence that

See: *Observer and guardian newspapers v the United Kingdom* App no. 13585/88 (Commission Decision, 26 November 1991) para 62

²⁵ It argued: 'The adjective "necessary" within the meaning of Article 10 para. 2 of the convention is not synonymous with "indispensable" or as flexible as "reasonable" or "desirable", but it implies the existence of a pressing social need'. *Observer and guardian newspapers v the United Kingdom* App no. 13585/88 (Commission Decision, 26 November 1991) para 71

²⁶ *Bank Mellat v Her Majesty's Treasury (No 2)* [2013] UKSC 39, [2014] A.C. 700, para 74

²⁷ The specified legitimate aims are 'national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'. See: Article 10, ECHR, Paragraph 2

demonstrates how the ECtHR assesses the legitimacy and proportionality of restrictions on speech, especially that which condones and supports terrorism.

4.1.6 ECHR JURISPRUDENCE

There are a number of cases concerning restrictions on freedom of expression relating to terrorism. This section will show how the ECtHR applies the criteria of paragraph 2 to restrictions of expressions that condone, support or glorify terrorism.

4.1.6.1 PURCELL AND OTHERS V. IRELAND

One of the key cases that seems to have become a precedent for similar cases is *Purcell and Others v. Ireland*.²⁸ Betty Purcell and 16 other Irish citizens, who were journalists and producers of radio and television programmes employed by Radio Telefis Eireann (RTE), complained that their freedom of expression had been restricted by a ministerial order made under Section 31 of the Broadcasting Authority Act 1960.²⁹ The Order directed RTE to refrain from broadcasting interviews with spokespeople from proscribed organisations, including the Irish Republican Army (IRA), Sinn Fein, Republic of Sinn Fein, and the Irish National Liberation Army.³⁰ Sinn Fein, being a registered political party under Section 13 of the Electoral Act 1963, was not an illegal organisation.³¹ This raised concerns of unlawful restriction of political freedom of expression under Article 10.³² One of the submissions of the applicants was that the ban amounted to an unjustified interference with freedom of expression, on the grounds that it was a blanket ban on

²⁸ *Purcell and Others v. Ireland*, App no. 15404/89, (ECommHR, 16 April 1991)

²⁹ Section 31 allowed the Minister to issue an order to refrain from broadcasting, if the Minister was of the opinion that the broadcast is 'likely to promote, or incite to, crime or would tend to undermine the authority of the State'. Section 31, Broadcasting Authority Act 1960

³⁰ The ban came into force on 20 January 1987 by the S.I. No. 13/1987 and was to remain in force until 19 January 1988. However, it was then extended by the S.I. No. 3/1989 until 19 January 1990. See: S.I. No. 13/1987 - Broadcasting Authority Act, 1960 (Section 31) Order, 1987; S.I. No. 3/1989 - Broadcasting Authority Act, 1960 (Section 31) Order, 1989.

³¹ *Purcell and Others v. Ireland*, App no. 15404/89, (ECommHR, 16 April 1991)

³² The ban meant that RTE journalists could not cover Sinn Fein political party conferences and thus could not question or challenge of their candidates on party manifesto. RTE journalists were prevented from interviewing members that held public offices, such as Sinn Fein councillors. The blanket ban, irrespective of the news story, meant that even programmes critical of Sinn Fein could not be broadcast. Ibid

political, social and current affairs coverage and not necessary in a democratic society.³³ In opposition, the Government submitted that the effects of the restriction on the applicant were marginal, the order was proscribed by law and it was necessary considering the circumstances pertaining to Ireland with terrorist organisations.³⁴ The Government also submitted documentary evidence suggesting that Sinn Fein supported the terrorist activities of the IRA.³⁵

In determining whether there was an interference with the Article 10 right, the Commission acknowledged that although the ban was directed at RTE and not the applicants, it did have 'serious effects on the applicants' work'.³⁶ Hence, it concluded that, considering the role of journalists in political speech, the Order constituted an interference in the Article 10 rights of the applicants.³⁷ It then went on to examine whether the interference was justified under paragraph 2 of Article 10. The Commission found that the order contained great detail of the kind of material and manner to which it applied and thus the Commission argued that the Order was proscribed by law.³⁸ The Commission took into consideration that Sinn Fein, although a registered political party, had qualified as an 'integral and dependent part of the apparatus of the Provisional

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ The Commission argued the effects were:

by virtue of the guidelines issued by their employer which they have to observe: they cannot broadcast interviews, or reports of interviews, with representatives of the listed organisations; they must use mute film or stills to illustrate any reportage relating to any of the listed organisations; they must obtain clearance from their superiors prior to broadcasting any news feature or current affairs programme relating to a matter connected with these organisations. As these prohibitions apply to any statement of a representative of a listed organisation regardless of the subject matter, compliance with the Order entails restrictions and conditions not only on the choice of the material the applicants may broadcast but also on their editorial judgment. Ibid

³⁷ Ibid

³⁸ It argued:

As the Order describes in great detail not only the kind of material to which it applies but also the manner in which such material may be conveyed to listeners and viewers, the applicants cannot claim to be unaware of the scope of application of the restrictions imposed upon them. Ibid

I.R.A., an illegal terrorist organisation’, which the applicants had not disputed.³⁹ Hence the restrictions did pursue the legitimate aim of protecting the interests of national security and preventing disorder and crime under Article 10, paragraph 2.⁴⁰

In determining the necessity of the restriction in a democratic society, the Commission assessed whether the Government had made a convincing case of a ‘pressing social need’ for imposing the ban. It argued that given that radio and television have considerable power and influence in society and that live statements involved special risks of coded messages which journalists cannot control, the broadcasting ban in Ireland aimed at denying a media platform to known terrorist organisations and their representatives.⁴¹ It concluded that since defeating terrorism in a democratic society is a ‘public interest of the first importance’, the restrictions with limited scope on the applicants were necessary in a democratic society within the meaning of Article 10, paragraph 2.⁴² Hence, the ban preventing the broadcast of interviews with spokespersons did not breach Article 10 of the Convention. The ruling in *Purcell and Others v. Ireland* seems to have become a precedent for similar cases, such as *Brind v. United Kingdom*.

4.1.6.2 BRIND V. UNITED KINGDOM⁴³

When the violence intensified in Northern Ireland, the UK Government introduced a ban, which spanned 1988 to 1994, on the British Broadcasting Corporation (BBC) and Independent Broadcasting Authority (IBA) from broadcasting any speech from proscribed organisations, including Sinn Fein, Republican Sinn Fein and the Ulster Defence Association.⁴⁴ The then Secretary of State for the Home Department, Douglas Hurd, argued, ‘[t]hose who practise and support terrorism and violence should not be

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ *Brind v. United Kingdom*, App no. 18714/91, (ECommHR, 09 May 1994)

⁴⁴ The notice to refrain from broadcasting was issued by the then Secretary of State for the Home Department, Douglas Hurd, on 19 October 1988. See: HC Deb 19 October 1988, vol 138, col. 893; Elodie Gallet, ‘“This Is Not Censorship”: The BBC and the Broadcasting Ban (1988-1994)’ (2022) 27 Cahiers du MIMMOC;

allowed direct access to our radios and television screens'.⁴⁵ Hurd insisted that this measure was 'necessary in the fight against terrorism'⁴⁶ and did not amount to censorship, as it did not prohibit the reporting of events, but denied media access to terrorists and their supporters.⁴⁷ Hurd also argued that restriction was 'within the bounds of the European convention on human rights [sic], which is no doubt why it has been practised in the Republic of Ireland for some time without problems of this kind'.⁴⁸

A number of journalists challenged the ban in the judicial review, but were dismissed by the UK Courts,⁴⁹ after which they turned to the ECHR in *Brind v. United Kingdom*.⁵⁰ The applicants submitted that the Home Secretary's direction amounted to an unjustified interference with their Article 10 right of freedom of expression, and it had a 'chilling effect' on their coverage.⁵¹ However, the Commission noted that extent of the interference in the *Brind v. United Kingdom* case was limited compared to *Purcell and Others v. Ireland*.⁵² The ban did not apply to the broadcast of proceedings in Parliament or during impartial coverage of elections.⁵³ Moreover, the ban applied only to direct statements and not to reported speech.⁵⁴ It allowed the showing of a film or a still picture of the speaker but with a voice-over of an actor whether in paraphrase or verbatim.⁵⁵ After taking into consideration the wide margin of appreciation, the importance of combatting terrorism and the limited extent of the restriction compared

⁴⁵ HC Deb 02 November 1988, vol 139, col 1073

⁴⁶ HC Deb 19 October 1988, vol 138, col 894

⁴⁷Ibid, col 898

⁴⁸ Ibid, col 896

⁴⁹ Their challenge was dismissed by the High Court on 26 May 1989, by the Court of Appeal on 6 December 1989 and by the House of Lords on 7 February 1991.

⁵⁰ *Brind v. United Kingdom*, App no. 18714/91, (ECommHR, 09 May 1994)

⁵¹ They gave examples of interviews that could no longer be transmitted and that political views of callers in phone-in radio programmes required examination prior to permitting them access to airwaves. The concerns of a chilling effect stemmed from the fact that there was a heavy penalty for non-compliance - losing the right to broadcast. The severity of this penalty, the applicants argued, was 'so enormous that broadcasters will always err on the safe side'. Ibid

⁵² Ibid

⁵³ HC Deb 19 October 1988, Vol 138, col. 893

⁵⁴ Ibid

⁵⁵ *Brind v. United Kingdom*, App no. 18714/91, (ECommHR, 09 May 1994)

to *Purcell and Others v. Ireland*, it concluded that the interference was not disproportionate to the aims pursued.⁵⁶

4.1.6.3 TERRORISM RELATED CASES

A number of ECtHR cases demonstrate that condoning terrorism, glorification of terrorism and supporting terrorism are beyond the scope of protected speech. Condoning terrorism, for example, in *Leroy v. France*, was argued to be beyond protected free speech under article 10 of the ECHR.⁵⁷ The applicant was a cartoonist whose drawing represented the 9/11 attacks with the slogan ‘We have all dreamt of it... Hamas did it’.⁵⁸ It was published two days after the attacks on 13 September 2001. The ECtHR argued that cartoon with its caption amounted to ‘moral support for and solidarity with those whom he presumed to be the perpetrators of the attacks, demonstrated approval of the violence and undermined the dignity of the victims’.⁵⁹ The ECtHR reinforced that freedom of speech carried duties and responsibilities, which in this case were increased due to the impact of its message in a ‘politically sensitive region’.⁶⁰

Whilst the limits of permissible criticism are wide for political expression, and ideas that ‘offend, shock and disturb’ are protected under Article 10, the ECtHR in *Stomakhin v. Russia* reiterated that the Article 10 right does not protect glorification of terrorism and deadly violence.⁶¹ The applicant in this case was a journalist and a civil activist, who published his own newsletter, which made comments on the Chechen conflict.⁶² Likewise, *Z.B. v. France* also establishes that glorifying wilful killing and terrorism is a legitimate aim to limit expression.⁶³ The applicant was convicted for glorifying crimes of

⁵⁶ Ibid

⁵⁷ *Leroy v. France*, App no. 36109/03, (ECtHR, 2 October 2008) Information Note on the Court’s case-law No. 112

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ *Stomakhin v. Russia*, App no. 52273/07 (ECtHR, 9 May 2018), para 103

⁶² Ibid

⁶³ *Z.B. v. France*, App no. 46883/15, (ECtHR, 2 September 2021), Information Note on the Court’s case-law 254

wilful killing by having the slogans 'I am a bomb' and 'Jihad, born on 11 September' printed on a t-shirt worn by his three-year-old nephew to nursery at his request.⁶⁴ The applicant relied on the polysemic nature of the word 'bomb', which, in colloquial French, can refer to physical attractiveness of a person. 'Jihad' was also the forename of the child and 11 September was also his birthday. The applicant did not have any links to terrorist groups and did not espouse terrorist ideology, but presented this T-shirt as a humorous gesture.⁶⁵ Since the slogans were displayed only a few months after another terror attack had resulted in the death of three school children, the timing of the case was also regarded as significant.

The above cases demonstrate that the ECtHR will regard restrictions that limit expression which condones, glorifies or supports terrorism as being in the interests of 'national security, territorial integrity or public safety, for the prevention of disorder or crime'.⁶⁶ However, the restrictions and the punishments need to be proportionate to the legitimate aims they seek to pursue. Hence, the ECtHR will assess the duration and intensity of the punishment to assess proportionality. In *Leroy v. France*, the domestic criminal court convicted and ordered the cartoonist and the publishing director to pay a fine each, which the ECtHR ruled was proportionate to the aims it pursued.⁶⁷ Likewise, in *Z.B. v. France*, the ECtHR held that the suspended two-month prison sentence and the fine of EUR 4,000 imposed on the applicant was not disproportionate to the legitimate aim pursued and the interference with the applicant's right to freedom of expression was necessary in a democratic society.⁶⁸ However, in *Stomakhin v. Russia*, although the ECtHR found that the statements published by the applicant did glorify terrorism and advocate violence and hatred, the sentence to five years imprisonment and three-year ban from journalism was not was not proportionate to the legitimate aims pursued.⁶⁹ The Court reiterated that the concepts of 'national security' and 'public safety' in Article

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Article 10, Paragraph 2, ECHR

⁶⁷ *Leroy v. France*, App no. 36109/03, (ECtHR, 2 October 2008) Information Note on the Court's case-law No. 112

⁶⁸ *Z.B. v. France*, App no. 46883/15, (ECtHR, 2 September 2021), Information Note on the Court's case-law 254

⁶⁹ *Stomakhin v. Russia*, App no. 52273/07 (ECtHR, 9 May 2018)

10 paragraph 2 that permit limitation of freedom of expression, ‘must be interpreted restrictively’ and should only be used if it can be shown to be ‘necessary to suppress the release of information for the purposes of protecting national security and public safety’.⁷⁰ The Court took the following factors into consideration: (a) the applicant had no criminal record and had never been convicted for a similar offence; (b) he was not a well-known influential public figure; (c) the statements were printed in a small quantity of a self-published newsletter; and (d) the circulation of those newsletters was insignificant.⁷¹ In light of these considerations, the five-year imprisonment and three-year ban from journalism were considered disproportionate. Hence, it concluded that there had been a violation of Article 10 of the Convention.⁷² This shows that although states are provided wide margins of appreciation and terrorism-related expressions are likely to be regarded as pursuing a legitimate aim, states do not have unfettered power to impose disproportionate restrictions and punishments for such expressions. For example, in *Rouillan v. France*, the applicant was sentenced to 18 months’ imprisonment for describing the perpetrators of the 2015 Paris and Seine-Saint-Denis terrorist attacks as ‘brave’ and saying they had ‘fought bravely’.⁷³ The ECtHR acknowledged that at a time when the terror threat was high and French society was still recovering from the 2015 attacks, the portrayal of a positive image of the perpetrators amounted to an ‘indirect incitement to terrorist violence’.⁷⁴ However, it argued that the penalty of a custodial sentence was not proportionate to the legitimate aim pursued and thus not ‘necessary in a democratic society’.⁷⁵

Although paragraph 2 is a test for the assessment of restrictions on freedom of expression, the test itself only serves as a rough guide to what may or may not be a legitimate restriction upon freedom of expression. There is significant difference of opinion on questions such as: what constitutes necessity in a democratic society? What is a pressing social need? Who decides what is necessary? The Strasbourg Court, on the

⁷⁰ Ibid, para 85

⁷¹ Ibid, para 130 – 131

⁷² Ibid, para 134

⁷³ *Rouillan v. France*, App no. 28000/19 (ECtHR, 23 June 2022), Information Note on the Court’s case-law 263

⁷⁴ Ibid

⁷⁵ Ibid

one hand, allows states a significant margin of appreciation in establishing a 'pressing social need'⁷⁶. The scope of the margin of appreciation differs depending on the nature of the rights or on balancing of competing rights, making it very difficult to predict its application.⁷⁷ Conversely, some national judges have argued for the test to be applied strictly. For example, Munby J has argued that in order to establish necessity, the pressing social need 'must be convincingly established' and the interests mentioned in paragraph 2 'are not trump cards which automatically override the principles of open justice and freedom of expression'.⁷⁸ This suggests that the threshold of proving the existence of a pressing social need is to be kept high and that freedom of expression is to be given high priority when there is a conflict between it and another right. Likewise, Hoffmann LJ has also argued that freedom of expression 'is a trump card which always wins'⁷⁹ when in conflict with interests other than those mentioned in paragraph 2 of article 10 and other than those that parliament enacts. He argues:

...a freedom which is restricted to what judges think to be responsible or in the public interest is no freedom. Freedom means the right to publish things which government and judges, however well motivated, think should not be published. It means the right to say things which "right-thinking people" regard as dangerous or irresponsible. This freedom is subject only to clearly defined exceptions laid down by common law or statute.⁸⁰

Nonetheless, this approach has not always materialised, as courts have continued to give the executive a large margin of appreciation. For example, in *Regina (Farrakhan) v Secretary of State for the Home Department*, Louis Farrakhan, the leader of the Nation of Islam, was denied entry to the UK by the Secretary of State, who exercised his power under the Immigration and Asylum Act 1999 s.60 (9), with the aim of preventing disorder. The Court of Appeal recognised that the case involved Article 10 of the

⁷⁶ *Observer and Guardian V. The United Kingdom* App no. 13585/88 (ECtHR, 26 November 1991) para. 59

⁷⁷ Francis Geoffrey Jacobs, Robin C. A. White and Clare Ovey, 'The European Convention on Human Rights' (Oxford university press 2010) p326

⁷⁸ *Kelly v British Broadcasting Corporation* [2001] Fam. 59 [68]

⁷⁹ *R. v Central Independent Television Plc.* [1994] 3 WLR 20, [1994] Fam. 192 [203]

⁸⁰ [1994] Fam. 192 [203]

convention as ‘the Secretary of State did not wish him to address meetings in this country because he considered that such meetings might prove the occasion for disorder’.⁸¹ Under consideration in this case was whether or not the restriction of freedom of expression met the criteria mentioned in Article 10 (2). There was no question concerning the first part of the test, which is an assessment of whether the restriction was prescribed by law, adequately accessible and foreseeable, because of the Immigration and Asylum Act 1999 s.60 (9). The Court further recognised that preventing disorder was a legitimate aim according to paragraph 2, thus fulfilling the third part of the test.⁸² Therefore, the decision of the Court of Appeal rested on whether or not part two of the test was also satisfied. It was for this part of the test that Munby J and others had argued for a strict approach, in other words, a restriction must be ‘convincingly established’ by reference to the existence of a ‘pressing social need’.⁸³ Contrary to this, the court held that the decision of the Secretary of State ‘did not involve a disproportionate interference with freedom of expression’⁸⁴ and that the consideration that ‘a visit by Mr Farrakhan to this country *might* provoke disorder’,⁸⁵ was sufficient despite the absence of convincing evidence.

The above analysis has illustrated that legal and procedural tests are not sufficient to produce clarity on what are or should be the proportionate boundaries of freedom of expression. For a more principled account of the value and limits of freedom of expression, a philosophical understanding is necessary. This goes beyond abstract academic debate – as noted above, philosophers have influenced lawyers and judges in shaping the legal doctrine of freedom of expression.⁸⁶ For example, in *R. v Secretary of State for the Home Department*, Steyn LJ argued that:

⁸¹ *Regina (Farrakhan) v Secretary of State for the Home Department* [2002] EWCA Civ 606, [2002] Q.B. 1391 [62]

⁸² [2002] Q.B. 1391 [63]

⁸³ *Kelly v British Broadcasting Corporation* [2001] Fam. 59, [2001] 2 WLR 253

⁸⁴ *Regina (Farrakhan) v Secretary of State for the Home Department* [2002] EWCA Civ 606, [2002] Q.B. 1391 [79]

⁸⁵ *ibid* para 78

⁸⁶ Lawrence Alexander and Paul Horton, ‘The impossibility of a free speech principle’ (1984) 78 *Northwestern University Law Review* 1319, p1320

Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self-fulfilment of individuals in society. Secondly, in the famous words of Mr. Justice Holmes (echoing John Stuart Mill), "the best test of truth is the power of the thought to get itself accepted in the competition of the market.".... Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate.⁸⁷

The next section will explore various philosophical perspectives on freedom of speech. In doing so, it will consider how these interpretations can aid our understanding of the application and limits of freedom of speech in the context of higher education.

4.2 PHILOSOPHICAL PERSPECTIVES

This section will consider four philosophical arguments commonly used to establish the importance of freedom of expression: (a) the argument from democracy, (b) the argument from truth, (c) the argument from autonomy, and (d) the natural rights theory. In doing so, it will consider whether such approaches encompass restrictions upon freedom of expression, or alternatively present freedom of expression as an absolute right.

4.2.1 FOUR PHILOSOPHICAL ARGUMENTS

An influential argument in favour of freedom of expression is the argument of democracy, articulated by the American political philosopher Alexander Meiklejohn. He argued:

As the self-governing community seeks, by the method of voting, to gain wisdom in action, it can find it only in the minds of its individual citizens. If they fail, it fails. That is why freedom of discussion for those minds may not be abridged.⁸⁸

⁸⁷ *R. v Secretary of State for the Home Department Ex p. Simms* [2000] 2 AC 115 (HL) 126

⁸⁸ Alexander Meiklejohn, *'Free speech and its Relation to Self-government'* (Harper & brothers Publishers New York, 1948) p25

From this perspective, a democratic political system takes into account the wishes of the people being governed in decisions concerning how they are to be governed and by whom. In order for such a system to succeed, society needs to protect the widest possible scope for freedom of expression, which in turn allows citizens to effectively voice their opinions and debate alternatives to the status quo.⁸⁹ Frederick Schauer identifies two critical elements that make up the democracy argument: (a) all relevant information needs to be available to the government before they can decide which proposals to accept and which to reject; and (b) if citizens are truly sovereign then the government officials are servants to the citizens and, therefore, must serve the wishes of the citizens by allowing them to voice their opinions.⁹⁰

This approach is reflected in the jurisprudence of the Strasbourg Court, which has emphasised the importance of freedom of expression in a democratic society. In *Handyside*, for example, the ECtHR stated that, ‘freedom of expression constitutes one of the essential foundations of such a society [one that is democratic], one of the basic conditions for its progress and for the development of every man’.⁹¹

The second philosophical argument for freedom of expression, known as the argument from truth, is found in the essay *On Liberty* by John Stuart Mill, who stated that:

If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.⁹²

Mill’s defence of freedom of expression has three elements. The first is based on the assumption that if the silenced opinion is true, then people ‘are deprived of the opportunity of exchanging error for truth’ and, therefore, by silencing the opinion mankind has been robbed of the truth.⁹³ He argues that to deny others freedom of speech is to assume ‘infallibility’, which he describes not as feeling sure of a doctrine but

⁸⁹ Barendt, E., *‘Freedom of Speech’* (2nd Edition, Oxford University press, 2005)

⁹⁰ Frederick Schauer, *‘Free Speech: A Philosophical Enquiry’* (Cambridge University Press 1982) p38

⁹¹ *Handyside v The United Kingdom* App no. 5493/72 (ECtHR, 7 December 1976) para 49

⁹² J. S. Mill, *‘On Liberty’* (Yale University Press 2003) p87

⁹³ *Ibid*, p87

deciding 'that question for others, without allowing them to hear what can be said on the contrary side'.⁹⁴ To add strength to his argument, Mill cites examples from history where authorities assumed infallibility, resulting in the deaths of people like Socrates and Jesus, both of whom were silenced, at their time, for having views that were considered blasphemous and wrong, but later were accepted.

The second part of the defence, which Mill puts forwards in Chapter Two of *On Liberty*, is that if the suppressed opinion is wrong, then mankind will still lose 'what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error'.⁹⁵ In other words, when the false idea collides with the truth, the correct idea will stand out as the truth, which has the effect of making the truth more apparent. This, therefore, justifies the expression of what are assumed to be false statements. Holmes SCJ also made a similar argument in his famous dissent in *Abrams v United States*, 'the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market'.⁹⁶ Mill additionally argues that true opinions should also be challenged fully, frequently and fearlessly, otherwise they risk becoming 'dead dogma, not a living truth'.⁹⁷ He further elaborates that 'not only the grounds of the opinion are forgotten in the absence of discussion, but too often the meaning of the opinion itself'.⁹⁸ Mill was so convinced of this that he suggested 'if opponents of all important truths do not exist, it is indispensable to imagine them, and supply them with the strongest arguments which the most skilful devil's advocate can conjure up'.⁹⁹ The final element of Mill's defence of freedom of expression is that conflicting doctrines can share the truth between them, rather than one being true and the other false, which is what he refers to as the

⁹⁴ Ibid, p93

⁹⁵ Ibid, p87

⁹⁶ *Abrams v United States* 250 U.S. 616 (1919) para 58

⁹⁷ J. S. Mill, '*On Liberty*' (Yale University Press 2003) p103

⁹⁸ Ibid

⁹⁹ Ibid, p105

'commoner case'.¹⁰⁰ Thus, the 'nonconforming opinion is needed to supply the remainder of the truth'.¹⁰¹

The third argument for freedom of expression is the argument from autonomy, which proposes that 'when people are constrained from expressing their opinions, an element of their humanity is denied'.¹⁰² In a US case, *Guglielmi v. Spelling-Goldberg Productions*, Bird SCJ argued that 'free speech is also guaranteed because of our fundamental respect for individual development and self-realization'.¹⁰³ He argued:

For expression is an integral part of the development of ideas, of mental exploration and of the affirmation of self. The power to realize his potentiality as a human being begins at this point and must extend at least this far if the whole nature of man is not to be thwarted. Hence suppression of belief, opinion and expression is an affront to the dignity of man, a negation of man's essential nature.¹⁰⁴

Unlike other theories, this argument is not necessarily instrumental, but rather it advocates that 'a right to express beliefs and political attitudes instantiates or reflects what it is to be human'.¹⁰⁵ Thomas I. Emerson argues that human beings are distinguished from other animals principally because they have the ability to reason and 'think in abstract terms, to use language, to communicate ... thoughts and emotions, to build a culture', likewise the 'powers of imagination, insight and feeling'.¹⁰⁶ It is with the 'development of these powers that man finds his meaning and his place in the world'.¹⁰⁷ Therefore, everyone has the right to develop their own personality, to form their own beliefs and opinions, and furthermore, be able to express these beliefs and opinions.

¹⁰⁰ Ibid, p112

¹⁰¹ Ibid

¹⁰² Douglas M. Fraleigh and Joseph S. Tuman, *freedom of Expression in the Marketplace of Ideas* (Sage Publications 2011) p11

¹⁰³ *Guglielmi v. Spelling-Goldberg Productions* 25 Cal. 3d 860 (1979) p866

¹⁰⁴ Ibid, p867

¹⁰⁵ Eric Barendt, *Freedom of Speech* (Oxford University Press 2005) p13

¹⁰⁶ Thomas I. Emerson, 'Toward a General Theory of the First Amendment', (1963) 72 *The Yale law journal* 877, p879

¹⁰⁷ Ibid

Otherwise, Emerson argues, these opinions are of little account as 'expression is an integral part of the development of ideas, of mental exploration and of the affirmation of self'.¹⁰⁸ Speech it seems is the most direct way of communicating to the rest of society the real inner self of a person, and with feedback from other people that self-perception is modified and improved.¹⁰⁹ In other words, the self-development of humans depends upon communicating to society who they really are and receiving feedback from society on how to improve.

The Supreme Court of the United States in *Hustler Magazine v Falwell* case recognised both the arguments from autonomy and truth as reasons why freedom of expression should be protected:

The freedom to speak one's mind is not only an aspect of individual liberty - and thus a good unto itself - but also is essential to the common quest for truth and the vitality of society as a whole.¹¹⁰

The fourth philosophical argument for freedom of expression is based upon the natural rights tradition and the concept of liberty and free speech. This argument stems from John Locke's social contract theory, which says that in the state of nature individuals had an inherent right to liberty, which he defines as the individual's power to control his or her own person, actions and possessions without interference from others.¹¹¹ He also states that the right to liberty is not absolute, but rather it is bound by the laws of nature, which dictate that individuals must respect the freedom, equality and rights of others.¹¹² From this natural state a society is built, when individuals decide to alienate a portion of their natural liberties to the community, in order for mutual aid and protection against aggression. The community is, thus, empowered to regulate the conduct of individuals to the extent necessary in order to promote the common good.¹¹³ The people, according

¹⁰⁸ Ibid

¹⁰⁹ Wojciech Sadurski, *Freedom of Speech and its Limits* (Kluwer Academic Publishers 1999) p17

¹¹⁰ *Hustler Magazine v Falwell* 485 U.S. 46 (1988)

¹¹¹ John Locke, *Two Treatises of Government* (New York Hafner Publishing Company 1947), Essay two, section 6

¹¹² Ibid, Essay 2, sections 6 and 123

¹¹³ Ibid, Essay 2, Sections 89, 95, 96, 99, 123, 136

to Locke's theory, always have the right to decide whether or not the government, being their trustee or deputy, is fulfilling its duty or is acting contrary to its trust. He argues:

... the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them.¹¹⁴

Heyman argues that by arguing so, Locke has laid 'the foundation for the eighteenth-century libertarian doctrine of political freedom of speech'.¹¹⁵ John Trenchard and Thomas Gordon further developed this theory and wrote in their famous essay *Cato's Letters*:

The administration of government is nothing else, but the attendance of the trustees of the people upon the interest and affairs of the people. And as it is the part and business of the people, for whose sake alone all publick matters are, or ought to be, transacted, to see whether they be well or ill transacted; so it is the interest, and ought to be the ambition, of all honest magistrates, to have their deeds openly examined, and publickly scanned.¹¹⁶

This reflects Locke's argument that people should have the right to oversee and speak freely about the conduct of government to ascertain whether or not the government is fulfilling its duty as 'the trustees of the people'. *Cato's letter* declares that 'freedom of speech is the great bulwark of liberty; they prosper and die together'.¹¹⁷ It further states that although libels against government are unlawful and often mischievous, they are nonetheless an 'evil arising out of a much greater good'¹¹⁸, the good being that criticism of government actions helps to prevent abuse in power. It goes on to state that:

¹¹⁴ Ibid, Essay 2, Section 149

¹¹⁵ Steven J. Heyman, *Free Speech and Human Dignity* (Yale University Press New Haven & London 2008) p8

¹¹⁶ John Trenchard and Thomas Gordon, 'Cato's Letters', NO. 15. SATURDAY, FEBRUARY 4, 1721. Of Freedom of Speech: That the same is inseparable from publick Liberty. (Gordon), <<http://oll.libertyfund.org/titles/trenchard-catos-letters-vol-1-november-5-1720-to-june-17-1721-lf-ed>> accessed 06 December 2016

¹¹⁷ Ibid

¹¹⁸ Ibid

...as to those who are for locking up the press, because it produces monsters, they ought to consider that so do the sun and the Nile; and that it is something better for the world to bear some particular inconveniencies arising from general blessings, than to be wholly deprived of fire and water.¹¹⁹

To summarise, Locke's social contract theory, as well as the later adaptations of it, suggests that freedom of speech is an inherent natural right of all individuals, not a right derived from positive law and is independent from legal recognition. It also stresses the importance of political freedom of speech, in order to supervise the government's role as trustees of the people.

4.2.2 A CRITIQUE OF THESE ARGUMENTS

As Micklejohn has acknowledged, the argument of democracy is limited in scope, applying only to a handful of politicians. When talking about the American First Amendment, for example, Micklejohn states that it may not be possible or practical to allow every citizen to talk, but it rather requires 'that everything worth saying shall be said'.¹²⁰ This reduces the scope of the argument of democracy and limits it to the political speech of only some people and not all citizens, and thus it fails to be a broad free-speech principle.¹²¹

The argument from truth, particularly the idea that the truth will become clear when it collides with falsehood, has also faced criticism. First, the collision may not result in a clear victory for the truth and may result in people accepting false statements, due to other factors such as false propaganda.¹²² There is no evidence to support the idea that reason and truth always prevails in society or that truth has an inherent power to defeat falsehood in a debate. Second, some opinions, such as that socialism is better than capitalism or vice versa, are not what philosophers call "truth-apt", as they are opinions and not facts.¹²³ The collision of opinion with opinion is likely to result in another opinion

¹¹⁹ Ibid

¹²⁰ Alexander Micklejohn, *Free speech and its Relation to Self-government* (Harper & brothers Publishers New York, 1948) p25

¹²¹ Frederick Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge University Press 1982) p44

¹²² Ibid, p25

¹²³ Wojciech Sadurski (n109) p10

rather than a truth. Mill's argument seems to be structured around a defence for true free speech, rather than a general free speech principle.

The argument from autonomy has been criticised for collapsing into 'a principle of general liberty', as opposed to being a robust defence for free speech.¹²⁴ It can be argued that just like freedom of expression, other rights and interests, such as the right to education, the right to cultural goods, the right to adequate housing and so on, also lead to self-fulfilment and development. Schauer argues that if the premise that mental self-fulfilment is a primary good is accepted, the failure to distinguish intellectual self-fulfilment from other wants and needs is the reason this argument fails to provide a distinct free speech principle.¹²⁵ If there is no distinction between free speech and other self-fulfilling acts, then most talk of a right to free speech and not of a right to other self-fulfilling acts is at best misleading.¹²⁶ Similarly, it can be objected that since the argument from autonomy is essentially linked to human self-fulfilment, it lacks the depth to extend freedom of speech protection for the press, media and legal persons, such as corporations.¹²⁷ Therefore, whilst freedom of expression is a means to human intellectual self-fulfilment, it lacks the scope for being a complete principle of freedom of expression.

To conclude this section, it is argued that although none of the philosophical approaches outlined are in themselves sufficient to underpin a right to freedom of expression, when considered together they provide a strong defence of its protection. If the argument from democracy lacks the depth to be a defence for non-political speech, then the arguments from truth and autonomy cover those missed grounds. Likewise, if the argument from truth can be criticised for only protecting facts rather than statements of opinion, then it can be argued that such opinions are protected by the argument from autonomy. A defence of freedom of expression thus ought to encompass each of these complementary philosophical approaches.

¹²⁴ Frederick Schauer (n121) p52

¹²⁵ Ibid, page 56

¹²⁶ Ibid, page 58

¹²⁷ Ibid

4.2.3 RESTRICTING FREEDOM OF EXPRESSION

This section will illustrate how the philosophical arguments outlined in the above section allow freedom of expression to be limited. As David van Mill argues, ‘whatever reasons we offer to protect speech can also be used to show why some speech is not special’.¹²⁸ Stanley Fish, in his powerful text, *There’s No Such Thing as Free Speech and It’s a Good Thing Too*, argues that freedom of expression can only be a primary value, ‘if what you are valuing is the right to make noise’. He points out that when speech forms part of a given purposive activity, some forms of speech may endanger that purpose.¹²⁹ In an interview, Fish suggested that free speech is what remains after certain forms of speech are not permitted to flourish – it ‘emerges against the background of what has been excluded’.¹³⁰

It is apparent that Fish’s arguments have some validity, because international treaties such as the ECHR and the ICCPR allow for limitations to be placed on freedom of expression.¹³¹

The democracy argument, for example, can be used to prohibit the right to freedom of expression. Van Mill argues that if political free speech is essential for providing an environment where citizens can develop and exercise their goals, talents and abilities, then based on this same reason free speech may be limited if it curtails the development of such capacities.¹³² It is possible to point to many examples where freedom of expression has been restricted through democratic means in order to protect democracy and the rights of certain citizens to develop and exercise their goals, talents

¹²⁸ David Van Mill, ‘freedom of speech’, *Stanford Encyclopedia of Philosophy* (Spring edn, 2021) <<https://plato.stanford.edu/entries/freedom-speech/>> accessed 06 April 2023

¹²⁹ Stanley Fish, ‘There’s no such thing as free speech, and it’s a good thing too’, (Oxford University Press 1994) p107

¹³⁰ Stanley Fish, “‘There is no such thing as free speech’: an interview with Stanley Fish”, *Australian Humanities Review* < <http://australianhumanitiesreview.org/1998/02/01/there-is-no-such-thing-as-free-speech-an-interview-with-stanley-fish/>> accessed 06 April 2023

¹³¹ Likewise, although, the American First Amendment prohibits congress from making any laws that abridge freedom of speech, the American Convention on Human Rights Article 13 section 5 lists the types of expressions that are to be considered as offenses and punishable by law.

¹³² David Van Mill (n128)

and abilities without restraint, such as hate speech legislation. The Strasbourg Court uses this same argument of democracy to limit speech that spreads, promotes, incites or justifies hatred. In the *Erbakan v Turkey* case the Court argued:

... [T]olerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance.¹³³

Therefore, the argument from democracy does not protect freedom of expression as an absolute right, but as a qualified right that may be subject to limitations. Likewise, the argument from truth allows the restriction of free speech when it comes to harm – it is clear that J. S. Mill was not an absolutist. In his essay *On Liberty*, he expressed his famous principle, commonly known as the ‘harm principle’ as follows: ‘the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others’.¹³⁴ He provides the following example:

An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard. Acts of whatever kind, which, without justifiable cause, do harm to others, may be, and in the more important cases absolutely require to be, controlled by the unfavourable sentiments, and, when needful, by the active interference of mankind.¹³⁵

Turning now to the argument from autonomy, Wojciech Sadurski argues that if the rationale for free speech is based upon self-realisation, then free speech must also share

¹³³ *Erbakan v Turkey*, App no 59405/00 (ECtHR, 6 July 2006) para 56; also see: European Court of Human Rights, ‘Factsheet – Hate speech’ (June 2016)

<http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf> accessed 14 September 2016

¹³⁴ J. S. Mill, ‘On Liberty’ (Boston: Ticknor and Fields 1863) p23

¹³⁵ *ibid*, pp107 - 108

the limitations of self-realisation.¹³⁶ Driving at high speeds through a school district during peak hours, he argues, may be a way of expressing the real self, but it is prohibited as it would cause harm to others. By the same token, speech and other forms of expression should be subject to limitations if they cause harm. Likewise, Eric Barendt argues that at times the exercise of freedom of speech may hinder the self-fulfilment of others, such as hate speech and pornography that demeans women, for which it may be limited.¹³⁷

The above discussion reveals that these four philosophical arguments not only provide a strong defence for freedom of speech, but they can also be used to justify its limits. For example, if free speech is likely to hinder citizens from developing and exercising their goals, talents and abilities, then the argument from democracy is likely to justify restricting such speech. If exercising free speech is likely to cause harm, then both J. S. Mill's argument and the argument from autonomy can be used to justify limiting that free speech. The next section will assess whether these approaches, which form the foundation for the legal right of freedom of speech, can also be used to restrict speech in the context of counter terrorism.

4.2.4 COUNTER-TERRORISM CONTEXT

In the context of counter terrorism, since speech that glorifies, condones or promotes terrorism is not only likely to hinder citizens from developing and exercising their goals, talents and abilities, but also likely to cause harm, the arguments from democracy and truth may be deployed to justify its restriction. Similarly, adaptations of the argument based upon Locke's social contract can also be used to argue that certain curtailments of specific non-absolute rights, such as freedom of speech of terror suspects, may be necessary in order to maximise the continued enjoyment of the overall set of liberties in a democracy.¹³⁸ Accordingly, Fernando Tesón maintains that the only justification to

¹³⁶ Wojciech Sadurski (n109) p18

¹³⁷ Eric Barendt (n105) p15

¹³⁸ Ian Cram, 'Countering Terrorism through Limits on Inciteful Speech', in Ian Cram (ed), *Extremism, Free Speech and Counter-Terrorism Law and Policy* (Routledge 2019); Fernando R. Tesón, 'Liberal Security', in Richard Ashby Wilson (ed), *Human Rights in the War on Terror* (Cambridge University Press 2005)

restrict liberty through security measures is to 'protect the total systems of freedoms in a democratic society'; thus, order and security are not independent values, but they stem from the commitment to protect liberty.¹³⁹ Hence, security measures must be necessary and proportionate.¹⁴⁰ This argument supports the requirements of Article 10 (2) of the ECHR, which say that restrictions on freedom of speech need to be necessary in a democratic society and proportionate to the legitimate aims they pursue.

However, academics such as Ian Cram have adopted Tesón's argument of necessity and proportionality to argue that some of the restrictions under UK anti-terrorism laws are not necessary or proportionate.¹⁴¹ For example, Section 1 of the Counter-Terrorism and Border Security Act 2019 (CTBSA 2019)¹⁴² creates an offence under Section 12 of the Terrorism Act 2000 of 'express[ing] an opinion or belief that is supportive of a proscribed organisation', where the person expressing the opinion 'is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation'.¹⁴³ Cram argues that this lowers the *mens rea* – the mental aspect of the offence – requirement from an intentional support of a proscribed organisation to mere 'recklessness' as to whether a listener will be encouraged to support a proscribed organisation. The meaning of recklessness was clarified in *R v. Cunningham*, where the Court of Appeal argued it meant: 'the accused has foreseen that the particular kind of harm might be done and yet has gone on to take the risk of it',¹⁴⁴ even if they did not intend the harm.¹⁴⁵ This, Cram argues, may catch academic debates on proscription and de-proscription of groups and create a 'chilling effect' on academic discussion.¹⁴⁶

Taking into consideration Cram's argument that these provisions are pre-emptive and catch expression that is far from the preparation and commission of acts of political

¹³⁹ Fernando R. Tesón (n138) p74

¹⁴⁰ Ibid

¹⁴¹ Ian Cram (n138)

¹⁴² It amends section 12 of the Terrorism Act 2000

¹⁴³ Counter-Terrorism and Border Security Act 2019, s1

¹⁴⁴ *R v. Cunningham* [1957] 2 QB 396

¹⁴⁵ This definition was also confirmed in *Regina v. G and another*, [2003] UKHL 50, [2004] 1 AC 1034 [29]

¹⁴⁶ The concept of chilling effect on freedom of speech and academic freedom in universities will be discussed in the following chapter.

violence, it is hard to argue whether they can be justified by the philosophical arguments mentioned in this chapter. For example, a state is truly democratic if its citizens are allowed to take part in democratic life, through the exercise of freedom of expression.¹⁴⁷ Thus, according to the argument from democracy, in order for citizens to take part in democracy, they need to be able to question the actions of the government, which includes debating the grounds for proscription of particular groups. However, debating and challenging a proscription may be seen as supporting a proscribed organisation. Hence, the Joint Committee on Human Rights (JCHR) has argued that this provision is likely to have a clear and disproportionate chilling effect on press freedom to engage in debate around criminalisation, proscription and state power, discussions of which are in the public interest.¹⁴⁸ Thus, the argument from democracy could not be used to support such a restriction. On the contrary, if it could be shown that the restriction is necessary to protect the overall liberty enjoyed in a democracy and proportionate, then the argument from democracy as well as the arguments from natural rights and autonomy may support such a restriction. Thus, using Tesón's argument and the spirit of Article 10 (2) of the ECHR, any restriction on freedom of expression needs to be necessary and proportionate in democratic society, for it to be afforded the backing of the philosophical arguments. This section shows that these philosophical arguments not only form the foundations for the legal right to freedom of speech, but also they can be used to justify the legal restrictions on freedom of speech if it supports or encourages terrorism, provided the restriction is necessary and proportionate.

CONCLUSION

This chapter has analysed the legal definition of freedom of speech under domestic law and the jurisprudence of the ECtHR. It has shown that although this provides a good starting point for the protection of freedom of speech, its enforcement can be limited and at times difficult. Firstly, the freedom of speech right under the ECHR and the HRA 1998 has a limited horizontal effect as the definitions have been drafted in a manner that stipulates that the right is enforceable against the state only. However, its limited

¹⁴⁷ Ian Cram (138) p 19

¹⁴⁸ Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill* Ninth Report (2017–19, HC 1208, HL PAPER 167) para 13

horizontal use can be seen in the approach of the domestic courts, which by virtue of being public bodies have to interpret law in accordance with the Convention rights. However, it falls short of having a full horizontal effect, due to procedural restrictions in bringing a case before the courts. Secondly, even when the right is enforced against the state, the outcome is not always clear, due to the high margin of appreciation provided to states by the courts. This chapter has shown that procedural tests to assess proportionality and legitimacy are insufficient, as it is not always clear what terms such as 'necessary in a democratic society' and 'pressing social need' mean in practice.

As a result, the chapter proceeded to explore freedom of speech from a philosophical perspective, recognising that philosophical arguments often influence lawyers, judges and policy drafters.¹⁴⁹ It analysed four philosophical arguments that underpin the importance of freedom of speech. The chapter shows that individually each of the four arguments provide a limited defence for freedom of speech. However, considering these arguments in their totality provides a strong defence for freedom of speech. For example, where the argument from democracy falls short of providing a robust defence for non-political artistic expression, the argument from autonomy can be used to encompass those grounds. This chapter has also demonstrated that none of these arguments justify an absolute right to freedom of speech; rather, they can be adapted to restrict certain types of freedom of speech. As the philosophical arguments also require a balance between individual liberties and protection of citizens from harm, they provide a philosophical justification for the approach reflected in Article 10 (2) of the ECHR, which permits restrictions so long as they are necessary in a democratic society and proportionate to the legitimate aims they pursue. As such, all anti-terrorism laws that restrict freedom of speech, including the statutory Prevent duty, are subject to scrutiny on the grounds of necessity and proportionality. However, as noted above, what is necessary and proportionate will vary from case to case. As this will require a subjective assessment, it will remain open to debate and contestation. Examining how UM interpret freedom of expression, and the limits that can be placed upon it, is a key aim of this thesis and will be explored further in Chapter Eleven.

¹⁴⁹ The influence of these four arguments is also visible in parliamentary debates, as the following chapter will demonstrate.

In the context of universities, the right is also protected by two other domestic pieces of legislation – The Education Reform Act 1988, which protects academic freedom, and the Education (No. 2) Act 1986, which protects freedom of speech. Since this project aims to assess how the freedom of speech duty is understood, implemented and balanced with the Prevent duty by UM, the next chapter will explore freedom of speech in the context of universities.

Chapter Five

EXTERNAL SPEAKERS AND THE PREVENT DUTY

The previous chapter noted that the right to freedom of speech under the European Convention on Human Rights (ECHR) and International Covenant on Civil and Political Rights (ICCPR) is enforceable against public bodies and its horizontal effect¹ is very limited. Nonetheless, it does apply to universities, which – although they are classified as part of the private sector² – are treated as public bodies for the purposes of the Human Rights Act 1998 (HRA 1998),³ because of the public funding they receive.⁴ Therefore, the definition of freedom of speech, as examined earlier, under the ICCPR, ECHR and the HRA 1998, also applies to universities. Moreover, due to the special importance of open debate and discussion in a university setting, speech is protected under section 202 of the Education Reform Act 1988 as ‘academic freedom’ and under the Education (No. 2) Act 1986, section 43 as ‘freedom of speech’.

Thus, this chapter will first analyse academic freedom under the Education Reform Act 1988, and then freedom of speech under the Education (No. 2) Act 1986. It will demonstrate that free speech for external speakers is protected under the Education

¹ Horizontal effect refers to rights being enforceable against non-state actors. See Chapter four, section 4.1.1

² Office for National Statistics, ‘Classification Review of Universities in the UK’ (31 January 2017) <<https://www.ons.gov.uk/news/statementsandletters/classificationreviewofuniversitiesintheuk>> accessed 26 February 2020

³ Human Rights Act 1998, Section 6 states: ‘it is unlawful for a public authority to act in a way which is incompatible with a Convention right’.

⁴ Equality and Human Rights Commission, ‘Freedom of expression: a guide for higher education providers and students’ unions in England and Wales’, (February 2019)

<<https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-england-and-wales.pdf>> accessed 26 February 2020; This point was also made by the Office for Students (OfS), that asserted ‘all universities and colleges must also comply with the right to freedom of expression (Article 10) and the right to freedom of assembly and association (Article 11) of the European Convention on Human Rights’. See: Office of Students, ‘Freedom of Speech’, <<https://www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/freedom-of-speech/what-should-universities-and-colleges-do/>> accessed 26 February 2020

(No.2) Act, rather than the Education Reform Act.⁵ Second, it will analyse the importance of external speakers in universities. Third, it will highlight that the freedom of speech duty under the Education (No.2) Act 1986 also extends to student union events. Fourth, it will evaluate what seems to be a step in the opposite direction under the Prevent duty. It will do so by assessing the concerns of potential impact that were raised in parliamentary debates and in academic literature. Fifth, it will assess the language of the Prevent Duty Guidance for Higher Education (HEPDG) in light of the *Butt* case. Finally, it will assess the possibility of a chilling effect resulting from not only Charity Commission guidance, but also some of the mitigations that universities may use to reduce the level of risk.

5.1 ACADEMIC FREEDOM

The following sections will define academic freedom and then explore the background of the Education Reform Act 1988, which protects academic freedom.

5.1.1 DEFINITION

Academic freedom has been defined in a number of different ways. For example, it was defined in 1960 by the President of the University of Rochester, New York, as ‘the right of scholarship to the pursuit of knowledge in an environment in which the emancipating powers of knowledge are the least subject to arbitrary restraints’.⁶ Lord Chorley defined it as the ‘freedom of thought, utterance, teaching, and research in academic institutions’.⁷ Ralph F. Fuchs described it as the ‘freedom of members of the academic community, assembled in colleges and universities, which underlies the effective performance of their functions of teaching, learning, practice of the arts, and research’.⁸ However, the legal definition that is adopted in this study is found in the Education Reform Act 1988. Section 202 of the Act reads:

⁵ Since the focus of this project is external speaker events, this Chapter will predominantly focus on freedom of speech, instead of academic freedom.

⁶ Cornelius William De Kiewiet, *Academic Freedom* (University of Cape Town 1961)

⁷ Lord Chorley, ‘Academic Freedom in the United Kingdom’ (1963) 28 *Law and contemporary problems* 647, p647

⁸ Ralph F. Fuchs, ‘Academic Freedom – its Basic Philosophy, Function, and History’ (1963) 28 *Law and contemporary problems* 431, p431

[T]he Commissioners shall have regard to the need—

(a) to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions.

In order to better understand this legal definition of academic freedom, it is important to analyse the events that led to academic freedom being enshrined in the Education Reform Act 1988.

5.1.2 BACKGROUND TO THE EDUCATION REFORM ACT 1988

During the time Margaret Thatcher was Prime Minister, the Government gained tighter control over schools, colleges and universities.⁹ Prior to this, the only control central Government could exercise over universities or schools was through control of money for new buildings.¹⁰ However, substantial changes were introduced with the Education Reform Act 1988. It provided mechanisms to make universities more accountable for the public money they received, which allowed the Government to intervene in issues previously seen as matters of academic judgment.¹¹

At the time when this Act was debated in the House of Commons, the Government's policy was that newly appointed staff at universities should no longer be given 'tenure',¹² which was 'special protection against dismissal on grounds of redundancy or financial exigency'.¹³ Paragraph (b) of section 202 of the 1988 Act abolished academic tenure. Section 202 states that 'the commissioners shall have regard to the need':

(b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically.

⁹ Peter Wilby, 'Margaret Thatcher's education legacy is still with us – driven on by Gove', *The Guardian*, (Monday 15 April 2013), <<https://www.theguardian.com/education/2013/apr/15/margaret-thatcher-education-legacy-gove>> accessed 20 December 2016

¹⁰ Ibid

¹¹ Conrad Russell, *Academic Freedom* (Routledge 1993) p7

¹² Mr Kenneth Baler, Hansard, Education Reform, HC Deb 20 November 1987 vol 122 cols 678W

¹³ Ibid

It was this clause, and especially the words ‘efficiently and economically’, that were ‘designed to give university commissioners the power to change universities’ charters and statutes to enable them to make academics redundant’.¹⁴ It was this issue that was of concern in parliamentary debates leading up to the passing of the 1988 Act. The fear in universities was that the abolition of academic tenure ‘would lead to people being pushed out of their posts if they were writing heterodox or controversial views or experimenting in doubtful areas’.¹⁵ Since the cry for academic freedom was first raised and moved by Lord Jenkins of Hillhead, who was at the time Chancellor of Oxford University, the proposed amendment in support of academic freedom became known as the ‘Jenkins amendment’.¹⁶ It embodied the words of paragraph (a) of Section 202 of the 1988 Act.¹⁷

Thus, the background to the Education Reform Act shows that academic freedom was introduced to protect academic staff from being removed from their posts by university commissioners for expressing controversial views, under the pretence of making the university more efficient and economical,. It was not designed to protect freedom of speech for external speakers. Hence, the language of the 1988 Act explicitly states ‘without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions’, which reflects the concern to protect teaching staff from losing their jobs or privileges. The next section will demonstrate that the protection of freedom of speech for external speakers was the background to the freedom of speech duty under the Education (No.2) Act 1986.

¹⁴ The Times Higher Education, ‘Memories of jobs for life’ (December 5, 1997)

<<https://www.timeshighereducation.com/news/memories-of-jobs-for-life/104896.article?storyCode=104896§ioncode=26>> accessed 23 December 2016

¹⁵ Lord Neill, HL Deb 07 January 2003, vol 642, col 880

¹⁶ Ibid

¹⁷ Section 202 reads:

[T]he Commissioners shall have regard to the need—

(a) to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions.

5.2 EDUCATION (NO.2) ACT 1986 AND EXTERNAL SPEAKER EVENTS

This section is divided as follows. First, it will analyse the background of the freedom of speech duty under the Education (No.2) Act 1986. Then it will explore the importance of external speakers. Finally, it will analyse how the duty extends indirectly to the student unions.

5.2.1 BACKGROUND TO THE FREEDOM OF SPEECH DUTY

This section will show that the background to the 1986 Act reflects the intention of the legislators to ensure external speaker events were not cancelled or restricted. During the 1980s, government ministers with controversial views who visited student unions were met with very hostile responses by student protestors. For example in 1983, when the then Secretary of State for Defence, Michael Heseltine, was invited to speak at the Students' Union in Manchester, a protester sprayed him in the face with red paint to protest against controversial Government plans to have American cruise missiles in the UK.¹⁸ In 1985, Leon Brittan, the then Home Secretary, was met by noisily protesting students at the University of Manchester. Adam Tickell, who was there at the time, said 'I can't remember anything the home secretary said, most of which was drowned out by hecklers'.¹⁹ In the run up to the Education (No. 2) Act 1986, the Conservative MP Fred Silvester argued in the House of Commons that the tradition of free speech in universities was 'widely challenged, especially in student unions, by the adoption of the practice known as the low [sic] platform policy'.²⁰

Barendt argues that the Government's view at that time was that universities had not taken effective steps to protect the freedom of speech of visiting speakers to air their views and they often took the path of least resistance by 'banning all controversial

¹⁸ Daniela Iacono, 'Defense Secretary Michael Heseltine, a target of angry anti-nuclear...', *United Press International* (16 November 1983) <<https://www.upi.com/Archives/1983/11/16/Defense-Secretary-Michael-Heseltine-a-target-of-angry-anti-nuclear/1947437806800/>> accessed 25 February 2020

¹⁹ Adam Tickell, 'Free-speech warriors mistake student protest for censorship', *The Guardian* (Monday 7 May 2018) <<https://www.theguardian.com/commentisfree/2018/may/07/free-speech-warriors-mistake-student-protest-censorship>> accessed 25 February 2020

²⁰ Mr. Fred Silvester, 'Freedom of Speech (Universities and Institutions Of Higher Education)', HC Debate 11 February 1986, vol 91, col 793

meetings where there was the slightest danger of a breach of the peace or disruption to ordinary university life'.²¹ This backdrop to the Education (No. 2) Act 1986 has also been highlighted in case law. For example, Sedley J argued in *R v University College London, ex p Riniker*:

It is well known that the principal purpose of the enactment was to prevent the banning from campuses of speakers whose views might be unacceptable to a majority, or even a vocal minority, of either the student body or the teaching body or both or, come to that, of the governing body.²²

These and many other similar student protests are the backdrop of the Education (No. 2) Act 1986, which now uses the force of law to ensure freedom of speech for visiting speakers at campuses. Section 43 (1) of the Education (No. 2) Act 1986 now reads:

Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.²³

Section 43 (2) states that the duty is to ensure as far as 'reasonably practicable that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with (a) the beliefs or views of that individual or of any member of that body; or (b) the policy or objectives of that body'.²⁴ Under section 43 (3) of the Education (No 2) Act 1986, universities have a statutory duty to issue and keep up to date a code of practice, which sets out the procedure to be followed for organising meetings and the conduct of persons in the events.

²¹ Eric Barendt, 'Free Speech in the Universities' [1987] Public Law 344, p344

²² *R v University College London, ex p Riniker* [1995] ELR 213 (216)

²³ Education (No. 2) Act 1986, Section 43 (1). The Act also clarifies that this section applies to '(a) any university; (aa) any institution other than a university within the higher education sector; (b) any establishment of higher or further education which is maintained by a local authority; (ba) any institution within the further education sector'. See: section 43 (5)

²⁴ Education (No.2) Act 1986, Section 43 (2)

This section has highlighted that the background to this legal duty was one of ensuring that external speakers, in particular those regarded as controversial, were not prevented from campuses. The next section will highlight the importance of external speakers in universities.

5.2.2 IMPORTANCE OF EXTERNAL SPEAKERS

Well-informed external speakers, even if they are controversial, may provide important knowledge and experience that makes them credible contributors to important discussions at universities. In addition, they may encourage ‘students to challenge other people’s views and develop their own opinions’.²⁵ The University of Lincoln’s external speaker policy states that ‘speakers have brought and continue to bring great diversity of experience, insight and opinion, enriching our events and activities and sparking discussion and debate among our students, staff and visitors alike’.²⁶ Exposure to controversial and differing external views is vital to avoid the danger of introverted perspectives becoming the norm, which may happen when an academic course is directed by the particular interests of individual members of staff.²⁷

Furthermore, it can be argued that controversial speakers provide a better opportunity for the advancement of knowledge, as they are more likely to incite debate and dialogue when compared to a noncontroversial speaker. According to J. S. Mill, as discussed in the previous chapter, the clash of controversial ideas with ‘acceptable’ ideas is likely to create a clearer perception and a livelier impression of the truth. This argument can be further advanced by the view that students, being future leaders in society, not only need to be familiar with all kinds of ideas and extreme views held by people in society

²⁵ Nicola Dandridge, ‘Universities will be allowed to host extremist speakers – within limits’, *The Guardian*, (Friday 17 July 2015) <<https://www.theguardian.com/education/2015/jul/17/universities-allowed-host-extremist-speakers-within-limits>> accessed 19 July 2017

²⁶ University of Lincoln External Speaker Policy, <<https://www.lincoln.ac.uk/home/media/External,Speaker,Policy.pdf>> accessed 19 July 2017

²⁷ S. M. Young, H. M. Edwards, and J. B. Thompson, ‘University Reach out - The Role of Guest Speakers in Communicating with Industry and Other Institutions a Position Paper’ (19th Conference on Software Engineering Education and Training Workshops 2006) <<https://sure.sunderland.ac.uk/id/eprint/8765/1/CSEET06%20%20Workshop%20position%20paper%20Young-Edwards-Thompson.pdf>> accessed 08 April 2023

but also need to be equipped to tackle such ideas. This can be facilitated by inviting controversial external speakers to be challenged in a controlled academic environment. Lord Mendelsohn argued this very point:

Listening to and rigorously questioning speakers about controversial issues is vital training for undergraduates and a life skill that universities are uniquely equipped to teach. Banning speakers whose views are antithetical to one particular group undermines the university's role in defending our society's values, which include the freedom to differ or even the freedom to insult.²⁸

5.2.3 STUDENT UNIONS AND THE EDUCATION (NO.2) ACT

Student unions, being separate legal entities from their partner universities, are not public authorities or bodies and thus are not directly required to comply with the freedom of speech duty imposed on universities.²⁹ Yet, student unions are made to uphold the free speech duty both by the Charity Commission and by their parent universities.³⁰ Universities require student unions to uphold freedom of speech indirectly through the use of premises. According to Section 43 of the Education (No.2) Act 1986, the freedom of speech duty on universities extends to all premises including those that are used by their student unions, even if those premises are not owned by their parent university.³¹ Therefore, university codes of practice often outline the requirements that student unions need to fulfil on their premises in order to ensure freedom of speech. Thus, the Section 43 duty on freedom of speech extends to student unions indirectly. Hence, although student unions are distinct, and most are

²⁸ Lord Mendelsohn, HL Deb 26 November 2015, vol 767, col 862

²⁹ Charity Commission, OG 48 Students' Unions

<<http://ogs.charitycommission.gov.uk/g048a001.aspx#tab2>> accessed 29 March 2020

³⁰ Charity commission, Operational Guidance OG48 Student Unions, 'Freedom of Speech and Partner Establishments', <<http://ogs.charitycommission.gov.uk/g048a001.aspx>> accessed 24 June 2020; It is also worth noting that until 30 May 2010 all students' unions were exempt charities and did not have to register with the Charity Commission. Following the enactment of the Charities Act 2006 (Changes in Exempt Charities) Order 2010, students' unions were required to register with the Commission if they met the legal definition of a charity and had a gross annual income of over £100,000. By registering the students' unions have to follow the Commission's regulations and guidance.

³¹ Education (No.2) Act 1986, Section 43 (8)

constitutionally independent from their partner establishments, they nonetheless have a close and practical relationship with each other.³²

In summary, the previous three sections have shown that the Education (No.2) Act was a step towards protecting freedom of speech in universities for external speakers, including events organised through student unions. However, the next section will demonstrate that the introduction of the Prevent duty on a statutory footing is a step in the opposite direction; one which seeks to reduce the scope of freedom of speech, especially for certain types of extremist speakers.

5.3 PREVENT DUTY AND EXTERNAL SPEAKERS

Chapter One highlighted some of the concerns relating to Prevent in general, including an increase in racism and Islamophobia, and the creation of suspect communities and legitimised intrusive state surveillance. This section will consider the potential impact of Prevent on freedom of speech in the context of external speaker events at universities. It was established in Chapter One that successive governments, since the introduction of the Prevent duty, have argued that universities are being targeted by 'extremists'. A key concern has been external speaker events, with external organisations such as Students Rights and Quilliam supplying the Government with lists of 'extremist speakers' who have visited campuses for talks. Thus, external speaker events have been pivotal in the lead-up to both the Prevent duty under the 2015 Counter-Terrorism and Security Act (CTSA) and the freedom of speech duty under the Education (No.2) Act 1986.

As such, this section will consider the dynamics of the two duties in the context of external speaker events. It will first analyse the debates in the Houses of Parliament and other literature regarding concerns of potential impact on freedom of speech in the period leading up to the 2015 Act. Second, it will assess the problematic language of the HEPDG, and the attempts that have been made to clarify the understanding and scope of Prevent in the courts. Third, it will explore how the Prevent duty extends to student

³² Charity commission, Operational Guidance OG48 Student Unions, 'The relationships between SUs and their partner establishments', <<http://ogs.charitycommission.gov.uk/g048a001.aspx>> accessed (24 June 2020)

unions and the role played by the Charity Commission in monitoring them. Finally, it will assess the possibility of a chilling effect on freedom of speech.

5.3.1 CONCERNS OF IMPACT ON FREEDOM OF SPEECH

The introduction of the Prevent Duty in 2015 triggered a considerable amount of academic commentary and debate, with many raising concerns about the impact on freedom of speech in general and more specifically on external speaker events on campuses. During the passage of the Bill, a number of university vice-chancellors wrote a letter arguing that ‘the Government does not appear to have considered how the Bill will relate to universities’ existing duties and codes of practice concerning freedom of speech and academic freedom’.³³ The letter argued that the new statutory duty should not apply to universities, as they are places where ‘lawful ideas can be voiced and debated without fear of reprisal’.³⁴ Anthony Foster, vice-chancellor of the University of Essex, voiced the concern that university lecturers and students would worry about whether Prevent may result in them being judged ‘to fall foul of the new duty’, during critical discussions, which could result in the potential inhibition of free speech.³⁵ Another letter signed by 500 academics raised concerns about how this duty would work alongside the freedom of speech duty; they argued that the ‘proposed legislation [CTSA 2015] is both unnecessary and ill-conceived.’³⁶

The debates in the House of Lords also raised significant concerns about curbing free speech, even in the case of extremist speech.³⁷ Lord Judd, for example, suggested that,

³³ University of Essex, ‘Vice-Chancellor defends academic freedom in national media debate’, (28 January 2015) <https://www1.essex.ac.uk/news/event.aspx?e_id=7334> accessed 02 March 2020

³⁴ Ibid

³⁵ Times Higher Education, ‘Terrorism bill will make universities ‘agents of the state’, warns vice-chancellor’, (January 28, 2015), <<https://www.timeshighereducation.com/comment/opinion/terrorism-bill-will-make-universities-agents-of-the-state-warns-vice-chancellor/2018246.article>> accessed 02 March 2020

³⁶ The Guardian, ‘Counter-terrorism and security bill is a threat to freedom of speech at universities’, (Monday 2 February 2015) <<https://www.theguardian.com/education/2015/feb/02/counter-terrorism-security-bill-threat-freedom-of-speech-universities>> accessed 02 March 2020

³⁷ Lord Deben argued that:

“[T]here are no improper debates in universities. There are improper actions as a result of debates; there are improper actions during debates; but to put a case and to argue the case is

‘unacceptable extremist ideas can be approached face on and argued out... [and] sensitive potential recruits for extremism can see that there is a better way’.³⁸ This argument seems to be based on the second part of J. S. Mill’s defence for freedom of speech.³⁹ According to Lord Judd:

[P]eace, understanding, stability and decency are built in the minds of men and women. It is not therefore a cliché to say that we are in a battle for hearts and minds—we are. Central to that battle for hearts and minds—the powerhouse of it—is higher education and the universities.⁴⁰

Baroness Kennedy stressed the importance of debates on extremely controversial topics, such as ‘the circumstances in which someone was entitled, as Mandela was in his time, to take up arms against the state’.⁴¹ She argued that:

That is how young people learn about the nature of our society. It is where they learn and hear the counter arguments to some of the things that they feel seem so obvious to them.⁴²

Similar arguments were made in the House of Commons, in the debates leading up to the CTSA 2015. Diana Johnson, for example, argued:

an essential part of university education.” See: Lord Deben, Debate on Counter-Terrorism and Security Bill, HL Deb 04 February 2015, vol 759, col 690

³⁸ Lord Judd, HL Deb 28 January 2015, vol 759, cols 209 – 210.

³⁹ Mill argued that the collision between truth and error would produce a ‘clearer perception and a livelier impression of truth’. See Chapter four on Freedom of Speech. A similar point was argued by Baroness O’Neill:

[U]niversities have, not always with success but often, opened the minds of their students and countered radicalisation by the only long-term, effective method which is to discuss juvenile claims, hopes and aspirations that reveal hidden horrors within them. It is only speech that can defeat evil speech. See: Baroness O’Neill, ‘HL Deb 28 January 2015, vol 759, col 249

⁴⁰ Lord Judd, HL Deb 04 February 2015, vol 759, col 693. This argument is very similar to what Justice Oliver Wendell Holmes said in *Abrams v United States*: ‘the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market’. See: Dissenting opinion in *Abrams v United states* 250 U.S. 616 (1919)

⁴¹ HL Deb 28 January 2015, vol 759, col 239

⁴² Ibid

[U]niversities' commitment to freedom of speech and the rationality underpinning the advancement of knowledge mean that they represent one of our most important safeguards against extremist views and ideologies.⁴³

Baroness Warsi posited that universities would become risk averse and adopt safe positions that would lead to 'a stifling of the very conversations that need to take place'.⁴⁴

The debates also show that the Government struggled to make a convincing case against a chilling effect on freedom of speech, as Baroness O'Loan argued, 'the Minister, Mr James Brokenshire, was unable to reassure the committee that this new duty was not about restricting freedom of speech'.⁴⁵ As such, Baroness Brinton argued that the drafters of the Bill in the Home Office 'do not understand the way in which our universities are structured'.⁴⁶ During the pre-legislative scrutiny, the Joint Committee on Human Rights (JCHR) also argued that the Government appeared to have failed to consider how the new duty relates to the existing duty of freedom of speech and the implications it would have on the codes of practice already adopted in universities.⁴⁷ As a result of these debates and concerns, the Bill was amended and Section 31 (2) now reads:

When carrying out the duty imposed by section 26(1), a specified authority to which this section applies—

(a) must have particular regard to the duty to ensure freedom of speech, if it is subject to that duty;

(b) must have particular regard to the importance of academic freedom, if it is the proprietor or governing body of a qualifying institution.

⁴³ Diana Johnson, HC Deb 7 Jan 2015, vol 590, col 319

⁴⁴ Baroness Warsi, HL Deb 4 Feb 2015, vol 759 col 700

⁴⁵ Baroness O'Loan, HL Deb 28 Jan 2015, vol 759 col 230

⁴⁶ Baroness Brinton, HL Deb 13 Jan 2015, vol 758, col 759

⁴⁷ House of Lords and House of Commons Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Security Bill*, Fifth Report (2014 – 15, HL Paper 86, HC 859) para 6.7

However, many academics still had concerns about the impact of the Prevent duty on freedom of speech. For example, even after the introduction of Section 31 (2), Neville Harris said that ‘the widely held uncertainty about the appropriateness and efficiency of the measures that will be brought into effect will probably continue’.⁴⁸ Wragg argued that the Prevent duty provided institutions, who were ill-equipped, too much arbitrary power and ‘it champion[ed] over-cautious and zealous attitudes’.⁴⁹ Likewise, Ben Stanford argued that university administrators would be left implementing policies in ways that have the effect of restricting free speech.⁵⁰

As noted above in section 4.2, the freedom of speech duty under the Education (No.2) Act 1986 was intended to ensure controversial visiting speakers were not banned or no-platformed on campus. This appears to be in stark contrast to the purported aim of the Prevent duty, which also applies to external speaker events. As such, it is easy to envisage a possible conflict when trying to balance the two concomitant duties. In order to assess the potential conflict between the two duties and why there are still fears that the Prevent duty will impinge on the right to freedom of speech, it is necessary to discuss the Prevent duty requirements for external speaker events. Therefore, the next section aims to analyse the requirements of the HEPDG, and then assess the likelihood and type of impact the Prevent duty could have on external speaker events.

5.3.2 HEPDG AND EXTERNAL SPEAKERS

The guidance issued by the Secretary of State for Higher Education sets a threshold for approving events with external speakers. Paragraph 11 of the HEPDG states:

When deciding whether or not to host a particular speaker, RHEBs [Relevant Higher Education Bodies] should consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. In these circumstances

⁴⁸ Neville Harris, ‘Academic Freedom: New Conflict’ [2015] Educational Law Journal 3

⁴⁹ Paul Wragg, ‘For all we know: freedom of speech, radicalisation and the prevent duty’, (2016) 21 Communications Law 60, p61

⁵⁰ Ben Stanford, ‘The Multifaceted Challenges to Free Speech in Higher Education: Frustrating the Rights of Political Participation on Campus’, [2018] Public Law 708

the event should *not be allowed* to proceed except where RHEBs are *entirely convinced* that such risk can be *fully mitigated* without cancellation of the event.
[Emphasis added by author]

Furthermore, the paragraph continues:

This includes ensuring that, where any event is being allowed to proceed, speakers with extremist views that could draw people into terrorism are *challenged with opposing views as part of that same event*, rather than in a separate forum. Where RHEBs are *in any doubt that the risk cannot be fully mitigated they should exercise caution and not allow the event to proceed*.
[Emphasis added by author]

When paragraph 11 and the accompanying guidance is read and the words are given their normal sense, it suggests that events with extremist speakers should only be approved if those views, albeit non-violent, are challenged within that same event and in doing so the RHEB is *entirely* convinced that the risk of radicalisation is *fully* mitigated in the process. Clearly, this guidance is very problematic, as a debate or a challenge can never fully mitigate the risk, because the listeners still have the choice to accept any view after a debate. This threshold for the approval of events is a very high one that could result in fewer events being approved.

Furthermore, this guidance when read in its normal sense seems to give the Prevent duty more weight than the freedom of speech duty, whereas the wording of the CTSA clearly indicates to the contrary. According to the CTSA, universities are required to give the Prevent duty 'due regard' and freedom of speech 'particular regard'. Arguably particular regard is weightier than due regard. This contradiction between the wording of the CTSA and HEPDG is likely to cause further confusion and a literal implementation of the HEPDG will curb freedom of speech.

5.3.2.1 BUTT V. SECRETARY OF STATE FOR THE HOME DEPARTMENT

In the *Butt* case,⁵¹ an attempt was made to clarify the threshold in the HEPDG by giving it a non-literal new meaning. The defence proposed a more nuanced and less absolute reading of that paragraph. It suggested that ‘fully mitigated’ meant ‘so far as could be or was proper’.⁵² It was also asserted that the circumstance in which a cancellation would happen is when there is a likelihood of extreme views being expressed that risk drawing people into terrorism, which are not challenged by opposing views.⁵³ This suggests that the risk does not need to be fully mitigated and an event can proceed, so long as any problematic views can be challenged in the same event. This is substantially different to the normal sense of the words in the Prevent Duty Guidance. In the *Butt* case, Ouseley J acknowledged that this reading of the paragraph ‘is not what an ordinary reading of the words would yield’,⁵⁴ yet he concluded that the Prevent Duty Guidance in his view ‘does not bite on academic freedom’.⁵⁵

Ouseley J also argued that having ‘particular regard’ to academic freedom and freedom of speech duties is more important than having ‘regard’ to the application of the HEPDG. Hence, after mitigating the risk as realistically possible and considering the risk that cannot be removed, universities ‘are not in breach of their duties under s29 or s26 or s31 if they decide to proceed’.⁵⁶ He argued that ‘their actions may not comply with the terms of the HEPDG, but the HEPDG is not law, and the duty in s29 has to be reconciled with other particular duties’.⁵⁷ He argued that ‘the s29 duty in relation to the guidance documents is notably less weighty: it is to have regard to the guidance’.⁵⁸ This seems to suggest that it is possible for universities to not comply with the HEPDG altogether, as it is guidance and not law. As the judge put it, ‘This was guidance and not direction.’⁵⁹

⁵¹ The facts of the case are mentioned in Chapter 3.2.2.4

⁵² *Butt v. Secretary of State for the Home Department* EWHC 1930 (Admin), [2017] 4 W.L.R. 154 [55]

⁵³ *Ibid*, para 55

⁵⁴ *Ibid*, para 57

⁵⁵ *Ibid*, para 50

⁵⁶ *Ibid*, para 61

⁵⁷ *Ibid*

⁵⁸ *Ibid*, para 62

⁵⁹ *Ibid*, para 28

Scott-Baumann has also argued down the same line that the HEPDG is only guidance and if it contradicts the Counter-Terrorism and Security Act 2015, then the CTSA should take precedence.⁶⁰ However, Scott-Baumann contends that the language of HEPDG does not reflect the fact that it is guidance. Rather, it protects it from challenge, as the quasi-legalistic jargon gives the impression that it is in fact law and therefore, the ‘guidance can be perceived to be mandatory, even though it is not’.⁶¹ Moreover, it is also possible to argue that many of the people designated to assess speakers and events are not lawyers and may not know the argument of Ouseley J or be familiar with differing interpretations of law and guidance. Thus, they may only take the literal meaning of the HEPDG. This brings uncertainty to the scope of freedom of speech in practice, as some assessors could read it literally whilst others could take a more nuanced reading of the paragraph, and a literal approach has the potential to impact on freedom of speech. The likelihood of this impact is a real concern that was raised by justices when the case reached the Court of Appeal. It was argued that ‘the HEPDG in general, and paragraph 11 in particular, is expressed in trenchant terms. The HEPDG is not only intended to frame the decision of RHEBs on the topic in question, it is likely to do so’.⁶² The justices in the Court of Appeal argued:

We accept, of course, that those responsible for taking such decisions on behalf of RHEBs will often be aware of the other statutory duties to which they must respond, including the duties under section 43(1) E2A. No doubt some will be better versed in these duties than others. We accept also that guidance can be sought from Prevent coordinators and from information circulated within the university establishments. The difficulty, as we see it, is that the reader of HEPDG is likely to conclude that it is the most specific and pointed guidance that exists in the context with which we are concerned. Even the well-educated reader called on to take a decision on behalf of a university is likely to assume that this

⁶⁰ Alison Scott-Baumann, ‘Dual Use Research of Concern and Select Agents – How Researchers Can Use Free Speech to Avoid Weaponising Academia’ (2018) 7 *Journal of Muslims in Europe* 23 (n60)

⁶¹ *Ibid*, p255

⁶² *Regina (Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256, [2019] 1 W.L.R. 3873 [176]

particular focused guidance already represents a balance of the relevant statutory duties affecting the RHEB decision-maker.⁶³

In 2018, the JCHR also argued that ‘it is unfortunate that the Guidance is not clear on its face without users also having to separately know that they need to refer to the case law’.⁶⁴ Although the guidance was updated in April 2019, the updated version does not reflect the interpretation submitted by the lawyer on behalf of the Secretary of State. Even the later guidance issued by the Equality and Human Rights Commission (EHRC) on freedom of speech for universities seems to direct readers back to the HEPDG, as it has stressed that EHRC ‘guidance does not replace the existing regulatory or statutory guidance relating to charity law or the Prevent duty, and readers should refer to those documents... for an official and comprehensive guide to their legal duties’.⁶⁵

Although it is also understood from Office for Students (OfS) datasets that a very small number of events are cancelled by university management (UM),⁶⁶ it is unclear whether or not those cancellations were due to Prevent-related concerns. Nor does the data collected clarify the threshold used by administrators to approve or decline external speakers and events. Therefore, it is unclear at the moment how universities understand paragraph 11. Do they read it in the literal sense or do they give it the nuanced meaning as established in the *Butt* case?

⁶³ Ibid

⁶⁴ Joint Committee on Human Rights, *Freedom of Speech in Universities*, Fourth Report (2017–19, HL PAPER 111, HC 589), para 69

<<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/589.pdf>> accessed 17 March 2020

⁶⁵ Equality and Human Rights Commission, *Freedom of Expression: a guide for higher education providers and students’ unions in England and Wales*, (published February 2019)

<<https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-england-and-wales.pdf>> accessed 15 October 2019

⁶⁶ In 2017-18 only 0.09 per cent of the total number of requests were declined. See: Office for Students, ‘Prevent monitoring accountability and data returns 2017-18 Evaluation report’, (OfS 2019.22, 21 June 2019)

A consultation was conducted with ‘thirty-three experts from the higher education sector’⁶⁷ and a report was drafted by Perfect, which shows that one of the major concerns of experts was that some institutes may ‘over comply and try to implement the guidance rigidly’.⁶⁸ Thus, some of the participants in that study argued that the Duty was inherently flawed, whilst others argued that any resultant chilling effect was due to poor implementation, which could be remedied by better training.⁶⁹ As this consultation was conducted before the *Butt* case, it is possible that university administrators may have changed their approach after the *Butt* case. However, further research is required to better understand how the duty is being implemented.

Nevertheless, the concern remains that Prevent may have the effect of limiting legitimate free speech. Scott-Baumann argues that some views concerning the Middle East, Syria and Islam are perceived by some in the Government as ‘select agents, somewhat like germs: contagious and apt to damage the vulnerable’, even when they are explored in the context of a university.⁷⁰ ‘Select agents’ under the Anti-terrorism, Crime and Security Act 2001 are potent pathogens that have the potential to cause serious harm and mass casualties if they fall into the hands of the malevolent.⁷¹

Having established the difficulty for universities in implementing the two seemingly opposite duties, it is also important to mention that this problem is not limited to university events, but it extends to student unions and their events. Student unions also face the problem of trying to find the correct balance between the two duties, as the language and purpose seem to be at odds with each other.

⁶⁷ Participants included lecturers, Prevent coordinators, barristers, directors of human rights groups and Henry Jackson Society

⁶⁸ Simon Perfect, ‘Freedom of Speech in Universities - Monday 31 October – Tuesday 1 November 2016 Report’, [2017] College of St George in partnership with Centre of Islamic Studies SOAS, p29
<<https://www.stgeorghouse.org/wp-content/uploads/2017/03/Freedom-of-Speech-in-Universities-Report.pdf>> 29 November 2022

⁶⁹ Ibid, p29

⁷⁰ Alison Scott-Baumann (n60) p251

⁷¹ Ibid

5.3.3 STUDENT UNIONS AND PREVENT

As noted above in section 4.3, the duty on universities to ensure freedom of speech under the Education (No.2) Act is extended to student unions. Likewise, the Prevent duty, which directly applies to universities, has also been extended to student unions, even though they are not public authorities for the purposes of the 2015 Act. The HEPDG states that universities should have policies in place which 'set out what is expected from the student unions and societies in relation to Prevent including making clear the need to challenge extremist ideas which risk drawing people into terrorism'.⁷² The HEPDG further states that 'Student Unions should consider whether their staff and elected officers would benefit from Prevent awareness training or other relevant training provided by the Charity Commission, regional Prevent co-ordinators or others'.⁷³ Since the counter-terrorism agenda is also high on the priorities list of the Charity Commission, it is, therefore, conceivable that the Charity Commission could take regulatory action if it found that a student union did not comply with the Prevent procedure of a university.⁷⁴ The Prevent Strategy 2011 asserts:

Legally, all charities must work for the public benefit and must act to avoid damage to the charity's reputation, assets and associated individuals. Higher education institutions and student unions can be challenged on whether they have given due consideration to the public benefit and associated risks notably when they, or one of their affiliated societies, invite controversial or extremist speakers to address students.⁷⁵

⁷² HM Government, 'Prevent Duty Guidance for Higher Education Institutions in England and Wales', (updated 10 April 2019) para 29 <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 22 June 2020

⁷³ Ibid, para 30

⁷⁴ National Union of Student, 'Prevent duty - NUS Guidance for Students' Unions', Bates Wells Braithwaite 2015, p4

⁷⁵ HM Government, *Prevent Strategy* (Cm 8092, 2011) para 10.59

The next section will explore whether student unions are likely to experience a chilling effect, not only because of the Prevent duty, but also due to strict guidance from the Charity Commission.

5.3.4 CHARITY COMMISSION

The JCHR report in 2018 characterised the approach of the Charity Commission in regulating free speech as ‘problematic’, ‘not easy to use’ and ‘unduly restrictive’, which could deter lawful speech, and said it did not take ‘account of the importance of debate in a university setting’.⁷⁶ Subsequent to the JCHR report, the Guidance was updated on 19 November 2018. However, it still seeks to discourage controversial topics:

“You should be able to show that an activity supports the charity’s purposes, and that in doing so it does not lead to undue public harm or detriment. *In some instances, strongly partisan or controversial views may compromise the charity’s integrity or public trust and confidence in it.* It may risk the charity’s operations and other activities, or the safety of its staff and volunteers.”⁷⁷ [Emphasis added by author]

The Charity Commission recently issued an official warning to the Islamic Centre of England Ltd, a registered charity, for hosting a speaker who praised Qasem Soleimani – the Iranian Major General – after his assassination.⁷⁸ Although the Islamic Centre of England was not a student society at a university, it nonetheless shows that the Charity Commission is willing to be interventionist when it comes to hosting controversial speakers. The Charity Commission’s guidance also states:

⁷⁶ Joint Committee on Human Rights, *Freedom of Speech in Universities*, Fourth Report (2017–19, HL PAPER 111, HC 589), p5

⁷⁷ Charity Commission, ‘Chapter 5: Protecting charities from abuse for extremist purposes’, (Updated 19 November 2018) Section 10.6, <<https://www.gov.uk/government/publications/protecting-charities-from-abuse-for-extremist-purposes/chapter-5-protecting-charities-from-abuse-for-extremist-purposes#fnref:4>> accessed 14 January 2020

⁷⁸ Charity Commission, ‘Official Warning of the Charity Commission for England and Wales to Islamic Centre of England Limited’, (10 June 2020) <<https://apps.charitycommission.gov.uk/schemes/512449.pdf>> 16 September 2021

Expressing strongly controversial or partisan views is not illegal or unacceptable under charity law in itself, unless these are criminal. However, *whether it's unacceptable under charity law for a charity to support these views or allow them to be expressed will depend on the circumstances: what is said; when; to whom; and why; as well as how, if at all, these further the charity's purposes.*⁷⁹ [Emphasis added by author] This threshold to approve an event may prove to be difficult, as the event must demonstrably *advance the charity's purpose and public benefit*. The guidance also states:

Under charity law, all charities must also operate for the public benefit and must avoid undue damage to the charity and its assets, people, beneficiaries and reputation. All charities, including higher education institutions, students' unions and debating societies, *can be challenged* on whether they have given due consideration to the public benefit and associated risks when they, or one of their affiliated societies, invite speakers to address students.⁸⁰ [Emphasis added by author]

This piece of guidance has the potential to make student unions risk averse. Research by Scott-Baumann and Perfect conducted in 2016-17– in which 20 members of student unions, mainly CEOs, were interviewed – shows that although the Charity Commission has a light-touch approach and some CEOs reported very little interaction with the Commission, 'there is evidence that when it does intervene in students' unions, the Commission has sometimes encouraged them to be risk-averse regarding external speakers'.⁸¹

The Commission recognises that 'SUs are autonomous bodies and do not fall within the scope of Schedule 6 of the 2015 Act, and as such the Prevent duty does not fall *directly*

⁷⁹ Charity Commission (n77) section 10.6

⁸⁰ Ibid, section 13.2

⁸¹ Simon Perfect, 'From 'extreme' to 'controversial': the Charity Commission, students' unions and freedom of speech' (Discovery Society, 4 September 2019)

<<https://discoversociety.org/2019/09/04/from-extreme-to-controversial-the-charity-commission-students-unions-and-freedom-of-speech/>> accessed 29 March 2020

on them as it does on HEPs'.⁸² However, Perfect argues that research has shown that the Commission pressures student unions to comply with official Prevent guidance and presents the guidance as the 'only realistic way for charity trustees to meet their charity law requirements'.⁸³ This is apparent in the language of the guidance in what follows:

Regardless of the Prevent duty, the Commission would expect all trustees to discharge their legal duties and responsibilities *to manage the risks from terrorism, extremism* or other illegal conduct such as racial or religious hatred. Trustees should consider the risks that could arise in a decision *to host a speaker* that could be considered to have *unacceptable views* or has been criticised for being *divisive*, or to host a particular event and how these risks are managed in the best interests of the SU (this can include *reputational risk* and the risk to beneficiaries).⁸⁴

The words 'to manage the risks from terrorism, extremism' in the above passage can be easily understood as applying the requirements of the Prevent duty. This guidance also requires trustees to consider 'unacceptable views' or those that are 'divisive' as well as assessing 'reputational risk' when hosting speakers. However, no clarity is provided on what these terms mean.

Furthermore, under the guidance, student union officers are not permitted to express their personal views on political issues. The Operational Guidance for student unions states that 'trustees must ensure that they do not express their personal political views or engage in personal political activity while acting as a trustee and in the course of discharging their trustee duties, as this could be seen to compromise the independence of not just the trustee but the charity itself'.⁸⁵ Research carried out by Scott-Baumann and Perfect shows that 'some students' union officers feel caught in a bind – they are elected by students to represent them on the issues students are passionate about, but

⁸² Charity commission, Operational Guidance OG48 Student Unions, 'Freedom of Speech and Partner Establishments', <<http://ogs.charitycommission.gov.uk/g048a001.aspx>> accessed 24 June 2020

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Ibid, Section 6.1

as charity trustees they cannot make public statements on issues of politics that do not affect students as students'.⁸⁶

The above discussion demonstrates that the challenge of balancing the two concomitant duties, in addition to the requirements of the Charity Commission, is not only faced by university staff, but also student union officers and societies. The effect could be one of risk averseness.⁸⁷ Thus, cancellations and the non-approvals of events are not the only way Prevent is likely to impact freedom of speech, rather students and staff may self-censor their speeches and events due to Prevent-related fear, which is commonly referred to as the chilling effect.

5.3.5 CHILLING EFFECT

The phrase 'chilling effect' can be traced back to the US. In *Gibson v. Florida Legislative Investigation Committee (1963)*,⁸⁸ William Gibson, the president of the Miami branch of the National Association for the Advancement of Colored People (NAACP), was ordered to appear with the organisation's membership records before a committee created by the Florida Legislature for questioning. The committee was investigating the infiltration of communists into organisations. However, there was no suggestion that NAACP was subversive or dominated by communists. Gibson refused on the grounds that it violated the rights of association for the members of NAACP protected by the First and Fourteenth Amendments. A Florida state court charged him with contempt of the legislature. The case involved a conflict between the rights of free speech and association and the government's interest in conducting legislative investigations. The US Supreme Court argued that that the legislative committee's demand of NAACP records for questioning was a deterrent that had a "chilling" effect on the free exercise

⁸⁶ Alison Scott-Baumann and Simon Perfect, written evidence FSU0075, <<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Human%20Rights%20Joint%20Committee/Freedom%20of%20Speech%20in%20Universities/written/75991.html>> accessed 29 March 2020

⁸⁷ Joint Committee on Human Rights, *Freedom of Speech in Universities*, Fourth Report (2017–19, HL PAPER 111, HC 589) Alex Burghart, Oral evidence on Wednesday 7 February 2018

⁸⁸ *Gibson v. Florida* Legislative Investigation Comm., 372 U.S. 539 (1963)

of constitutionally enshrined rights of free speech'.⁸⁹ By 1967, the concept had become so widely used in US case law that Harlan SCJ described it as 'ubiquitous'.⁹⁰

The concept has also been explored and developed in the works of academics such as Schauer.⁹¹ His work has been widely cited by academics and described as the 'definitive treatment' of the chilling effect theory.⁹² Schauer starts by suggesting that an activity is chilled if people are deterred from performing it, which in the context of law, occurs due to the fear of punishment.⁹³ For example, if the punishment established by obscenity laws in the US deters people from distributing hard-core pornography, it can be said to have a chilling effect.⁹⁴ Schauer refers to this effect as the 'benign chilling effect', which he argues is permissible.⁹⁵ 'Invidious chilling effect', on the contrary, occurs when the discouraged activity is protected by the first amendment.⁹⁶ However, Schauer argues that the concept of the chilling effect does more than just indicate the discouragement of an activity that is protected by the first amendment, as that alone adds nothing to the analysis.⁹⁷ For example, if a statute criminalised the publication of Shakespeare's work, the concept of chilling effect is not required to establish that the statute is unconstitutional. It is a mere truism, he argues, to say that the statute which criminalises protected speech also chills speech.⁹⁸ Thus, he posits that the significance of chilling effect as a concept lies in that it refers to those instances of deterrence that are indirect governmental restrictions on protected speech.⁹⁹ Hence, he defines it as:

⁸⁹ *Ibid*, 556 - 557

⁹⁰ *Zwickler v. Koota*, 389 U.S. 241 (1967), 256 n.2

⁹¹ Frederick Schauer, 'Fear, Risk and the First Amendment: Unraveling the "Chilling Effect"' (1978) 58 Boston University law review 685, p693

⁹² Julie E Cohen, 'A Right to Read Anonymously: A Closer Look at "Copyright Management" in Cyberspace' (1996) 28 Conn. L Rev. 981, p38 n. 116; Jonathon Penney, 'Chilling Effects: Online Surveillance and Wikipedia Use' (2016) 31 Berkeley technology law journal 117, p126

⁹³ Frederick Schauer (n91) p689

⁹⁴ *Ibid*, p690

⁹⁵ *Ibid*, p690

⁹⁶ *Ibid*, p690

⁹⁷ *Ibid*, p692

⁹⁸ *Ibid*

⁹⁹ *Ibid*, p693

A chilling effect occurs when individuals seeking to engage in activity protected by the first amendment are deterred from so doing by governmental regulation not specifically directed at that protected activity.¹⁰⁰

The words ‘protected by the first amendment’ in Schauer’s definition seem to suggest that it is US doctrine and applies to instances of chilling effect in the US alone. However, this project uses Schauer’s definition to analyse whether the UK counter-terrorism law, namely the Prevent duty, has a chilling effect on freedom of speech, by substituting the words ‘protected by the first amendment’ with ‘protected by law’.

According to Schauer, a chilling effect results from two factors. First, the fear that stems from punishment, cost of litigation and extra judicial effects, such as loss of personal friendships, reputation, and employment.¹⁰¹ The European Court of Human Rights (ECtHR) has also recognized that costs, success fees and unpredictably large damages awards in libel cases have the capability to have a chilling effect on press freedom.¹⁰² Similar concerns of a chilling effect resulting from cost and litigation were also raised by UK politicians leading up to the Defamation Act 2013, which aimed at ensuring a fair balance between freedom of expression and protection of reputation. Members of Parliament argued that the then libel laws and huge costs imposed by no-win, no-fee cases were having a chilling effect on editors, journalists, scientists, non-governmental organisations, campaigners and academics.¹⁰³ The House of Commons Culture, Media and Sport Committee argued:

Throughout our inquiry we have been mindful of the over-arching concerns about the costs of mounting and defending libel actions, and the ‘chilling effect’ this may have on press freedom. The evidence we have heard leaves us in no

¹⁰⁰ Ibid, p693

¹⁰¹ Ibid, pp 694 - 701

¹⁰² See: *MGN Limited v. The United Kingdom* App no 39401/04 (ECtHR, 18 January 2011) para 201; *Independent News and Media and Independent Newspapers Ireland Limited v. Ireland* App no 55120/00 (ECtHR 16 June 2005) para 114

¹⁰³ See for example: Jeremy Wright, Defamation Bill, HC Deb 12 September 2012, vol 550, col 330

doubt that there are problems which urgently need to be addressed in order to enable defamation litigation costs to be controlled more effectively.¹⁰⁴

The second factor that contributes to a chilling effect is uncertainty of law, which can result from the possibility of incorrect determination of facts, the possibility of misapplication of law and the ambiguity of the terminology used in the law.¹⁰⁵ This effect of uncertainty was also highlighted by Lord Nicholls in *Reynolds v. Times Newspapers Limited and Others*, who argued:

The outcome of a court decision, it was suggested, cannot always be predicted with certainty when the newspaper is deciding whether to publish a story. To an extent this is a valid criticism. A degree of uncertainty in borderline cases is inevitable. This uncertainty, coupled with the expense of court proceedings, may 'chill' the publication of true statements of fact as well as those which are untrue.¹⁰⁶

Schauer's two factors of chilling effect may be present in UK counter-terrorism laws, which are not only likely to create fear of the consequences of being labelled as extremist or radicalised but also have a degree of ambiguity surrounding those terms and how they are deployed. The fear of being labelled as extremist or radicalised can become even more severe when surveillance is involved. Hence this next section will analyse the effects of surveillance in relation to chilling effects.

5.3.5.1 SURVEILLANCE AND THE CHILLING EFFECT

Foucault's idea of panopticism is a useful tool to conceptualise how surveillance can have a constraining effect on behavior and lead to a chilling effect on acts of free speech that are within law.¹⁰⁷ The Panopticon, as designed by Jeremy Bentham, was an annular prison building divided into cells for inmates circling around a watch tower, or what

¹⁰⁴ The House of Commons Culture, Media and Sport Committee, *Press Standards, Privacy and Libel* (HC 2009-10, 362-1) p6

¹⁰⁵ Frederick Schauer, (n91) pp 694 - 701

¹⁰⁶ *Reynolds v. Times Newspapers Limited and Others* [1999] UKHL 45, [2001] 2 AC 127

¹⁰⁷ Michel Foucault, "Panopticism" from "Discipline & Punish: The Birth of the Prison", (2008) 2

Bentham called the ‘inspector’s lodge’.¹⁰⁸ Each cell had a window facing the watch tower such that anyone in the watch tower could see the inmates at all times.¹⁰⁹ Yet the design was such that the inmates could not tell whether there was anyone in the watchtower.¹¹⁰ Hence, by making the inmates visible at all times, the main effect of the Panopticon is ‘to induce in the inmates the state of conscious and permanent visibility that assures the automatic functioning of power’.¹¹¹ The constant possibility of being monitored leads the inmates to develop a psychological state of controlling and self-regulating their behavior all the time.¹¹² This effect can also be explained using ‘deterrence theory’,¹¹³ which views individuals as rational cheaters who seek to reduce cost and maximise benefits. When the benefit of engaging in restricted activity is outweighed by the cost, due to extensive surveillance, individuals are less likely to engage in that activity. For example, Forsys *et al.* found that a combination of video cameras and signs informing the public of surveillance was a highly effective method of reducing intruders into a bird sanctuary.¹¹⁴ Moreover, Daniel Stove posits that if people are aware that there is even a *possibility* of surveillance, it causes a greater chilling effect than overt surveillance.¹¹⁵

For Foucault, the Panopticon elucidated the way in which discipline and punishment worked in the modern world.¹¹⁶ Replacing the old forms of punishments that required obedience or threatened physical harm on the body, citizens were made to control their

¹⁰⁸ Jeremy Bentham, ‘Letter II: Plan For a Penitentiary Inspection House’, in John Bowring (ed), *The works of Jeremy Bentham* (Edinburgh: W. Tait; London, Simpkin, Marshall, & Co., 1843), vol 4, p 40

¹⁰⁹ *Ibid*, p41

¹¹⁰ *Ibid*, p41

¹¹¹ Michel Foucault (n107) p6

¹¹² Pascah Mungwini , “‘Surveillance and cultural Panopticism’”: situating Foucault in African modernities’, (2012) 31 *South African Journal of Philosophy* 340, p 344

¹¹³ This theory is also called ‘principal-agency theory’ and ‘rational cheater model’. It is explored in section 6.4.3 of Chapter six.

¹¹⁴ Elizabeth A. Forsys, Paul Hindsley, Maggie P. Miller, James B. Wilson, Lorraine N. Margeson, and Don W. Margeson, ‘Can Video Cameras Decrease Human Intrusion into a Closed Natural Area?’, (2016) 36 *Natural Areas Journal* 146

¹¹⁵ Daniel Solove, ‘A Taxonomy of Privacy’ (2006) 154 *University of Pennsylvania law review* 477, p495

¹¹⁶ Massimo Sargiacomo, ‘Michel Foucault, Discipline and Punish: The Birth of the Prison’ (2009) 13 *Journal of Management & Governance* 269

behaviour in accordance with socially acceptable norms through subtle forms of coercion generated by the consciousness of omnipresence surveillance.¹¹⁷

There are a number of academic studies that suggest that the deterrence effect of surveillance may extend to activity that is protected by law (thus causing a chilling effect). For example, Jonathon Penny found that revelations about online government surveillance in 2013 resulted in a chilling effect on Wikipedia users, leading to a decrease in traffic to privacy-sensitive articles.¹¹⁸ The chilled activity, Penny argues, was ‘not only legal – accessing information on Wikipedia – but also desirable for a healthy democracy’.¹¹⁹ The adapted Schauer definition of chilling effect is a perfect description of this deterrence, as it is the outcome of a governmental activity – surveillance – which has indirectly deterred individuals from engaging in an activity that is protected by law – accessing information.

Similarly, Elizabeth Stoycheff *et al.*'s study suggests that the US Government's extensive online surveillance, which according to them resembles the Panoptic monitoring system with the aim of assembling as much information about every user as possible in order to pick out individuals who they consider as suspicious, had a chilling effect on online political participation during the US presidential primary elections in 2016.¹²⁰ Their study also showed that perceptions of government surveillance significantly chilled the online behavior of the Muslim participants in their study.¹²¹ Thus it is worth assessing the effects of the Prevent statutory duty along with its associated surveillance on free speech within the law. Prevent, being a government intervention program aimed at

¹¹⁷ *Ibid*, p345

¹¹⁸ Jonathon Penney, ‘Chilling Effects: Online Surveillance and Wikipedia Use’ (2016) 31 *Berkeley technology law journal* 117

¹¹⁹ *Ibid*, p161

¹²⁰ Elizabeth Stoycheff, Juan Liu, Kai Xu and Kunto Wibowo, ‘Privacy and the Panopticon: Online Mass Surveillance's Deterrence and Chilling Effects’ (2019) 21 *New media & society* 602

¹²¹ Their study was based upon a group of 213 Muslim participants who took part in an online survey relating to political online behaviour, in December 2016 and early 2017. Midway through the questionnaire a randomly assigned subset of participants were sent a message with Terms of Agreement that the remainder of the survey may be subject to government surveillance. The other half of the participants did not receive such a message. The study showed that those who received the message were more likely to report feelings of caution about their activities. *Ibid*

preventing terrorism, will be said to have a chilling effect, as defined by Schauer, if it indirectly has a deterrence effect on lawful and legitimate debate on sensitive but important topics.

5.3.5.2 PREVENT AND CHILLING EFFECT

Since non-violent extreme speech is regarded as being conducive to terrorism in official Prevent documents, as noted in the previous chapter, it is possible that it may lead to students feeling hesitant in expressing views on sensitive topics. This was the argument of Baroness O’Loan in the House of Lords debate on the Counter-Terrorism and Security Bill 2015: ‘my experience has been that, very often where issues are particularly sensitive, students can almost be afraid to engage with them’.¹²² Other members of the House of Lords also expressed similar concerns during the passage of the Counter-Terrorism and Security Bill. For example, Baroness Uddin pointed out:

I was with about 20 university students at the weekend. ... It is becoming difficult to even be allowed to think; they were saying, “Think now before it becomes illegal”.¹²³

However, it is frequently argued that there is no evidence of a chilling effect or there is very limited empirical research on the effects of Prevent on freedom of speech.¹²⁴ However, that assertion may not be completely true and one of the notable projects that has empirical data on the effects of Prevent on freedom of speech is the ‘Re/representing Islam on Campus’ study led by Scott-Baumann. She argues:

¹²² Baroness O’Loan, HL Deb 28 Jan 2015, vol 759, col 229

¹²³ Baroness Uddin, HL Deb 28 Jan 2015, vol 759, col 214; Likewise, Commenting on how a question mark over certain community groups had led to a chilling effect within government, whereby individual Ministers, civil servants and departments were reluctant to engage with them, Baroness Warsi asserted that ‘people were so concerned about being seen as being on the wrong side of the argument on these issues, that even where they would not have fallen foul of the guidance they were concerned that they would fall foul of opinion’. She advanced the argument that the inclusion of extremism in the Bill will have a similar ‘chilling effect as regards engagement’. See: Baroness Warsi, HL Deb 28 Jan 2015, vol 759, col 254

¹²⁴ Steven Greer and Lindsey Bell, ‘Counter-Terrorist Law in British Universities: A Review of the Prevent Debate’, [2018] Public Law 84

Students and staff often choose to self-censor or curb their academic activities because of uncertainty and discomfort about being misunderstood in a securitised atmosphere, and this applies specifically to those who are Muslim or are thought to be Muslim.¹²⁵

One union chief executive officer was quoted as saying:

Sadly, I've got to be risk averse ... It's led to some speakers being talked about and being stopped before they're even presented as potential candidates.¹²⁶

Likewise, research conducted by the thinktank Theos interviewed 72 students between December 2017 and May 2019, from various faith and belief societies in six case-study universities.¹²⁷ It found that the Prevent duty was one of the factors that did chill speech by making some religiously conservative students self-censor their views.¹²⁸

In order to explain the chilling effect of Prevent on freedom of speech, Scott-Baumann uses the concepts of 'Ideology and Utopia'. In her view, ideologies, which are the ideas and ideals about governance that form the basis for political and economic policies, are extremely difficult to challenge, as they are used to legitimise power.¹²⁹ This, she argues, 'may be the case for Muslims in Britain right now, whose views on British foreign policy may differ from those of government' but may feel unable to express them.¹³⁰ Likewise, it may become extremely difficult for Muslim students and academics to challenge policies that are underpinned by the assumption that they themselves are vulnerable to radicalisation and any dissent in relation to Prevent might be seen as sympathy for

¹²⁵ Alison Scott-Baumann (n60) p242

¹²⁶ Ibid, p249

¹²⁷ Simon Perfect, Ben Ryan and Kristin Aune, 'Faith and Belief on Campus: Division and Cohesion Exploring Student Faith and Belief Societies' (Theos, 2019)

<<https://www.theosthinktank.co.uk/cmsfiles/Reportfiles/Theos---Faith-and-Belief-on-Campus---Division-and-Cohesion.pdf>> accessed 08 April 2023

¹²⁸ Ibid, page 105

¹²⁹ Alison Scott-Baumann, 'Ideology, Utopia and Islam on Campus: How to Free Speech a Little From its Own Terrors' (2017) 12 Education, citizenship and social justice 159

¹³⁰ Ibid, p161

Islamists and extremists. The HJS¹³¹ asserts that ‘student criticisms of Prevent that were used to justify non-participation appear to have been influenced by the narratives of extremists’.¹³² The HJS report further asserts that these criticisms ‘in some cases, have led to students working alongside extremists’, implying that criticising Prevent has the potential to lead to radicalisation. If the views of HJS are adopted,¹³³ then it is very likely that some Muslim students will not express their otherwise reasonable criticisms of Prevent, for fear that they may be seen being influenced by extremists and therefore vulnerable to radicalisation and terrorism. Dissenting Muslim students could be seen as mouthpieces for extremists and as such subject to surveillance not only by counter-terrorism agencies but also by organisations such as the HJS. The Re/presenting Islam on Campus project shows that not only is there a chilling effect on speech, but also that some Muslim male staff are deciding not to grow beards and some Muslim women are self-conscious of wearing the hijab or other visible religious symbols.¹³⁴

Research by Rights Watch UK suggests that a number of articulate students and concerned teachers have noted that Prevent, counterproductively, is driving vulnerable children to discuss difficult issues online, which ‘risks the very marginalization and radicalization the Prevent strategy was developed to stop’.¹³⁵ Although the interviewed students and teachers were from schools and not universities, there is nothing to suggest that the same is not true for universities. Sam Gyimah, when he was the Minister of Universities, told the JCHR that it was hard to measure the large number of events that do not take place because organisers worry about obstructions and overzealous enforcement of rules that can make organising events ‘more trouble than they are

¹³¹ See section 1.4.1.1 in Chapter one for a critique of this organisation.

¹³² Rupert Sutton, ‘Preventing Prevent? Challenges to Counter-Radicalisation Policy On Campus’, (The Henry Jackson Society 2015) <http://henryjacksonsociety.org/wp-content/uploads/2015/10/Preventing-Prevent_webversion3.pdf> accessed 22 March 2020

¹³³ The influence of HJS was discussed in Chapter one, section 1.4.1

¹³⁴ Emanuelle Degli Esposti and Alison Scott-Baumann, ‘Fighting for Justice, Engaging the Other: Shi’a Muslim Activism on the British University Campus’ (2019) 10 Religions 189

¹³⁵ Rights Watch UK, ‘Preventing Education? Human Rights and UK Counter-Terrorism Policy In Schools’ (July 2016) <<http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf>> accessed 09 March 2020

worth'.¹³⁶ The JCHR concluded that there were real 'disincentives for students to put on challenging events', which could have a wider chilling effect.¹³⁷ In order to fully assess the concern that Prevent may become a disincentive to put on challenging events, it is important to consider the effects of mitigations on external speaker events.

5.3.5.3 MITIGATIONS UNDER HEPDG

The JCHR has pointed out that unreasonable conditions can interfere with free speech rights. These may include requiring speakers who provide assurances that their speech will remain within the law to submit a transcript or an outline of their speech in advance.¹³⁸ Likewise, the JCHR has argued that freedom of speech is unduly interfered with if bureaucratic procedures and complicated processes deter students from inviting speakers.¹³⁹ The report by Perfect found that some experts from higher education felt that rigorous bureaucratic processes discouraged students from submitting requests and that the 'feeling of "why bother" may curb freedom of speech'.¹⁴⁰ The report suggests that institutions do face difficulties when trying to organise balanced panels in line with the requirements of the Duty. One of the participants in Perfect's research was reported to have recounted incidents 'where students' requests for external speakers had been put on hold repeatedly because of the difficulty of finding speakers with

¹³⁶ Joint Committee on Human Rights (n87) Q68

¹³⁷ Ibid, para 37

¹³⁸ Ibid, para 41; Even Spiked claims that it found, in 2018, that out of 115 universities and students' unions surveyed, forty per cent of the universities 'were ranked Amber, meaning they chill speech through unnecessary regulation, burdensome speaker-vetting procedures or guidance warning students against engaging in vague categories of expression – for example, 'offensive' or 'provocative' speech.

See: Spiked, 'Free Speech University Rankings 2018 Results Summary', <<https://media.spiked-online.com/website/images/2019/02/21153835/FSUR-PACK-2018.pdf>> accessed 10 March 2020. Spiked is a controversial online magazine that appears to hate left-wing politics and defends people from the hard right or far right. See: George Monbiot, 'How US billionaires are fuelling the hard-right cause in Britain',

The Guardian (7 Dec 2018), available online at:

<<https://www.theguardian.com/commentisfree/2018/dec/07/us-billionaires-hard-right-britain-spiked-magazine-charles-david-koch-foundation>> accessed 17 September 2021

¹³⁹ Joint Committee on Human Rights (n87) para 42

¹⁴⁰ Simon Perfect (n68) p27

opposing viewpoints'.¹⁴¹ When universities intentionally put an event on hold to find a speaker with opposing views, free speech gets curbed as a direct consequence of this mitigating measure. Hence, it may not seem to be a chilling effect according to Schauer's definition, which refers to an indirect deterrence effect of a measure that was not intended to deter speech. However, in light of the findings from the report by Perfect, such measures may cause students to not put forward events, where it may seem difficult to balance the platform.

It is also worth noting that another participant in the Perfect report argued that Prevent could have the effect of securing freedom of speech for the audience in external speaker events. As the Prevent duty requires that extremist speakers are challenged and panels are balanced with neutral chairs, this ensures that students who wish to challenge the speakers do not have their voices suppressed. The participant recalled events where students had been shouted down for challenging the views of the speakers in organisations such as Hizb ut-Tahrir.¹⁴² Therefore, for those events that do take place, mitigation measures have the potential to, on the one hand, become barriers to legitimate free speech, as the JCHR highlighted, whilst on the other hand, they may help facilitate free speech by ensuring that events allow opportunities to challenge speakers' views. Hence, it is important to explore the role of mitigation measures and how they are utilised by university management, which is what this project seeks to do through empirical research.

5.3.5.4 CHILLING EFFECT AND THE PUBLIC SECTOR EQUALITY DUTY

As mentioned in Section 5.3.5.2 of this chapter, section 1.4.2 of Chapter One and section 2.3 of Chapter Two, academics have raised concerns that the chilling effect is likely to affect Muslim students disproportionately, boost racism and Islamophobia, and increase grievances among the Muslim population. That being the case, Prevent implementation in universities is also likely to create tension with the Public Sector Equality Duty (PSED), which is established by the Equality Act 2010. Section 149 (1) states:

¹⁴¹ Ibid, p27

¹⁴² Ibid, p30

A public authority must, in the exercise of its functions, have due regard to the need to —

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Protected characteristics, according to Section 149 (7) of the Equality Act 2010, are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In short, PSED requires public authorities to eliminate both direct and indirect discrimination, advance equality, tackle prejudice and foster good relations between people with and without protected characteristics. According to section 29 of the Equality Act 2010, higher education providers, when acting as service providers to members of the public, are required to comply with the PSED. Hence, universities are not only required to balance freedom of speech and academic freedom with the Prevent duty, but also to comply with the PSED. Since freedom of speech is not an absolute but a qualified right, its scope can vary when balanced with the PSED. For example, at times, freedom of speech may be legitimately and proportionally restricted on grounds that it is discriminatory.¹⁴³ At other times, restrictions on freedom of speech may themselves be discriminatory.

The proponents of the Prevent duty, such as Greer and Lindsey, argue that there is no trace of Islamophobia or racism in the CTSA 2015 or in any of its supporting documents and that documents repeatedly stress the need for proportionality.¹⁴⁴ According to them, the neutral wording of the statutory Prevent duty in the CTSA 2015 and some of the other relevant documents is evidence of non-discrimination. However, that may not be the correct conclusion, as it overlooks the potential for indirect discrimination.

¹⁴³ *Vejdeland and Others v. Sweden* App no 1813/07 (ECtHR, 09 May 2012), para 55; *Norwood v. the United Kingdom* App no 23131/03 (ECtHR, 16 November 2004)

¹⁴⁴ Steven Greer and Lindsey Bell, 'Counter-Terrorist Law in British Universities: A Review of the "Prevent" Debate', [2018] Public Law 84

Indirect discrimination occurs when a seemingly neutral policy that applies to everyone disadvantages a group of people who share a protected characteristic, even if the intention of the drafters was not to discriminate.¹⁴⁵ Hence, the EHRC has argued that Prevent is sometimes being implemented in ways that could lead to discrimination or conduct that is prohibited under the Equality Act 2010.¹⁴⁶ Although the wording of the statutory Prevent duty in the CTSA 2015 is neutral and does not directly discriminate against a group with protected characteristics, section 1.5.2 of Chapter One, however, has shown that there are fears that Prevent does indirectly discriminate against Muslims. Moreover, Chapters Two and Three have shown that the debates and discourses surrounding terrorism frame radicalisation and extremism as predominantly a problem within Muslim communities.

Moreover, given that this chapter has shown that paragraph 11 of the HEPDG has the possibility of restricting legal free speech and cause a chilling effect on external speaker events, which may disproportionately target Muslim students, creating tension with the PSED, it is important to assess how UM risk assess external speaker events whilst balancing all the concomitant duties. The difficulty in balancing the relevant duties may be compounded by the ambiguous and deeply contested concepts of radicalisation and extremism, as highlighted by Chapters Two and Three, and the lack of sufficient clarity of procedural legal tests in establishing the proper boundaries of acceptable speech, as highlighted in Chapter Four.

Currently, the available data that indicates the chilling effect is largely collected from students, staff and other experts in higher education, who are seldom the members of UM who apply the Prevent duty to external speaker events. For example, the data collection for the Re/presenting Islam on Campus research consisted of interviews with

¹⁴⁵ Equality and Human Rights Commission, 'What is direct and indirect discrimination' <<https://www.equalityhumanrights.com/en/advice-and-guidance/what-direct-and-indirect-discrimination>> accessed 27 March 2023

¹⁴⁶ Equality and Human Rights Commission, 'Delivering the Prevent duty in a proportionate and fair way: A guide for higher education providers in Wales on how to use equality and human rights law in the context of Prevent', (2017) p3, <https://www.equalityhumanrights.com/sites/default/files/ehrc_delivering_the_prevent_duty_wales_final_eng_web_0.pdf> accessed 25 February 2023

57 academic and non-academic members of staff and 58 students, 23 focus groups of 167 staff and student participants, and a survey of over 2,000 students. Therefore, the data in the research are predominantly from academic staff and students and thus largely reflect their opinions. For this reason, in a report that forms part of the Re/presenting Islam on Campus research, Perfect indicates that there is urgent need to explore some key areas with more empirical research, and one of those was highlighted as 'how freedom of speech and academic freedom are understood and protected at policy level, including ... by individual universities'.¹⁴⁷ Thus, one aim of this PhD project is to focus on UM, who are generally responsible for approving events and implementing their freedom of speech and Prevent policies. It will explore their opinions, thus adding a new dimension to the debate.

CONCLUSION

This chapter has shown that in the context of universities, freedom of speech has extra protection compared to other contexts. In the university context, it is also protected by the Education Reform Act 1988, as academic freedom, and the Education (No. 2) Act 1986, as freedom of speech, which also extends indirectly to student unions. The wording and the background to the Education (No. 2) Act 1986 demonstrate that it was introduced to protect freedom of speech for external speakers in university campuses. The chapter then demonstrated that the background to the Prevent duty as established by the CTSA 2015 was to restrict the alleged radicalisation of students by external speakers, who were thought to be extremist. This duty also indirectly extends to students unions through the Charity Commission's guidance and university policies. Hence, universities and their student unions face the challenge of balancing two concomitant duties – one of which ensures that freedom of speech is protected for external speakers, whilst the other seeks to place restrictions on certain types of external speakers. In addition, it has shown that the scope of freedom of speech and Prevent duties is influenced by the PSED, which requires that the two duties are not implemented in a way that results in discrimination against anyone, or any group, with certain protected characteristics. Given that the literature examined in this chapter, as well as in previous chapters, has shown that Prevent can have a discriminatory effect, it

¹⁴⁷ Simon Perfect (n68) p36

is important to analyse how university management balance all of their potentially conflicting duties. This is what this project seeks to do.

The chapter also analysed the debates in the Houses of Parliament and academic literature, which raised concerns about the Prevent duty having an impact on freedom of speech, with academics arguing that the duty was ‘unnecessary and ill-conceived’. It found that the wording of the accompanying HEPDG further complicates the task of balancing the two duties, as it requires that universities ban all external speakers that are deemed to be extremist unless universities are ‘entirely convinced’ the risk of drawing people into terrorism can be ‘fully mitigated’. Although the High Court in the *Butt* case clarified that ‘fully mitigated’ meant ‘so far as could be or was proper’, and that freedom of speech was a higher duty than Prevent, the Court of Appeal argued that the wording was ‘trenchant’ and was likely to frame the decision. Although the HEPDG is not law, this chapter has shown that academics have argued that its quasi-legalistic language gives the impression that it is law. By laying out the background to the various duties and the concerns surrounding their implementation, this chapter has set the context of this project, which seeks to explore the understanding of university management regarding the requirements of the seemingly opposing duties and how they are implemented in practice.

The chapter has also shown that significant concerns were raised concerning the chilling effect of Prevent on freedom of speech. It concludes that the mechanisms and mitigations that may be applied to external speaker events to reduce the risk posed by extremism may deter organisers from arranging events with speakers with controversial views. Hence this project seeks to ascertain not only the views of UM on the likelihood of a chilling effect on events from their policies and processes, but also if they have any apparatus to assess and ensure there is no chilling effect on external speaker events. Hence, this chapter and Chapter Four have laid the foundation for the following fourth and fifth sub-questions:

How do UM understand and implement paragraph 11 of the Prevent duty Guidance for Higher Education (HEPDG) and is there evidence of risk aversion in the implementation of the guidance?¹⁴⁸

¹⁴⁸ This question is explored in Chapter Ten and Eleven.

Do participants consider that the Prevent duty has had either a 'direct' or 'indirect' chilling effect on freedom of speech in the context of external speaker events?¹⁴⁹

Since the role of UM involves risk assessment of external speaker events, the next chapter will critically analyse the current empirical and theoretical literature regarding risk.

¹⁴⁹ This question is explored in Chapter Ten and Twelve.

Chapter Six

IMPLEMENTATION OF PREVENT

In the context of universities, those responsible for approving external speaker events, usually university management (UM), are required to assess whether views expressed by external speakers risk drawing people towards terrorism.¹ UM are also required to cancel events if the risk cannot be ‘fully mitigated’.² Hence, one of the key aspects of Prevent implementation is risk management. The other key aspect of Prevent implementation is that it is presented as a safeguarding duty, which according to the Department of Education is similar in nature to protecting children from other harms such as drugs, gangs, neglect, and sexual exploitation.³ According to the Office for Students (OfS), ‘Prevent is treated as part of safeguarding, welfare and wellbeing’.⁴ Hence this chapter will in turn explore existing research to highlight ‘what is known’ and ‘what is unknown’ regarding risk assessment and safeguarding under Prevent. The first

¹ HM Government, ‘Prevent duty guidance: for higher education institutions in England and Wales’, (Home Office, 2015) para 11 <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed: 15 November 2022

² Ibid

³ Department for Education argues:

Protecting children from the risk of radicalisation should be seen as part of schools’ and childcare providers’ wider safeguarding duties, and is similar in nature to protecting children from other harms (e.g. drugs, gangs, neglect, sexual exploitation), whether these come from within their family or are the product of outside influences.

See: Department for Education ‘The Prevent Duty: Departmental advice for schools and childcare providers’ (June 2015)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/439598/prevent-duty-departmental-advice-v6.pdf> accessed 27 November 2022; Similar wording can be found in NHS England documents, ‘Preventing someone from being drawn into terrorism is substantially comparable to safeguarding in other areas, including child abuse or domestic violence, and all providers and staff within NHS England have a statutory duty to prevent’. See: NHS England, ‘Safeguarding Policy’ (first published March 2014 and updated March 2019) p31 <<https://www.england.nhs.uk/wp-content/uploads/2019/09/safeguarding-policy.pdf>> accessed 27 November 2022

⁴ OfS, ‘Prevent duty monitoring in higher education in England: Supplementary information note’ (12 September 2018) p5 <https://www.officeforstudents.org.uk/media/19b94eed-d2ad-4a9b-bb92-ee0b410a1f1f/ofs2018_35_a.pdf> accessed 06 April 2023

section will analyse the current literature and empirical research that examines risk. The second section will explore research that deals with the status of Prevent as a safeguarding duty and its impact on implementation. An analysis of both aspects will help analyse the empirical findings of this project to answer the overarching research question of ‘how do university administrative staff interpret the requirements of the Prevent duty and the freedom of speech duty, and what practical implications does their interpretation have on the implementation of the duty in the context of external speaker events?’

The final section of this chapter will provide an overview of how this study contributes to existing research on the implementation of the Prevent duty, as well as provide an analysis of the theoretical and conceptual frameworks used to understand and explain implementation of the Duty and risk management.

6.1 RISK

Section 6.1 will analyse current empirical and theoretical literature relating to the first key aspect of Prevent implementation: risk management. The first sub-sections will locate the requirement to mitigate ‘risk’ under the Prevent duty within the broader preoccupation with risk management throughout modern society. Since future risk is unknown, the second sub-section will explore theories that attempt to explain how future risk is identified and made actionable in the present. The third sub-section will highlight the findings of previous studies that decisions regarding risk are commonly made using ‘gut feelings’, which will then be explored using Brian Massumi’s ‘affect’ theory. The final sub-section will present a critique of risk management under Prevent.

6.1.1 FROM DISCIPLINE TO RISK TO OBSESSION WITH RISK

There has been a shift in penal policy and practice from discipline to risk, which has been documented by researchers since the 1980s.⁵ From focusing on identifying ‘deviants’ and devoting resources to reforming and ‘normalising’ them, at times through harsh discipline, the focus of Government policy has now shifted to viewing offenders as risks

⁵ Mariana Valverde and Michael Mopas, ‘Insecurity and the dream of targeted governance’, in Wendy Larner and William Walters (eds), *Global Governmentality: Governing International Spaces*, (Routledge: Taylor & Francis Group, 2004) p239

that must be managed.⁶ The language of the 'old penology' focussed on individual intention in order to assign guilt and created barriers to conviction in order to protect the individual from the powerful state.⁷ The 'new penology', in contrast, uses the language of probability and risk that applies to populations.

[It] is markedly less concerned with responsibility, fault, moral sensibility, diagnosis, or intervention and treatment of the individual offender. Rather, it is concerned with techniques to identify, classify, and manage groupings sorted by dangerousness.⁸

'Risk occupies a prominent place in society', argues Francois Ewald, who identifies three periods in the genealogy of risk.⁹ First, the Middle Ages, when risk thinking entered into Western culture with the emergence of the insurance contract; second, the 19th Century, when risk took on full legal status due to work-related accidents and the emergence of the 'occupational hazard' category; and finally, from the 1970s, when due to the expansion of the concept, society itself was subsequently labelled as 'society of risk'.¹⁰ The representation of the 9/11 attacks as a radical break from previous attacks has not only accelerated the rise of risk-management programmes but also made them a profitable industry with an integral role in preventing terrorism.¹¹ Since issues such as national, social, corporate and domestic security now dominate the political agenda, risk thinking permeates all aspects of society, creating an urge to manage every imaginable harm, including through criminalisation.¹² The current approach, which can best be

⁶ Ibid, p240

⁷ Malcolm Feeley and Jonathan Simon, 'The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications' (1992) 30 *Criminology* 449, p451

⁸ Ibid, 452

⁹ Francois Ewald, 'Risk in Contemporary Society' (1999) 6 *Conn Ins LJ* 365, p366

¹⁰ Ibid, p366

¹¹ Louise Amoore and Marieke De Goede, 'Governance, risk and dataveillance in the war on terror', (2005) 43 *Crime, Law and Social Change* 149, pp 150 – 151; Also see section 1.1.2 in Chapter One for a detailed discussion on the new terrorism discourse.

¹² Richard Ericson, 'Crime in an Insecure World' (Polity Press, 2007) p1

described as ‘risk management of everything’,¹³ has led to analysts labelling society as ‘riskophobe’.¹⁴ The Prevent duty should be seen as part of this trend in society towards the risk management of everything.

Michael Power argues that risk assessment is now viewed as synonymous with good governance.¹⁵ To the extent that in some businesses and organisations risk management may be viewed as a ‘managerial and administrative fashion’,¹⁶ or just another part of ‘organisational procedure’ that protects those who are accountable for decisions.¹⁷ Being accountable for decisions creates a culture of defensiveness in which decision-makers are more preoccupied with managing their own risks – personal, legal and reputational – rather than the risks in their primary mission.¹⁸ According to Richard Ericson, risk managers try to avoid blame when things go wrong by demonstrating that they followed the rules.¹⁹ In the words of Power, their ‘expert judgement [in risk management] shrinks to an empty form of defensible compliance’.²⁰ Hence, Power argues that it is debatable whether the world now is objectively more dangerous or ‘risky’ than it was in the past, although more situations and outcomes are now viewed as ‘amenable to human decision and intervention’.²¹ In light of Power’s argument, it is important to assess whether or not the risk assessment and management processes in universities are empty forms of ‘defensible compliance’. The concept of defensible compliance and ‘symbolic compliance’ will be further explored in section 6.4.2 of this chapter, which will form the theoretical framework for this project. Next, this chapter

¹³ Michael Power, *The Risk Management of Everything: Rethinking the politics of uncertainty* (Demos, 2004) Demos, pp13 – 14, < <https://www.demos.co.uk/files/riskmanagementofeverything.pdf> > accessed 17 August 2022

¹⁴ Bill Heberton and Toby Seddon, ‘From Dangerousness To Precaution: Managing Sexual and Violent Offenders in an Insecure and Uncertain Age’ (2009) 49 *British Journal of Criminology*, 343, p346

¹⁵ Michael Power (n13) p40

¹⁶ *Ibid*, p39

¹⁷ *Ibid*, pp 40 – 41

¹⁸ *Ibid*, pp 14 – 15

¹⁹ Richard Ericson (n12) p13

²⁰ Michael Power (n13) p42

²¹ *Ibid*, p14

will explore some of the theories used by academics to understand risk and how it is made actionable.

6.1.2 FUTURE-ORIENTATION AND UNCERTAINTY

One of the key features of risk management under Prevent is that it is future-orientated and governs individuals deemed ‘vulnerable’ to radicalisation in a non-criminal space before any crime is committed. In this sense, Prevent can be referred to as ‘anticipatory security’ and as part of a ‘precautionary logic’.²² Dresser, for example, uses Nikolas Rose’s definition of risk as ‘a family of ways of thinking and acting that involve calculations about probable futures in the present followed by interventions into the present in order to control that potential future’.²³ This raises the question: ‘how is the future risk made actionable in the present?’ This section will explore previous research that has used ‘risk thinking’, ‘premediation’, and ‘pre-emption’ theories to answer this question.

The central aim of risk management under Prevent is to make the danger of terrorism measurable and manageable.²⁴ However, since the future is unknown, policymakers have the paradoxical task of expecting the unexpected and making the unknown governable by anticipating the ‘next terrorist attack’.²⁵ According to Rose, this is done through ‘risk thinking’, which tries to discipline the uncertainty of the future by bringing it into the present and making it calculable.²⁶ By making the uncertainty of the future

²² Paul Dresser, ‘“Trust your instincts – act!” PREVENT Police officers’ perspectives of counter-radicalisation reporting thresholds’, (2019) 12 *Critical Studies on Terrorism*, 605, p605; Paul Dresser, ‘Counter-Radicalisation Through Safeguarding: A Political Analysis of the Counter-Terrorism and Security Act (2015)’, (2018) *Journal for Deradicalization*, 125, p126; Paul Dresser, ‘Prevent Policing in Practice – The Need for Evidenced-Based Research’, (2019) 15 *Policing* 716; Bill Heberton and Toby Seddon (n14)

²³ Nikolas Rose, ‘Politics and Life’ in *The Politics of Life Itself: Biomedicine, Power, and Subjectivity in the Twenty-First Century*, (Princeton University Press 2007) p70; Paul Dresser, ‘Counter-Radicalisation Through Safeguarding: A Political Analysis of the Counter-Terrorism and Security Act (2015)’ (2018) *Journal for Deradicalization* 125, p128 n9

²⁴ Louise Amoore and Marieke De Goede (n11)

²⁵ Claudia Aradau and Rens van Munster, ‘The Time/Space of Preparedness: Anticipating the “Next Terrorist Attack”’, (2012) 15 *Space and Culture* 98, p98

²⁶ Nikolas Rose, ‘At Risk of Madness’, in Tom Baker and Jonathan Simon (eds), *Embracing Risk: The Changing Culture of Insurance and Responsibility* (The University of Chicago Press, 2002), p214

quantifiable, decisions can be made and justified based upon the probability of those futures occurring.²⁷ According to Rose, 'risk thinking' has led to a 'network of control' where a range of professionals have the impossible task of monitoring and managing those who are deemed to be troublesome.²⁸ Moreover, Rose argues that taking action in the present to manage the future has escalated rapidly into an obligation.²⁹

Marieke De Goede uses 'premediation' as a theoretical tool to understand how future risk is visualised. It refers to how media outlets and cultural industries 'map and visualize a plurality of possible futures'.³⁰ Premediation, as coined by Richard Grusin, is not about predicting the course of the future correctly; rather, it is imagining 'as many possible futures as could plausibly be imagined'.³¹ De Goede argues that premediation seems to have become part of counter-terrorism efforts since the 9/11 terror attacks, through which the United States has sought to avoid experiencing another catastrophic event that had not already been premediated.³² Thus, the 9/11 Commission report calls for 'routinizing, even bureaucratizing, the exercise of imagination'.³³ Since it entails visualising and imagining all possible futures, some far-fetched and others thought likely, premediation allows action in the present.³⁴ Thus, this concept is closely tied with pre-emption, in which imaginative technologies are deployed to visualise and disrupt possible future threats through unprecedented legal action in the present by picturing the threats as imminent and catastrophic.³⁵ Pre-emption is a key feature in the UK's

²⁷ Ibid, p214

²⁸ Nikolas Rose (n26) p215

²⁹ Ibid, p214

³⁰ Marieke De Goede 'Beyond Risk: Premediation and the Post-9/11 Security Imagination', (2008) 39 Security Dialogue 155, p155

³¹ Richard A. Grusin, 'Premediation', (2004) 46 Criticism p28

³² Ibid, p21

³³ 9/11 Commission, 'Final Report of the National Commission on Terrorist Attacks Upon the United States', (2004) P344 < <https://www.govinfo.gov/content/pkg/GPO-911REPORT/pdf/GPO-911REPORT.pdf>> accessed 27 July 2022

³⁴ Marieke De Goede (n30) p159

³⁵ Ibid, p162

Prevent Strategy, which stresses that '[Prevent programmes] should pre-empt and not facilitate law enforcement activity'.³⁶

De Goede *et al.* postulate that radicalisation is non-linear, unpredictable and lacks parameters, making it difficult to measure and know. However, by depicting it as potentially cataclysmic, the logic of pre-emption requires that intervention should happen at the earliest stage possible: the present.³⁷ To make this intervention possible, those who are 'vulnerable' to radicalisation in the future are identified and then made subject to intervention in the present using radicalisation indicators.³⁸ These indicators serve as what Thomas Martin calls, 'strategies of (in)visibilization', which he defines as 'attempt[s] to translate discursive knowledges into visible objects or subjects of threat'.³⁹ The central aim in many security practices, it seems, is to make potential future terror threats visible prior to them materialising, which is achieved by crossing a temporal gap between the present and the conceptualised future.⁴⁰ This, Martin argues, is accomplished by institutional mechanisms such as the Channel programme, which makes visible those who are deemed to be 'vulnerable' to radicalisation.⁴¹ In doing so, it seeks to structure and transform the gaze of public sector workers towards new threats and vigilance towards indicators of radicalisation.⁴²

The above discussion has shown that risk in counter-terrorism studies is viewed as being future-orientated and related to the unknown, which is made actionable in the present by premediation, pre-emption and risk thinking. However, it does not explain how decisions are made. Hence, the next section will explore current empirical research that analyses the grounds upon which decisions are made regarding risk.

³⁶ HM Government, *Prevent Strategy* (Cm 8092, 2011) p8

³⁷ Marieke de Goede, Stephanie Simon and Marijn Hoijsink, 'Performing Preemption', (2014) 45 *Security Dialogue* 411, p412

³⁸ Also see Chapter Two, section 2.2.1.3 for a discussion on vulnerability and radicalisation indicators.

³⁹ Thomas Martin, 'Identifying Potential Terrorists: Visuality, Security and the Channel Project', (2018) 49 *Security Dialogue* 254, p255

⁴⁰ *Ibid*, p257

⁴¹ *Ibid*

⁴² *Ibid*, 267

6.1.3 GUT FEELINGS

There is a relative paucity of empirical research on how decisions are made regarding the risk of radicalisation. Some of the limited research that does exist pre-dates the statutory Prevent duty.⁴³ One example is Dresser's qualitative study into how Prevent police officers make their decisions, which draws on 21 semi-structured interviews, conducted between 2013 and 2014, with Prevent police officers and connected personnel.⁴⁴ Dresser's study identified 'gut feelings' and 'instincts' as the foundation for mobilising intelligence in the decision-making process.⁴⁵ Dresser found that Prevent police officers encouraged their 'partners' and frontline agencies, such as teachers, social workers and youth workers, 'to trust their subjective judgements in the absence of radicalisation knowledge(s)'.⁴⁶ Their findings illustrated how 'soft facts' – beliefs that are derived from feelings – were considered important in mobilising intelligence. Under the catchphrase 'action counters terrorism', counter terrorism police encourage the public to 'trust their instinct' and report anything unusual and suspicious.⁴⁷ Official Prevent related documents and guidance are also littered with words such as 'intuition' and 'professional judgement', all of which can be viewed as encouragement to use gut feelings in risk identification and management.⁴⁸

⁴³ Paul Dresser, "'Trust your instincts – act" PREVENT police officers' perspectives of counter-radicalisation reporting thresholds', (2019) 12 Critical Studies on Terrorism, 605; Tom Pettinger, 'British terrorism preemption: Subjectivity and disjuncture in Channel "de-radicalisation" interventions', (2020) 71 Br J Sociol. 970; Charlotte Heath-Kelly and Erzsebet Strausz, 'The banality of counterterrorism "after, after 9/11"? Perspectives on the Prevent duty from the UK health care sector', (2019) 12 Critical Studies on Terrorism 89

⁴⁴ Participants included two Prevent Sergeants, a Prevent police lead, a Prevent police officer, a Channel officer, a neighbourhood police officers, a youth offending team case manager, a supported housing officer, a local housing officer, a community safety officer, a community engagement officer, and a Channel intervention provider. They were at the time operating as a Prevent team in a non-priority Prevent area. Paul Dresser (n43) p611

⁴⁵ Ibid, p606

⁴⁶ Ibid, p606

⁴⁷ Counter Terrorism Policing, 'Action Counters Terrorism', <<https://www.counterterrorism.police.uk/what-you-can-do/>> accessed 03 August 2022

⁴⁸ The Department of Education, for example, states:

The reliance on gut feelings that Dresser identified is not restricted to Prevent police officers. Pettinger, for example, found that Channel practitioners emphasised the use of intuition and gut feelings as ‘highly valuable’ when calculating risk.⁴⁹ Pettinger’s study, which utilised 17 interviews with senior Channel officials and mentors between 2017 and 2018, focused on three important aspects of risk governance: (a) ‘how an individual becomes sufficiently “seen” as harbouring risk’; (b) ‘how practitioners negotiate supposed riskiness’; and (c) ‘how practitioners “know” risks they observe’.⁵⁰ Pettinger found that deploying gut feelings was encouraged throughout the Channel process, from the initial referral to the conclusion of a case.⁵¹ Using anticipatory risk governance literature, Pettinger’s study builds on the many critiques of radicalisation discourse by identifying a lack of scientific rigour in how risk is assessed.

In a study exploring the implementation of Prevent in the healthcare sector, Heath-Kelly and Strausz found that the use of gut feelings and intuition was also encouraged in the NHS.⁵² Their study highlights that the Home Office Prevent training DVD called

Children at risk of radicalisation may display different signs or seek to hide their views. School staff should use their *professional judgement* in identifying children who might be at risk of radicalisation and act proportionately. (Emphasis added)

See: The Department of Education, ‘The Prevent duty: Departmental advice for schools and childcare providers’ (June 2015) p6

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/439598/prevent-duty-departmental-advice-v6.pdf> accessed 04 August 2022;

The Home Office incentive ‘Action Counters Terrorism’ (ACT) encourages the public as follows:

Friends and family are best placed to spot the signs, so trust your *instincts* and tell us your concerns in confidence. (Emphasis added)

See: Counter Terrorism Policing (n47)

⁴⁹ Tom Pettinger, ‘British terrorism preemption: Subjectivity and disjuncture in Channel “de-radicalisation” interventions’ (2020) 71 Br J Sociol. 970, p978

⁵⁰ Ibid, p970,

⁵¹ Ibid, p979

⁵² Charlotte Heath-Kelly and Erzsebet Strausz, ‘The banality of counterterrorism “after, after 9/11”? Perspectives on the Prevent duty from the UK health care sector’, (2019) 12 Critical Studies on Terrorism 89; Charlotte Heath-Kelly and Erzsebet Strausz, ‘Counter-terrorism in the NHS Evaluating Prevent Duty Safeguarding in the NHS’ < https://warwick.ac.uk/fac/soc/pais/people/heath-kelly/project_report_60pp.pdf> accessed 19 November 2022

'Workshop to Raise Awareness of Prevent' encouraged employees to spot signs of radicalisation through the use of intuition.⁵³

6.1.4 AFFECT THEORY

Gut feelings and intuition are widely promoted within official Prevent policy and discourse as useful devices to spot risk. However, as Pettinger has argued, such approaches are by definition unexplainable and not amenable to scientific rigour.⁵⁴ In order to consider why such approaches have become central to official counter-terrorism policing and practice, Dresser utilises Massumi's 'affect' theory, which draws a useful distinction between the 'threat' and 'danger'.⁵⁵ Whereas danger is clear, present, observable and objectively verifiable, threat, in contrast, has a 'visceral reality' – it exists as an 'affect'.⁵⁶ An 'affect', according to Massumi, is an autonomic bodily response that is beyond the conscious state.⁵⁷ He further argues that affect mutates space-time, meaning that a future threat can be felt as a real and an imminent 'gut feeling' in the present.⁵⁸ Massumi posits that in the context of security pre-emption, the focus is on the threat, rather than danger.

⁵³ Their data was gathered from a number of sources: (a) safeguarding teams working in a mixture of six NHS Trusts and Clinical Commissioning Groups in the Midlands Area in Prevent non-priority areas; (b) seventeen 'expert' interview participants, and (c) a 26 question survey with 329 NHS staff from the six NHS Trusts and Clinical Commissioning Groups. The seventeen expert interviewees included 'NHS Prevent leads, NHS Heads of Safeguarding, medics publishing in medical journals on the Prevent Duty and professional practice, one Channel Panel member, two Prevent Leads in the Police, and a forensic lead at a Prevent Mental Health Hub'. See: Charlotte Heath-Kelly and Erzsebet Strausz, 'Counter-terrorism in the NHS Evaluating Prevent Duty Safeguarding in the NHS', p6,

<https://warwick.ac.uk/fac/soc/pais/people/heath-kelly/project_report_60pp.pdf> accessed 19

November 2022

⁵⁴ Tom Pettinger (n49) p979

⁵⁵ Paul Dresser (n43)

⁵⁶ Brian Massumi, 'The Remains of the Day', in Linda Åhäll, and Thomas Gregory (eds), *Emotions, Politics and War*, (London: Taylor & Francis Group 2015), p18

⁵⁷ Ibid, p18; Paul Dresser (n43) p607

⁵⁸ Massumi argues 'The felt reality of the threat is so superlatively real that it translates into a felt certainty about the world, even in the absence of other grounding for it in the observable world. The assertion has the felt certainty of a "gut feeling."' See: Brian Massumi, 'The Future Birth of the Affective Fact: The

According to Massumi, 'affect ... suspends considered reflection and momentarily paralyzes action', and in the context of a terror attack it 'braces us together in uncertainty, in the terror of not yet being able to answer the question, "what just happened?"'.⁵⁹ He argues that pre-emption establishes a direct link between the formal institutional-level policy and the informal affective-level collective disorientation and paralysis, which becomes a 'motor' that sets in motion a tendency that has its own logic and is difficult to stop.⁶⁰ When the uncertain threat of the future becomes felt in the present, as an 'affect', it has an effect on how we choose to act in the present.⁶¹ For Massumi, the shift in pre-emption towards threat and away from danger means that action is possible against a threat that 'vaguely looms' and 'casts a shadow on the present', even if it is not clear and visible.⁶²

Gut feelings, understood as an 'affect', serve a strategic purpose according to Dresser. He argues that his data suggests 'in the absence of clearly defined, observable risk indicators, gut feelings act as anticipatory epistemic conditions legitimised as a form of quasi-evidence that professional partners are encouraged to trust'.⁶³ Dresser argues that for the Prevent partners that were non-expert in counter-radicalisation, 'gut feelings' were seen as a trustworthy device replacing knowledge of radicalisation, extremism and terrorism.⁶⁴ The Prevent team in Dresser's study argued that gut feelings were simple and professional partners could 'instantly understand and immediately relate to [them]', as such they served as strategic policy tactics in bringing frontline agencies to implement Prevent even when there is conceptual ambiguity around radicalisation.⁶⁵ Conceptualising risk as a feeling that is devoid of reflective and

Political Ontology of Threat', in Melissa Gregg, and Gregory J. Seigworth (eds), *The Affect Theory Reader* (Duke University Press, 2010), p55

⁵⁹ Ibid, p19

⁶⁰ Ibid, p19

⁶¹ Ibid, p19

⁶² Ibid, p19

⁶³ Paul Dresser (n43) p607

⁶⁴ Ibid, p614

⁶⁵ Ibid, p613

analytical judgement has the aim of alleviating the uncertainty of non-expert frontline workers to report and reduce dissonance and resistance.⁶⁶

In summary, participants in Dresser's study argued that gut feelings were 'simple', 'instantly understandable', 'immediately relatable' and 'trustworthy devices'. The use of gut feelings as quasi-evidence, according to Dresser, reduced dissonance to Prevent even when there was conceptual ambiguity around radicalisation. The next section will challenge this narrative, arguing that far from being 'simple', 'instantly understandable', 'immediately relatable' and 'trustworthy', identifying risk through intuition or gut feelings is actually a difficult, subjective task that may be steeped in bias.

6.1.5 PROBLEMS WITH IDENTIFYING RISK

Identifying who is at risk of turning to terrorism and who is not is an almost impossible task, as the following study conducted by Pettinger illustrates. Pettinger drew on interviews with 33 mainly former combatants from the Northern Ireland conflict,⁶⁷ testing the assumptions of Prevent regarding the causes and identification of radicalisation with the testimony of those whom Prevent would have sought to stop from becoming tangled in violence.⁶⁸ Pettinger found that former combatants who had years of experience in the conflict, in prison, and decades of contemplation, could not identify the reasons why some people got involved in violence whilst others facing the same situation did not.⁶⁹ Pettinger argues that on the rare occasions when they did speculate a cause, responses were: 'courage or a lack thereof' to face the consequences; '[violence] is not for me'; and 'I can say why I joined, I can't say why other people didn't join'.⁷⁰

⁶⁶ Ibid, p619

⁶⁷ 11 interviewees were from various loyalist groups, 15 were former Irish Republican Army, 4 were former Irish National Liberation Army, and 3 were former chief prosecuting counsel of Northern Ireland. See: Tom Pettinger, 'Examining "Prevent" From a Former Combatant Perspective', (2020) 25 *Sociology of Crime, Law and Deviance* 225, p227

⁶⁸ Ibid, p226

⁶⁹ Ibid, pp236 - 237

⁷⁰ Ibid, pp235 - 236

This then raises the question of ‘how does Prevent *know* possibly risky from non-risky subjects?’⁷¹ The answer according to Pettinger, is subjective interpretation and guesswork.⁷² Thus, Prevent is situated in a pre-criminal space and adopts a pre-emption rationality, where the speculative guesswork of practitioners is infused with imagination of worst-case scenarios.⁷³ Pettinger’s earlier study with Prevent Channel practitioners also showed that they differed over what constituted risk and its management, based upon how they were trained, their reading of body language and their own life experience.⁷⁴ Pettinger found that governing possible future intents in this way had led Prevent practitioners to varied interpretations of what constituted a security risk.⁷⁵

The study conducted by Heath-Kelly and Strausz on how the Prevent duty is implemented in the NHS also confirms this finding.⁷⁶ Participants in Heath-Kelly and Strausz’s study initially argued that ‘professional intuition already developed within safeguarding practice’ was a suitable tool to use to detect radicalisation.⁷⁷ However, when participants were introduced to ‘mild complex scenarios’, such as a person’s interest in Middle Eastern politics and wars, their confidence in their ability to spot radicalisation dropped.⁷⁸

⁷¹ Ibid, p237

⁷² Ibid, p237

⁷³ Ibid, p237

⁷⁴ Tom Pettinger (n49) p970 and p977

⁷⁵ Tom Pettinger (n75) p119 and p122. For example, according to one practitioner, if a student said ‘pray for Palestine’ in a classroom that would be actionable and not-responding to that would be ‘bad’ and ‘misconduct’. Whereas, another practitioner contested, ‘it’s quite wrong to pick [that example] out of a list of items and say that is a problem’: Ibid, p123

⁷⁶ See section 1.1.3 Gut feelings. Charlotte Heath-Kelly and Erzsebet Strausz, ‘The banality of counterterrorism “after, after 9/11”?’ Perspectives on the Prevent duty from the UK health care sector’, (2019) 12 Critical Studies on Terrorism 89; Charlotte Heath-Kelly and Erzsebet Strausz, ‘Counterterrorism in the NHS Evaluating Prevent Duty Safeguarding in the NHS’

<https://warwick.ac.uk/fac/soc/pais/people/heath-kelly/project_report_60pp.pdf> accessed 19 November 2022

⁷⁷ Charlotte Heath-Kelly and Erzsebet Strausz, ‘The banality of counterterrorism “after, after 9/11”?’ Perspectives on the Prevent duty from the UK health care sector’, (2019) 12 Critical Studies on Terrorism 89, p96

⁷⁸ Ibid, p103

This section argues that, in light of the previous empirical research, identifying the risk of radicalisation is not a straightforward task. Gut feelings and intuition are not reliable tools for assessing who is at risk of being involved in terrorism and who is not. Current research suggests that this method of identifying risk is based upon speculative guesswork regarding an unknown future. Premediation and pre-emption may be tools to envisage potential futures, but arguably are subjective and, as the next section will show, steeped in bias.

6.1.4.2 OVER-REPORTING AND BIAS

The urge to report every imaginable risk gives counter-terrorism interventions a wider reach, as those who are ‘merely suspected of being harmful’, become the subjects of counter-terrorism laws and programmes even if no actual harm has been caused.⁷⁹ Additionally, attempting to render imaginary futures actionable in the present is problematic and a ‘catastrophe’, as the visualisation of some possible futures and not others is political work that can constrain political decision making.⁸⁰ The process of rendering a future threat actionable by making it ‘knowable’ and ‘legible’ is not a neutral process, as the potential futures are limitless, yet their visualisation and conceptualisation is limited culturally and epistemically to a small portion of what is possible.⁸¹

Gut feelings are not neutral or objective in any sense, but rather can be influenced by political or world views. Unlike Massumi, who argued that an affect is a pre-personal intensity, Margaret Wetherell posits that it is mediated by consciousness and is ‘extra-discursive’.⁸² Similarly, Dresser has argued that feelings that are sensed somatically are “entangled with cultural meaning-making, discourse and semiosis’.⁸³ Dresser found that

⁷⁹ Richard Ericson, *Crime in an Insecure World* (Polity Press, 2007) p1

⁸⁰ Ibid, p171; De Goede, here, gives the example of how premediation of the Iraq war had an effect on how the war played out: Marieke De Goede (n30) p171 ; Also See: Tom Pettinger (n75) p130

⁸¹ Thomas Martin (n39) p257

⁸² Wetherall challenges affect scholarship, which distinguishes aspects of affect as being ‘beyond, below and past discourse’, as ‘palpable experiences that do not operate through the structures of language, discourse and meaning’. See: Margaret Wetherell, ‘Affect and discourse – What’s the problem? From affect as excess to affective/discursive practice’ (2013) 6 *Subjectivity* 349, p350 and p352

⁸³ Paul Dresser (n43) p620

participants in his study drew attention towards how ‘experience’ is influenced by ‘feeling’ or ‘intuition’, which suggests that affect does not reside beyond discourse.⁸⁴ Encouraging the ‘non-expert’ ordinary citizen to over-report and be ever-vigilant for possible locations of risk thus has the potential to be steeped in personal judgement based upon visualisations drawn from popular culture. As Heath-Kelly and Strausz found, NHS staff relied upon popular culture from the media for their knowledge regarding indicators of radicalisation, rather than on official training material.⁸⁵ Making referrals based upon knowledge from popular culture becomes extremely unscientific, especially when decisions are made on ‘gut feelings’ and ‘intuition’.⁸⁶

Hence, it has been argued that the practice of pre-emption by Prevent practitioners not only normalises suspicion of banal ordinary behaviours and institutionalises stereotypes but is also subsumed by human prejudices and disagreements.⁸⁷ The reporting of banal behaviour is also encouraged through the use of Extreme Risk Guidance factors, which are not objective metrics of risk but rather 22 supposed signs of radicalisation.⁸⁸ Likewise, the Government guidance for education settings broadly categorises the factors of the risk of extremism or radicalisation into two groups: ‘Push factors’ and ‘Pull factors’.⁸⁹ The ‘Push factors’ also encourage risk assessment based upon banal behaviours, as it includes factors such as feeling ‘low self-esteem’ and being ‘confused about life or the world’.⁹⁰

⁸⁴ Ibid, p608

⁸⁵ Charlotte Heath-Kelly and Erzsebet Strausz (n77) p90

⁸⁶ Charlotte Heath-Kelly and Erzsebet Strausz (n53) p51

⁸⁷ Tom Pettinger (n49) p970, 972

⁸⁸ Tom Pettinger (n75) p121. Vulnerability Assessment Framework involves a list of 22 factors, which are grouped into three broad categories: engagement with a group, cause or identity, intent to cause harm and capacity to cause harm. See: HM Government, ‘Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism’, (2020) Annex C, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964567/6.6271_HO_HMG_Channel_Duty_Guidance_v14_Web.pdf> accessed 20 November 2022

⁸⁹ Department of Education, ‘Guidance Understanding and identifying radicalisation risk in your education setting’ (24 October 2022) <<https://www.gov.uk/government/publications/the-prevent-duty-safeguarding-learners-vulnerable-to-radicalisation/understanding-and-identifying-radicalisation-risk-in-your-education-setting>> accessed: 20 November 2022

⁹⁰ Ibid

Moreover, critics of Prevent argue that safeguarding leads produce knowledge on where risk is found and where it is not, which then later feeds back into itself and becomes self-justifying, producing more knowledge.⁹¹ Considering that the Prevent practitioners in Pettinger's study would imagine worst-case catastrophic futures, in one way it is surprising that they did not focus on potentially violent risks when discussing interventions. In another way, this demonstrates the temporal distance between the possible future event and the banal ordinary behaviours that are problematised.⁹² Whether better or more training programmes can reduce the problems associated with identification and management of risk, such as biases or the identification of banal behaviours as sign of radicalisation, is contested. Pettinger argues that intuition and subjective judgement are central to the very foundation of risk assessment under Prevent. Hence, regardless of how people are trained, the final judgment regarding an unknown future will always have prejudice attached to it.⁹³ This type of decision making, Dresser argues, is arbitrary and capricious; it directs identification of signs towards a subjective realm.⁹⁴

To conclude, the above sections have shown that risk assessment under Prevent should be seen as part of society's general trend towards risk management of everything, which was accelerated after the 9/11 attacks. Since the risk of radicalisation is future-orientated and full of uncertainty, counter-terrorism laws and programmes such as Prevent are said to be 'anticipatory security'. Premediation, pre-emption and risk thinking are devices deployed not only to imagine as many possible futures as could plausibly be imagined, but also to make them calculable so that decisions can be formed in the present. However, empirical research by Dresser, Heath-Kelly and Strausz, and Pettinger has revealed that those in charge of risk assessing under Prevent, such as Prevent practitioners, Prevent police officers and the NHS staff, form their decisions based upon gut feeling and intuition. Moreover, this is largely encouraged in Prevent-related guidance and literature. The use of gut feelings has the strategic effect of acting

⁹¹ Tom Pettinger (n75) p125

⁹² Ibid, p129

⁹³ Ibid, p132

⁹⁴ Paul Dresser, 'Counter-Radicalisation Through Safeguarding: A Political Analysis of the Counter-Terrorism and Security Act (2015)', [2018] *Journal for Deradicalization* 125, p142

as quasi-evidence in the absence of clearly defined risk indicators, which supposedly are simple enough for even non-expert partners to rely upon. However, risk assessment through gut feelings has been criticised for being biased, subjective and problematic. Research by Heath-Kelly and Strausz has shown that the confidence levels of NHS staff in spotting risk dropped when faced with mildly complex situations. Pettinger found that Prevent practitioners differed over what constituted risk. What the above studies do not examine is how decisions are formed by those responsible for risk assessment in the higher education sector. This project fills this gap in the developing knowledge of Prevent implementation by analysing how university administrative staff risk manage for external speaker events.

This chapter will next explore the second key aspect of Prevent implementation, which is its status as a safeguarding duty and the effect of this status on its implementation. Since current academic literature heavily relies upon theories of governmentality to establish a framework to analyse the status of Prevent as a safeguarding duty, the next section will also explore these theories.

6.2 PREVENT AS SAFEGUARDING

The Prevent duty is officially presented by government documents as a safeguarding duty. For example, the up-to-date guidance issued by the Department of Education states, '[Prevent] includes safeguarding children, young people and adult learners from extremist ideologies and radicalisation'.⁹⁵ Academics such as Heath-Kelly and Dresser have critiqued the presentation of Prevent as a safeguarding duty using the theoretical concept of governmentality and the related body of theoretical literature. This section will first analyse Michel Foucault's concept of 'Governmentality' as well as Rose and Miller's concepts of 'political rationalities' and 'governmental technologies' and their use in the wider field of counter-terrorism studies, in which Prevent safeguarding is a small but crucial pillar. Second, it will explore Dresser's use of these theories of

⁹⁵ Department of Education, 'The Prevent duty: an introduction for those with safeguarding responsibilities' (24 October 2022) <

governmentality to analyse Prevent as a safeguarding duty. Finally, it will critique the status of Prevent as a safeguarding duty.

6.2.1 FOUCAULDIAN ANALYSIS AND COUNTER-TERRORISM

Political philosophy, especially Foucault's essays on 'Governmentality' and a connected body of theoretical and empirical research, have had significant influence on the analysis of security, safety, policing, punishment and crime.⁹⁶ This section will explore some of those theoretical ideas and how they are used to analyse counter-terrorism programmes. It will provide some of the theoretical framework and context to analyse Prevent as a safeguarding duty.

Since power through interference, coercion or direct steering contradicts the ethos of liberalism with its focus on individual freedoms, for Foucault, government needs to operate in conjunction with freedoms rather than to repress them.⁹⁷ Government, thus, endeavours to shape human conduct by calculated non-coercive means, with the purpose of securing the welfare of the population,⁹⁸ where arrangements are made so that people following their own self-interest end up doing 'as they ought'.⁹⁹ As Foucault puts it:

[G]overnment has as its purpose not the act of government itself, but the welfare of the population, the improvement of its condition, the increase of its wealth, longevity, health, etc.; and the means that the government uses to attain these ends are themselves all in some sense immanent to the population; it is the population itself on which government will act either directly through large-scale campaigns, or indirectly through techniques that will make possible, without the

⁹⁶ Mariana Valverde and Michael Mopas (n5) p233

⁹⁷ Niklas Altermark and Hampus Nilsson, 'Crafting the "Well-Rounded Citizen": Empowerment and the Government of Counterradicalization' (2018) 12 *International Political Sociology* 53, p57

⁹⁸ Tania Murray Li, 'Governmentality', (2007) 49 *Anthropologica* 275, p275

⁹⁹ David Scott, 'Colonial Governmentality', (1995) *Social Text*, 191, p202

full awareness of the people, the stimulation of birth rates, the directing of the flow of population into certain regions or activities, etc.¹⁰⁰

Foucault further states:

... with government it is a question not of imposing law on men, but of disposing things: that is to say, of employing tactics rather than laws, and even of using laws themselves as tactics - to arrange things in such a way that, through a certain number of means, such and such ends may be achieved.¹⁰¹

This Foucauldian analysis of government through 'arrangement of things' that make people behave 'as they ought' is closely connected to two key concepts: 'political rationalities' and 'governmental technologies'. According to Rose and Miller, 'political rationalities' are the conceptualisations and justifications for different ways of exercising power,¹⁰² whilst 'governmental technologies' are 'the means of realising [those political] rationalities'.¹⁰³

Counter-terrorism policies and programmes can be viewed as government technologies that try to arrange things in a manner to make people behave as they ought through what may seem like self-governance. For example, a recurring feature in counter-terrorism policy and discourse is the need to foster citizenship to challenge

¹⁰⁰ Michel Foucault, 'Governmentality', in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality with two lectures by and an interview with Michel Foucault* (The University of Chicago Press 1991) p100

¹⁰¹ Ibid, p95

¹⁰² In other words, 'the rules which regulate autonomous systems of meaning making'. Paul Dresser (n94) p129; Rose and Miller describe these as 'the changing discursive fields within which the exercise of power is conceptualised, the moral justifications for particular ways of exercising power by diverse authorities, notions of the appropriate forms, objects and limits of politics, and conceptions of the proper distribution of such tasks among secular, spiritual, military and familial sectors'. See: Nikolas Rose and Peter Miller, 'Political Power beyond the State: Problematics of Government', (1992) 43 *The British Journal of Sociology* 173, p175

¹⁰³ Paul Dresser (n94) p129; For Rose and Miller, these are 'the complex of mundane programmes, calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions'. See: Nikolas Rose and Peter Miller (n102) p175

radicalisation.¹⁰⁴ Since the concept of citizenship is juxtaposed with radicalisation, Niklas Altermark and Hampus Nilsson see the concept of ‘citizenship’ and the discourse surrounding it as a political government technology, which shapes how people behave.¹⁰⁵ By analysing ‘Muslimah’ and ‘BOUNCE’ – two community programs – Altermark and Nilsson argue that through mottos of ‘empowerment’ and ‘individual responsibility’, these programmes place the burden of counter-radicalisation back on the communities that are seen as being at risk of radicalisation, which means ‘government operates by effacing its own role and dressing it up as the “self-government” and “active citizenship” of targeted groups’.¹⁰⁶ As such, similar social programs can be viewed as instances of power that function by generating citizens who are moulded to behave and relate in certain approved ways.¹⁰⁷ Refocussing counter-terrorism programs towards ‘citizenship’ and ‘empowerment’ does not diminish state power, rather it can be understood as the state exercising its power through such programs.¹⁰⁸

Charlotte Heath-Kelly argues that the discourse of radicalisation is a technique of governance, which plays a crucial role as a pre-emptive technology of governance of terrorism that is used to control and induce specific types of conduct from Muslim communities.¹⁰⁹ The discourse of radicalisation performs a political function – it operates as a form of knowledge through which Government is able to ‘perform security’ and ‘act upon futurity’.¹¹⁰ For Heath-Kelly, the discourse of radicalisation tells us little about transitions to terrorism and more about the relationships between security and knowledge.¹¹¹

¹⁰⁴ For example, the advancement of ‘fundamental British values’ is a central feature in the UK counter-terrorism policy documents. See Chapter Three, section 3.1.1.

¹⁰⁵ Niklas Altermark and Hampus Nilsson (n97) p54

¹⁰⁶ Ibid, p64

¹⁰⁷ Ibid, p65

¹⁰⁸ Ibid, p58

¹⁰⁹ Charlotte Heath-Kelly, ‘Counter-Terrorism and the Counterfactual: Producing the ‘Radicalisation’ Discourse and the UK PREVENT Strategy’, (2013) 15 BJPIR 394 – 415, p396

¹¹⁰ Ibid 398

¹¹¹ Ibid, p412

This section has argued how a Foucauldian analysis can be used to explain the general approach of counter-terrorism programmes. It has shown that through a Foucauldian lens, counter-terrorism programmes are techniques of government that function to control how people behave. The next section will consider previous studies that have analysed the safeguarding status of Prevent through the same Foucauldian theoretical framework.

6.2.2 PREVENT SAFEGUARDING AS A POLITICAL RATIONALITY AND GOVERNMENTAL TECHNOLOGY

Prevent is contextualised under the rubric of safeguarding across many fields. The Department of Education, for example, has argued since the introduction of the CTSA 2015 that ‘protecting children from the risk of radicalisation should be seen as part of schools’ and childcare providers’ wider safeguarding duties’.¹¹² NHS England has situated the Prevent duty under safeguarding, arguing that it is within the ‘pre-criminal space’.¹¹³ This section will consider the utility of governmentality theories to explore Prevent and its implementation as a safeguarding duty.

According to Rose and Miller, political rationalities (a) have an epistemological character,¹¹⁴ (b) are connected with ‘welfarism’,¹¹⁵ and (c) have a moral form.¹¹⁶

¹¹² The Department of Education, ‘The Prevent duty: Departmental advice for schools and childcare providers’ (June 2015) p5,

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/439598/prevent-duty-departmental-advice-v6.pdf> accessed 04 August 2022

¹¹³ NHS England, ‘Prevent Training and Competencies Framework’ (July 2017) p6

<<https://www.cumbria.gov.uk/eLibrary/Content/Internet//537/6683/6687/17169/42977111912.pdf>> accessed 08 April 2023

¹¹⁴ The epistemological character of political rationalities describes ‘the nature of the objects governed ... [and] the persons over whom government is to be exercised’. Nikolas Rose and Peter Miller (n102) p179

¹¹⁵ ‘Welfarism’ is a key part of a political rationality which, according to Rose and Miller, aims to boost national growth and wellbeing ‘through the promotion of social responsibility and the mutuality of social risk’: Ibid, p192; Paul Dresser (n94) p139

¹¹⁶ Political rationalities also have a moral form, as they are supposed to rectify a social problem by formulating and justifying idealised schemata. Political discourse expounds upon what are the ‘fitting powers and duties’ and their ‘proper distribution’ between authorities in order to rectify the problem. Nikolas Rose and Peter Miller (n102) pp 178 - 179

Presenting Prevent as safeguarding fulfils all three criteria and firmly locates the underlying logic of Prevent as a political rationality. Hence, Dresser argues that the epistemological character of Prevent is connected with welfarism as it reconstructs vulnerability to radicalisation as 'ideological abuse', situates the vulnerable person as a victim, and then frames Prevent as a safeguarding mechanism.

The moral form of a political rationality expounds upon what are the 'fitting powers and duties' and their 'proper distribution' between authorities in order to rectify a given problem. This moral form takes the shape of critical reflection, which distances from, and remediates, existing forms of practices and understanding that have lost their coherence, inventing new ways of acting and understanding.¹¹⁷ Dresser argues that when framed as a political rationality, the Counter Terrorism and Security Act 2015 can be seen to have a moral character which distances it from existing 'socio-demographic profiling and fixed indicators which pre-figure terrorism' and adopts a new way of understanding and practicing Prevent as a safeguarding duty.¹¹⁸ Political discourse now distances itself from 'linear conveyor belt factors' and outlines that there is no single path for those on their way to becoming terrorists; instead, as we have seen in section 6.1.3, it encourages the use of 'professional intuition' to identify individuals 'at risk'.¹¹⁹

Moreover, depoliticising and labelling Prevent as safeguarding fulfils another crucial role, according to Dresser it serves as an 'operational linkage between and across diverse authorities'.¹²⁰ This ties neatly in with Rose and Miller's political rationality concept, according to which duties are distributed between authorities to rectify a problem and thus become a way of connecting diverse agents.¹²¹ Thus, a political rationality first 'problematizes' a particular trait of the social world and then offers a rhetorical framework to respond to that problem through government programmes.¹²²

¹¹⁷ Stephen J. Collier, 'Topologies of Power: Foucault's Analysis of Political Government beyond 'Governmentality', (2009) 26 *Theory, Culture & Society* 78, p80

¹¹⁸ Paul Dresser (n94) p142

¹¹⁹ *Ibid*, p142

¹²⁰ *Ibid*, p142

¹²¹ Nikolas Rose and Peter Miller (n102) p178; Paul Dresser (n94) p143

¹²² Paul Dresser (n94) p143

The result of this is the formation of a ‘complex assemblage of diverse forces’.¹²³ Prevent, Dresser argues, is also a complex heterogeneous assemblage that does not always function coherently. Dresser identifies certain aspects that make these heterogeneous entities seem to function together: (a) the entities have a significant degree of autonomy in how they implement Prevent objectives, (b) they are separated spatially and temporally, (c) they have a duty to respond to a localised risk, rather than following the dictates of a central authority, (d) Prevent training is also localised through processes and policies.¹²⁴

In short, Dresser sees the presentation of Prevent as a safeguarding duty to be a technology of government that first problematises and then seeks to address the social problem of radicalisation of vulnerable individuals. The concept of government technologies is said to make other actors accept its problematisations, goals and projects and thus enrolls them as allies.¹²⁵ Through the depoliticised language of safeguarding, Dresser argues, professional partners are enrolled as allies of the government’s counter-terrorism programme.¹²⁶ The next section considers how the implementation of Prevent as a safeguarding duty in schools has led to its acceptance.

6.2.3 APPARENT ACCEPTANCE OF PREVENT

In 2015 and 2016, Busher, Choudhury and Thomas conducted an extensive study consisting of 70 semi-structured interviews across 14 schools and colleges, semi-structured interviews with Prevent practitioners in eight local authorities, a national online survey with 225 school and college staff, and a series of focus-group discussions with individuals from national teaching unions, local and national government departments and national Muslim, black and minority ethnic civil society organisations.¹²⁷ Apart from some unease relating to the Prevent duty, Busher *et al.* did not find the depth or breadth of opposition to the Duty from school staff that they had

¹²³ Nikolas Rose and Peter Miller (n102) p183

¹²⁴ Paul Dresser (n94) pp145 - 146

¹²⁵ *Ibid*, p150

¹²⁶ *Ibid*, p150

¹²⁷ Joel Busher, Tufyal Choudhury and Paul Thomas, ‘The Introduction of the Prevent Duty into Schools and Colleges: Stories of Continuity and Change’, in Joel Busher and Lee Jerome (eds), *The Prevent Duty in Education*, (Palgrave Macmillan Cham, 2020) p35

anticipated.¹²⁸ This was a surprising find considering the large-scale opposition to the Duty when it was first introduced.¹²⁹

One of the key reasons for the acceptance was found to be the perception of the duty as a continuation of the existing professional practice of safeguarding that required little or no change.¹³⁰ The construction of continuity with existing professional practices helps explain why many respondents regarded the duty as a proportionate response even when the number of people involved in activities that are proscribed by legislation are so few.¹³¹

Busher *et al.* found a number of factors that facilitated the narrative of continuity with existing professional practices: first, respondents found that the procedures used to meet the Prevent-related obligations were similar in practice to other safeguarding procedures; second, the possible signs for vulnerable people being drawn into terrorism were similar to signs of vulnerable people in other safeguarding areas; and third, a 'self-assessment' of staff revealed that they were already largely addressing the requirements of the Duty, allowing them to incorporate the Duty into their existing practice and culture, with little change.¹³² As such, respondents in this study saw their Prevent duty as an extension to their other safeguarding duties, with some describing it as 'subtle vigilance' as opposed to a duty and others arguing it required 'little more than subtle adjustments, or even just relabelling of what they were already doing'.¹³³ According to Busher *et al.*, the combined effect of these factors is likely to have played a significant role in the lack of opposition to the duty.¹³⁴ Arguably, presenting Prevent

¹²⁸ Ibid, p35

¹²⁹ See Chapter One section 1.5.2.

¹³⁰ Joel Busher, Tufyal Choudhury and Paul Thomas, 'The enactment of the counter-terrorism 'Prevent duty' in British schools and colleges: Beyond reluctant accommodation or straightforward policy acceptance', (2019) 12 Critical Studies on Terrorism 440; also see: Joel Busher, Tufyal Choudhury and Paul Thomas (n127) p35

¹³¹ Joel Busher, Tufyal Choudhury and Paul Thomas, 'The enactment of the counter-terrorism 'Prevent duty' in British schools and colleges: Beyond reluctant accommodation or straightforward policy acceptance', (2019) 12 Critical Studies on Terrorism 440

¹³² Joel Busher, Tufyal Choudhury and Paul Thomas (n127) pp39 - 40

¹³³ Ibid, p39

¹³⁴ Joel Busher, Tufyal Choudhury and Paul Thomas (n131)

as safeguarding, which is a well-established and a non-controversial duty in many areas, has the effect of discouraging critical reflection on the purpose of Prevent.¹³⁵

Pettinger's study, which interviewed Prevent practitioners, also confirms this finding. He argues that whilst the narrative around the justification for Channel programmes rests on imagining apocalyptic futures of terror, surprisingly, such narratives are largely absent from implementation of Prevent, as practitioners see their roles as safeguarding and not as terrorism prevention or related to violence.¹³⁶ The banal implementation of Prevent has persuaded many 'that it is only a safeguarding mechanism, that its logic is far from malign'.¹³⁷ As such, practitioners situate their role as 'operating through protective mechanisms [rather] than as a security apparatus'.¹³⁸

This finding is also confirmed by Heath-Kelly and Strausz in their study of how the Duty is implemented in the health sector. Heath-Kelly and Strausz argue that since Prevent is located in a 'pre-criminal space' according to NHS England,¹³⁹ it makes persuading healthcare professionals to comply easier, because it can be argued that little harm can be done to the referred person as they will not obtain a criminal record or penalty.¹⁴⁰ Healthcare workers are encouraged to report extreme views so that support can be provided to 'vulnerable' people as opposed to criminalising them.¹⁴¹ The appropriation of Prevent as safeguarding and radicalisation as abuse can be seen as an endeavour to entice frontline agencies and workers to warm to Prevent as the rubric of safeguarding reduces dissonance and resistance.¹⁴² Hence, the study conducted by Heath-Kelly and Strausz also confirmed that framing Prevent as safeguarding did lead to the successful rollout of the Prevent duty in the public sector and that although the majority of those

¹³⁵ Tom Pettinger (n75) p131

¹³⁶ *Ibid*, p135

¹³⁷ *Ibid*, p135

¹³⁸ *Ibid*, p136

¹³⁹ NHS England (n113) p6

¹⁴⁰ Charlotte Heath-Kelly and Erzsebet Strausz (n77) p97

¹⁴¹ Charlotte Heath-Kelly, Dr Erzsébet Strausz (n53)

¹⁴² Paul Dresser (n43) p616

surveyed were not entirely convinced of its status as safeguarding, they approved of the Duty.¹⁴³

In addition to safeguarding, Busher *et al.*'s study found that the relative absence of professional opposition could also be due to other factors, such as reluctant accommodation and acceptance of the duty, as it is enforced as a legal requirement accompanied by the risk of sanctions for non-compliance.¹⁴⁴ The acceptance could also be a result of radicalisation being viewed as a 'significant' risk that 'could happen to anyone' and it was 'better to be safe than sorry'.¹⁴⁵

In summary, empirical research by Busher *et al.*, Heath-Kelly and Strausz, and Pettinger has shown that presenting Prevent as a safeguarding duty has helped in enrolling NHS and teaching staff in schools and colleges as allies in counter-terrorism programmes. However, the status of Prevent as a clear safeguarding duty remains contested within the same body of research, as the next section will demonstrate.

6.2.4 CRITICAL ANALYSIS OF PREVENT'S STATUS AS SAFEGUARDING

Pettinger argues that unlike safeguarding in other areas, Prevent sees subjects as not only vulnerable people who need support, but also at the same time as risky; hence, society needs protection from them.¹⁴⁶ Busher *et al.* posit that Prevent safeguarding involves a significant deviation from 'traditional' safeguarding, which concerns protecting the vulnerable rather than protecting society from what the vulnerable might do.¹⁴⁷ Compounding the concept of vulnerability with Prevent, albeit through safeguarding, poses the risk of silencing and pathologising those who are seen as

¹⁴³ Charlotte Heath-Kelly and Erzsebet Strausz (n77) p106

¹⁴⁴ One of the respondents in their study recalled their senior management telling them: 'This is a duty and we have to implement it, and if we don't implement it, the college could be closed down. So, there's your facts, okay?'. See: Joel Busher, Tufyal Choudhury and Paul Thomas (n127) p37

¹⁴⁵ Joel Busher, Tufyal Choudhury and Paul Thomas (n131); also see: Joel Busher, Tufyal Choudhury and Paul Thomas (N127)

¹⁴⁶ Tom Pettinger, (N75) p119

¹⁴⁷ Joel Busher, Tufyal Choudhury and Paul Thomas (n131)

vulnerable instead of engaging with them and understanding their practices as possible forms of dissent.¹⁴⁸

Heath-Kelly and Strausz found that their interviewees acknowledged the misfit between safeguarding under Prevent and other forms of safeguarding.¹⁴⁹ The safeguarding duty for the healthcare sector, as established by the Care Act 2014, accords protection to ‘those with care and support needs’, who are unable to protect themselves ‘as a result of those needs’ against the risk of experiencing abuse or harm.¹⁵⁰ However, safeguarding under Prevent is not limited to ‘those with care and support needs’. Rather, it extends across the entire population, which, in the words of Heath-Kelly and Strausz, ‘drives a wedge between Prevent and safeguarding’.¹⁵¹ The difference between the two types of safeguarding was worded by one general practitioner as follows, ‘when you do safeguarding, the person sat in front of you is your main concern because you’re trying to protect that person. Whereas, with this, you’re protecting the state from that person’.¹⁵² Arguably, safeguarding has shifted focus from being welfare orientated to being security orientated under Prevent.¹⁵³

Presenting Prevent as safeguarding, which is a well-established and a non-controversial duty in many areas, has three problematic effects according to Pettinger: first, it discourages critical reflection of the purpose of Prevent; second, it reduces the threshold of risk to banal behaviours and signs; and third, it rescinds the agency of those who question some of the things Prevent is trying to protect, such as fundamental British values.¹⁵⁴ However, Busher *et al.* argue that these narratives of continuity between safeguarding and Prevent are not straightforward, and are more unstable than they might seem in some instances. For example, some respondents reported that in contrast to previous safeguarding expectations, the intensified security and reputational risk had

¹⁴⁸ Ibid; also see: O’Donnell A, ‘Securitisation, Counterterrorism and the Silencing of Dissent: The Educational Implications of Prevent’, (2016) 64 British Journal of Educational Studies 53, p53

¹⁴⁹ Charlotte Heath-Kelly and Erzsebet Strausz (n77) p90

¹⁵⁰ Section 42, Care Act 2014

¹⁵¹ Charlotte Heath-Kelly and Erzsebet Strausz (n53) p21

¹⁵² Charlotte Heath-Kelly and Erzsebet Strausz (n77) p95

¹⁵³ Charlotte Heath-Kelly and Erzsebet Strausz (n53) p22

¹⁵⁴ Tom Pettinger (n75) p131

created anxiety about 'missing something'. They found that '33% across the whole sample [and] 54% among the senior leaders' pointed out that their workload had increased 'a lot' or 'a moderate amount'.¹⁵⁵

In summary, this section has shown that critical counter-terrorism studies use a Foucauldian analysis to argue that counter-terrorism programmes are 'techniques of government' that try to control how people behave in a discreet manner that looks like self-regulation. According to critical counter-terrorism scholars such as Heath-Kelly, the radicalisation narrative is a technique that is used to induce a particular type of behaviour from Muslim communities. Similarly, Dresser argues that the safeguarding narrative has the characteristics of a 'political rationality', which seeks to justify the Prevent duty as a technique of government. The safeguarding narrative first frames radicalisation as ideological abuse and then seems to be concerned with the welfare of the 'vulnerable', who are viewed as victims. According to Dresser, Pettinger, and Heath-Kelly and Strausz, this framing of the Duty is a tactical manoeuvre on two grounds: (a) it serves as an operational linkage between diverse authorities and (b) it helps enrol professional partners as allies in the counter-terrorism programme. Empirical studies conducted by Dresser, Pettinger and Heath-Kelly have all shown that the depoliticised language of safeguarding has persuaded many to accept the Duty. Presenting it as support for the vulnerable as opposed to criminalisation reduces resistance to the Duty. However, empirical research has demonstrated that the status of Prevent as a safeguarding duty is not straightforward. Whereas safeguarding in other areas views vulnerable people as needing support, under Prevent safeguarding, the vulnerable are also seen as risky. Not only do they need protection, society also needs protection from them. Thus, the focus of safeguarding under Prevent is not limited to the welfare of the vulnerable individual, but it is security orientated. As a result, Pettinger argued, framing Prevent as safeguarding reduces critical reflection and shifts the threshold down to banal behaviours.

6.3 SITUATION OF THIS STUDY AND THE GAP

As is clear from the literature review chapters, Prevent has been a contentious policy that has attracted a lot of attention and debate. This establishes an urgent need to

¹⁵⁵ Joel Busher, Tufyal Choudhury and Paul Thomas (127) p44

assess how the Prevent policy is being implemented by various responsible bodies. This chapter has shown that in response to this urgent need, academics have conducted empirical research on the implementation of Prevent by the NHS, schools, colleges, Prevent police and practitioners. Academics involved in this research, such as Dresser, have argued that further evidence-based research is still needed on how the Prevent duty is 'realised, (re)configured and performed'.¹⁵⁶ Joel Busher and Lee Jerome point out the scarcity and infancy of available data regarding the implementation of the Duty with which to evaluate how practices are taking shape and how its enactment is evolving over time.¹⁵⁷ The focus of Busher *et al.*'s research has been on early years, primary, secondary and further education, but not the higher education sector.

Considering the level of critical debate regarding the impact of Prevent on freedom of speech, it is important to analyse the implementation of Prevent in the higher education sector, where there may be tension between the requirements of the Prevent duty and the requirements of freedom of speech and academic freedom duties.¹⁵⁸ Section 5.3.1 of Chapter Five examined the tension between the requirements of freedom of speech and academic freedom on the one hand and the requirements of the Prevent duty on the other. Moreover, external speaker events, even if controversial, play an important role in contributing fresh ideas to debates in universities, as established in section 5.2.2 of Chapter Five. They provide students the opportunity to hear and debate alternative views, which helps avoid established perspectives becoming the norm. The tension between the duties, combined with the importance of external speaker events, establishes the need to examine the practical implementation of the Prevent duty for external speaker events at universities. Some research can be found on the effects of the Prevent duty in universities, but that research does not consider the perspectives of

¹⁵⁶ Dresser argues, 'In considering Prevent, it would be fruitful for future research to explore the ways counter-radicalisation is actualised, implemented and performed. Doing so will help a more nuanced account of Prevent to be realised'. See: Paul Dresser (n94) p155; Paul Dresser, 'Prevent Policing in Practice – The Need for Evidenced-Based Research', (2019) 15 Policing 716

¹⁵⁷ Joel Busher and Lee Jerome, 'Introduction' in Joel Busher and Lee Jerome (eds), *The Prevent Duty in Education: Impact, Enactment and Implications* (Palgrave Macmillan, 2020), pp3 - 4

¹⁵⁸ In the context of universities, speech is protected through two other domestic pieces of legislation: the Education Reform Act 1988, which protects academic freedom, and the Education (No. 2) Act 1986, which protects freedom of speech.

UM, who are responsible for balancing the seemingly conflicting duties of freedom of speech and Prevent.

One example is a study by Guest *et al.* titled 'Re/presenting Islam on Campus', led by a number of academics.¹⁵⁹ Carried out in the immediate aftermath of the introduction of the Prevent duty, during the academic year 2016 – 2017, the study was composed of a national survey of 2,022 students from across 132 universities; interviews and focus groups with 253 staff and students at four universities and two Muslim colleges that provided degree programmes. Whilst the aim of the project may have been to analyse the experiences of Muslims in UK universities and how their non-Muslim peers viewed them, it provided great insight into the impact of Prevent in the higher education sector from a student perspective. The project showed that students and staff expressed concerns about the impact of Prevent on freedom of speech and its ability to limit academic enquiry and to 'demonise Muslims',¹⁶⁰ with one student arguing 'religiosity is becoming ... criminalised'.¹⁶¹

Likewise, research by Perfect records the proceedings of a private consultation in 2016 with 33 'experts' from the higher education sector.¹⁶² This study analyses the views of members from various organisations on freedom of speech for staff, students and visiting speakers in universities in England and Wales. The report found that many participants held the view that Prevent had a 'chilling effect' on freedom of speech,

¹⁵⁹ Mathew Guest, Alison Scott-Baumann, Sariya Cheruvallil-Contractor, Shuruq Naguib, Aisha Phoenix, Yenn Lee, Tarek Al-Baghal, 'Islam and Muslims on UK University Campuses: perceptions and challenges', (2020) Durham University, SOAS, Coventry University and Lancaster University <<https://eprints.soas.ac.uk/33345/1/file148310.pdf>> accessed 08 April 2023

¹⁶⁰ *Ibid*, p43

¹⁶¹ *Ibid*, p41

¹⁶² The 'experts' included: lecturers and staff from various universities; members and heads of various organisations, such as Rights Watch, MEND, Higher Education Policy Institute, Department of Education, National Union of Students, Open Justice Society, Quilliam Foundation, Muslim Council of Britain, Henry Jackson Society; and the Independent Reviewer of Terrorism Legislation. The list of the participants can be found in the annexe 1 of the report prepared by Simon Perfect. See: Simon Perfect, 'Freedom of Speech in Universities - Monday 31 October – Tuesday 1 November 2016 Report', [2017] College of St George in partnership with Centre of Islamic Studies SOAS, <<https://www.stgeorghouse.org/wp-content/uploads/2017/03/Freedom-of-Speech-in-Universities-Report.pdf>> 29 November 2022

whilst some rejected this view or argued that it was justified given the level of threat on campus.¹⁶³ The relevant findings of the report produced by Perfect are analysed in various sections of this project.¹⁶⁴

Unlike schools and the NHS, universities have to balance the requirements of the Prevent duty with freedom of speech and academic freedom duties, which is unique to the higher education sector. Given that many 'experts' in Perfect's study seemed to think that free speech was impacted by Prevent, it shows that there is tension between the two duties, which requires further investigation. The serious concerns raised by the 'Re/presenting Islam on Campus' project regarding Prevent's impact on free speech also highlight the importance and need for further research into the implementation of Prevent in universities. Although the 'Re/presenting Islam on Campus' project takes into consideration student and staff views on the impact of Prevent, it does not consider the views of those who are duty bound to implement the Duty. Similarly, Perfect's study does not assess how UM try to balance the two duties, although it does provide a good starting point for such further research. Hence, previous studies have not assessed the implementation of Prevent for external speaker events at universities through the lens of UM, who are responsible for its implementation. This project seeks to fill this gap in literature and situates itself within that developing field of literature.

As such, this project sits in between the studies conducted by Guest *et al.* and Perfect relating to universities, on the one hand, and the critical terrorism studies conducted by Dresser, Pettinger, and Heath-Kelly and Stausz, studying risk management and the status of Prevent as a safeguarding duty, on the other. This project also sits neatly next to the empirical study conducted by Busher *et al.* on views of staff members regarding the implementation of Prevent in schools and colleges.

Although Busher *et al.* found that there was widespread acceptance of Prevent within schools and colleges, Dresser argues that further research is required to ascertain whether this 'transpires into effective counter-radicalisation or simply demonstrates a

¹⁶³ Ibid, p19

¹⁶⁴ See: sections 1.4.1 and 1.4.1.1 in Chapter 1; sections 5.3.2.1, 5.3.5.3, and 5.3.5.4 in Chapter 5

culture of compliance'.¹⁶⁵ Hence, in addition to the theories of governmentality and the affect theory, which are used by previous risk-related studies, this project will also use sociological concepts such as 'symbolic compliance' and 'street-level bureaucracy' to analyse the accounts of university administration staff regarding implementation compliance to the Prevent duty for external speaker events. This study, therefore, adds not only a new empirical dimension, but also a new theoretical dimension to the textual critiques centred on the analysis of policy documents. The next section will explore literature and theories that explain how organisations interpret law and shape policies to show compliance.

6.4 ORGANISATIONS AND COMPLIANCE

Chapters Two and Three have shown that the underlying concepts of the Prevent narrative and logic, such as extremism and radicalisation, are ambiguous and contentious. Chapter One has shown that universities are duty bound by the Counter-Terrorism and Security Act 2015 to comply with the requirements of the Prevent duty, which is monitored by the OfS.¹⁶⁶ This raises the question: 'how do universities implement and demonstrate compliance with a legal duty that is full of ambiguity?' In order to answer this question, this project utilises literature and theories that analyse how organisations construct meaning out of, and implement, ambiguous law. This section will in turn explore 'legal endogeneity', 'symbolic compliance', 'crowding out theory', 'rational cheater model', 'reactance' and 'street-level bureaucracy', as theoretical tools that can be used to analyse compliance with Prevent and freedom of speech.

6.4.1 LEGAL ENDOGENEITY

Lauren Edelman and Shauhin Talesh argue that rather than analysing the nature of organisations' compliance through the dichotomy of compliance versus non-compliance, it is better understood by 'a processual model in which organizations

¹⁶⁵ Paul Dresser, 'Prevent Policing in Practice – The Need for Evidenced-Based Research', (2019) 15 Policing 716

¹⁶⁶ Office for Students, 'Counter-Terrorism – The Prevent Duty'

<<https://www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/counter-terrorism-the-prevent-duty/how-we-monitor/>> accessed 26 December 2022

construct the meaning of both compliance and law'.¹⁶⁷ Organisations do not simply respond to top-down regulation; rather, they are involved in the construction of legal meaning.¹⁶⁸ Hence, Stephen Ball *et al.* have shown that policies are not simply implemented as envisaged by the drafters, rather they are interpreted and even modified by staff in the contexts of their professional and institutional practices.¹⁶⁹

Similar to organisations, which exist and interact within a broader field that includes suppliers, customers and competitors, legal bodies such as courts and legislators also exist within legal fields.¹⁷⁰ These fields may overlap, helping the flow of ideas across fields, especially through lawyers, who interact on both sides and serve as 'interpreters, monitors, entrepreneurs, transformers, activists and catalysts'.¹⁷¹ Hence, notions of rational and fair compliance develop and diffuse throughout various organisational fields and influence thinking in legal fields.¹⁷² Edelman and Talesh argue that just like judges, legislators may also incorporate institutionalised conceptions and practices into law.¹⁷³ Thus, the conceptualisation of compliance by organisations shapes the understandings of judges and legislators and eventually the meaning of law.¹⁷⁴ Edelman characterises the process of how the meaning of law is structured by organisations that are supposed to be regulated by the same law as 'legal endogeneity'.¹⁷⁵

In the context of universities and external speaker events, the statutory guidance for higher education bodies states, 'the RHEB [relevant higher education body] clearly needs to balance its legal duties in terms of both ensuring freedom of speech and

¹⁶⁷ Lauren B. Edelman and Shauhin A. Talesh, 'To comply or not to comply – that isn't the question: how organizations construct the meaning of compliance', in Christine Parker and Vibeke Lehmann Nielsen (Eds), *Explaining Compliance: Business Responses to Regulation* (Edward Elgar, 2011) p103

¹⁶⁸ *Ibid*, p114

¹⁶⁹ See: Stephen J Ball, Meg Maguire and Annette Braun, *How Schools Do Policy : Policy Enactments in Secondary Schools* (Abingdon: Routledge 2012) pp2 – 3

¹⁷⁰ Lauren B. Edelman and Shauhin A. Talesh (n167) p104

¹⁷¹ *Ibid*, p105

¹⁷² *Ibid*, pp104 – 105

¹⁷³ *Ibid*, p104

¹⁷⁴ *Ibid*, p114

¹⁷⁵ *Ibid*, pp 104 – 105

academic freedom, and also protecting student and staff welfare'.¹⁷⁶ However, the guidance is also clear that they have discretion in how to comply with the duties. Compliance is only achieved if 'properly thought through procedures and policies are in place ... [and] these procedures and policies are properly followed and applied'.¹⁷⁷ However, it further argues, 'this guidance does not prescribe what appropriate decisions would be – this will be up to institutions to determine, having considered all the factors of the case'.¹⁷⁸ Hence, the Higher Education Funding Council for England (HEFCE) specified that '[a]s autonomous bodies, it will be for providers [of higher education] to decide how best to implement their responsibilities'.¹⁷⁹ It is argued that since universities are responsible for drafting their own 'properly thought through procedures and policies' and decide on what are 'appropriate decisions', it allows them scope to develop the meaning of compliance to the Duty.

Furthermore, monitoring bodies rely upon 'good practice' as it develops in the higher education sector. It was acknowledged by HEFCE, the first monitoring body, that Prevent was a 'live and dynamic area of government policy'; hence, it gathered data on 'good practice' as it developed to share it with other providers of higher education.¹⁸⁰ This approach of sharing 'good practice' is also visible in the 'What works' programme of the OfS, the current Prevent monitoring body for higher education providers.¹⁸¹ HEFCE and

¹⁷⁶ Home Office, 'Statutory guidance: Prevent duty guidance: for higher education institutions in England and Wales', (Updated 1 April 2021) para 8 <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 05 December 2022

¹⁷⁷ Ibid, para 5

¹⁷⁸ Ibid

¹⁷⁹ HEFCE, 'The Prevent duty Monitoring framework for the higher education sector', (November 2015/32) para 25 <<https://webarchive.nationalarchives.gov.uk/ukgwa/20160106171216/http://www.hefce.ac.uk/pubs/year/2015/201532/>> 05 December 2022

¹⁸⁰ HEFCE, 'Updated framework for the monitoring of the Prevent duty in higher education in England' (September 2016/24) para 76 <https://dera.ioe.ac.uk/28319/1/HEFCE2016_24.pdf> accessed 05 December 2022

¹⁸¹ Office for Students, 'Prevent duty: Framework for monitoring in higher education in England 2018 – 19 onwards' (OfS 2018.35, 12 September 2018) para 108

OfS reports even highlight practices that are developing in various higher education institutes as case studies.¹⁸² Hence, the meaning of compliance with the statutory duties of Prevent and Freedom of Speech is largely dependent upon the ‘good practice’ developed in the higher education sector by the same bodies that are regulated by those statutory duties – thus fitting with Edelman’s concept of ‘legal endogeneity’.

Next, this section will explore the theory of symbolic compliance, as academics such as Helen Fenwick have posited:

The imprecise phraseology of the Guidance documents ... [may be] providing a space that some [higher education institutes] can rely on in order to give the impression of adhering to their Prevent duty, while in reality making little attempt to do so in any meaningful fashion.¹⁸³

In order to assess whether, due to the imprecise phraseology, universities are just appearing to comply with the Prevent duty instead of actually complying, this project uses Edelman’s concept of ‘symbolic compliance’. The next section provides a detailed account of symbolic compliance.

6.4.2 SYMBOLIC COMPLIANCE

According to Edelman and Talesh, legal endogeneity may foster forms of compliance that are more symbolic than they are substantive or a solution to real problems.¹⁸⁴ ‘Symbolic compliance’ structures are organisational responses to legal environments as

<https://www.officeforstudents.org.uk/media/3e9aa5d3-21de-4b24-ac21-18de19b041dc/ofs2018_35.pdf> accessed 05 December 2022

¹⁸² See for example: HEFCE, ‘Analysis of Prevent annual reports from higher education providers for activity in 2015-16’ (August 2017/11); OfS, ‘Monitoring of the Prevent duty 2016-17 progress report and future development’, (OfS 2018.27) <https://www.officeforstudents.org.uk/media/160fe2df-d737-419c-8071-19fa2dab0ee4/ofs2018_27.pdf> accessed 05 December 2022

¹⁸³ Helen Fenwick, ‘Critiquing approaches to countering extremism and terrorism via Prevent’, (2019) Commission for Countering Extremism <<https://www.gov.uk/government/publications/critiquing-approaches-to-countering-extremism-via-certain-preventive-measures>> accessed 05 December 2022

¹⁸⁴ Lauren B. Edelman and Shauhin A. Talesh (n167) p115

a way of showing attention to legal norms, whilst informally cultures and structures often deviate substantially from formal policies.¹⁸⁵

Laws are often ambiguous and require compliance without detailing how compliance should be achieved.¹⁸⁶ Edelman *et al.* analysed the effects of ambiguity in law on compliance in their study of how organisations in the USA complied with Title VII of the 1964 Civil Rights Act. They conducted semi-structured interviews with complaint handlers in 10 organisations, between 1990 and 1991. The Act created administrative and legal avenues for handling and redressing complaints about equal employment opportunities. Edelman argued that Title VII of the 1964 Civil Rights Act s703 (a) (1) requires organisations not to discriminate on the grounds of an ‘individual’s race, color, religion, sex, or national origin’, but the meaning and scope of this statement is unclear.¹⁸⁷ For example, if an organisation only hires people that have graduated among the top 25% of their high school class, is this discrimination against minorities from poorer economic backgrounds, as they are not likely to have achieved high grades?¹⁸⁸ The ambiguity first requires ‘affirmative action officers’¹⁸⁹ to interpret the law when drafting their organisations’ compliance with the law. Edelman *et al.* argue that as long as the meaning of law is not settled and debates remain unresolved, organisations have a wide scope to determine compliance.¹⁹⁰ However, compliance decisions are not likely to be neutral, but products of highly political processes. The nature and extent of compliance largely depends not only upon the initiative and agenda of members of organisations responsible for overlooking compliance, but also the political climate

¹⁸⁵ Lauren B. Edelman, Linda H. Krieger, Scott R. Eliason, Catherine R. Albiston, and Virginia Mellema, ‘When Organizations Rule: Judicial Deference to Institutionalized Employment Structures (2011) 117 *The American journal of sociology* 888

¹⁸⁶ Gillian Gualtieri, ‘Symbolic Compliance and Student Concerns: Legal Endogeneity and Title IX at American Colleges and Universities’, (2020) 35 *Sociological Forum*

¹⁸⁷ Lauren B. Edelman, Stephen Petterson, Elizabeth Chambliss and Howard S. Erlanger, ‘Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers’ Dilemma’, (1991) 13 *Law & Policy* 73, p76

¹⁸⁸ *Ibid*, p93

¹⁸⁹ Affirmative action officers, in Edelman *et al.*’s study were persons within organisations that were responsible for managing their organisations compliance with equal employment laws and regulations.

¹⁹⁰ Lauren B. Edelman, Stephen Petterson, Elizabeth Chambliss and Howard S. Erlanger (n187) p75

within their organisations.¹⁹¹ In such circumstances, creating symbolic structures, such as anti-discrimination rules and policies, can be attractive, as organisations can point to structural change as evidence of compliance, whilst making little or no change in behaviour.¹⁹² For example, in the context of corporate risk management strategies for dealing with products liability law, Joseph Sanders argued that when there is uncertainty in law, organisations construct a “process defense” which is ‘directed more toward defence than toward safety [of products] processes per se’.¹⁹³

According to Christine Oliver, organisations may use concealment tactics to disguise nonconformity to rules behind a façade of compliance.¹⁹⁴ They may, for example, establish elaborate plans and procedures but engage in ‘window dressing’, ritualism or symbolic acceptance, without intending to implement them.¹⁹⁵ Organisations may attempt to reduce external inspection, scrutiny and evaluation by detaching their technical activities from formal structures and thus from external contact, which is referred to as ‘buffering’.¹⁹⁶

This section has shown that ambiguity in law can create opportunities for organisations to show symbolic compliance instead of substantive compliance in any meaningful sense. The next section will explore what makes symbolic compliance an attractive way of dealing with laws and regulation.

6.4.2.1 WHY ORGANISATIONS MAY CHOOSE SYMBOLIC COMPLIANCE

One of the reasons for symbolic compliance may be the diverse and conflicting pressures on organisations. The process of making meaning in organisations is fraught with politics, as organisations and their employees, customers and competitors may compete for meanings that are favourable to them.¹⁹⁷ The ideas of compliance may conflict not

¹⁹¹ Ibid, 73

¹⁹² Ibid, 75

¹⁹³ Joseph Sanders, 'Firm Risk Management in the Face of Product Liability Rules' (1989) 11 Law & Pol'y 253, p268

¹⁹⁴ Christine Oliver, 'Strategic Responses to Institutional Processes' (1991) 16 The Academy of Management review 145, p154

¹⁹⁵ Ibid

¹⁹⁶ Ibid, 155

¹⁹⁷ Lauren B. Edelman and Shauhin A. Talesh (n167) p114

only with other actors in the organisational field, but also with actors in the legal field, including monitoring bodies. For example, tension may be created because the primary logic in legal fields may emphasise 'individual rights and impose constraints upon ... power', whilst the primary logic in organisational fields may emphasise 'managerial discretion and authority as a means of achieving efficient and effective production or provision of services'.¹⁹⁸ According to Edelman and Tatesh, only those forms of compliance '...that preserve managerial authority and discretion, while simultaneously realising, or appearing to realise, the legal principle of due process' acquire 'an aura of rationality in both organisational and legal fields...'.¹⁹⁹

Pressure to behave in a particular way could also be a result of institutionalised rules and norms. Although in the initial stages of compliance with new laws organisations may be diverse in their response, over time they become more homogeneous through a process called 'isomorphism'.²⁰⁰ Paul DiMaggio and Walter Powell describe isomorphism as 'a constraining process that forces one unit in a population to resemble other units that face the same set of environmental conditions'.²⁰¹ Isomorphism can be coercive, which stems from 'formal and informal pressures exerted on organisations by other organisations ... and cultural expectations in society'.²⁰² Such pressures may force organisations to adopt certain policies and processes, even if they are 'largely ceremonial'.²⁰³ For example, organisations may designate certain members with job roles and titles to fend off allegations of discrimination, and manufacturers may adopt certain controls to appear to be conforming with environmental regulations and laws.²⁰⁴ Isomorphism requires the adoption of institutionalised rules which help organisations

¹⁹⁸ Ibid, p105

¹⁹⁹ Ibid, p106

²⁰⁰ Paul J. DiMaggio and Walter W. Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organisational Fields', (1983) 48 (2) *American Sociological Review* 147 p148

²⁰¹ Ibid, p149

²⁰² Ibid, p150

²⁰³ Ibid

²⁰⁴ Ibid

to appear legitimate to internal participants, stakeholders, the public and governing bodies, which in turn increases their resources and survival capabilities.²⁰⁵

However, in order to function efficiently, at times technical activities that are particular to a certain organisation and its environment can be inconsistent with institutionalised rules that may be couched in high levels of generalisation.²⁰⁶ For example, a general curriculum mandated by the government for schools may not be suitable for particular students in a special needs school.²⁰⁷ Likewise, the adoption of institutionalised rules may increase expenditure in an organisation.²⁰⁸ Hence, John Meyer and Brian Rowan argue that organisations ‘buffer their formal structures ... by building gaps between their formal structures and actual work activities’ in order to maintain ceremonial conformity, on the one hand, and to avoid additional costs and any impact on efficiency, on the other hand.²⁰⁹ Likewise, organisations that are legally bound by anti-discrimination law, often create internal dispute resolution and complaints procedures ‘to buffer or insulate’ their core activities from legal threats, which may avoid legal costs, save time and avoid harm to the reputation of the organisation.²¹⁰ Having internal dispute resolution and complaints procedures does not necessarily mean that they are compliant with anti-discrimination law, but it does insulate their core actions and may reduce cost.²¹¹

Edelman *et al.* found that given the ambiguity in law, organisations were ‘strongly motivated to take defensive stance[s] to avoid litigation’ and the mere existence of an internal complaints procedure was seen to be sufficient in creating the appearance of non-discrimination.²¹² Having an internal complaints procedure symbolised all of the basic elements of due process – the right to appeal, legality and fairness – to employees

²⁰⁵ John W. Meyer and Brian Rowan, ‘Institutionalised Organisations: Formal Structure as Myth and Ceremony’, (1977) 83 *American Journal of Sociology* 340, p352

²⁰⁶ *Ibid*, p355

²⁰⁷ *Ibid*

²⁰⁸ *Ibid*

²⁰⁹ *Ibid*, p341

²¹⁰ Luran B. Edelman, Howard S. Erlanger and John Lande, ‘Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace’, (1993) 27 *Law and Society Review* 497, p499

²¹¹ *Ibid*

²¹² *Ibid*, p512

and those external to the organisation.²¹³ The symbolic value of a complaints procedure gave employers legitimacy and authority, making it harder for employees to challenge employment practices.²¹⁴ Edelman *et al.* found that where discrimination existed alongside symbolic procedures, it was harder for employees to convince external agencies of discriminatory treatment.²¹⁵ They also showed that complaint handlers used internal dispute-resolution procedures to protect themselves from lawsuits, or liability if a lawsuit was to occur.²¹⁶

According to Edelman *et al.*, there could be several factors that determine how organisations comply with ambiguous laws, which by virtue of being ambiguous require organisations to determine their meaning, scope and method of compliance.²¹⁷ One factor is the possible conflict not only between public opinion and judicial decisions, but also between multiple 'clienteles' and their varied interests, such as the claims of women or minorities of special status, due to common discrimination, whilst white male members may claim 'reverse discrimination'.²¹⁸ Another factor is the possible conflict between law and organisation goals.²¹⁹ Additionally, concerns of promotion to higher management positions may also influence how compliance is achieved, for example, junior managers may show compliance in ways that favour organisational goals rather than law when there is a conflict between the two, in order to seek promotion to senior management positions.²²⁰

In summary, the above factors often influence organisations to develop 'symbolic responses' that indicate compliance in a formal manner, but do 'not necessarily remedy

²¹³ *Ibid*, p530

²¹⁴ *Ibid*, p530

²¹⁵ *Ibid*

²¹⁶ *Ibid*, p521

²¹⁷ Lauren B. Edelman, Stephen Petterson, Elizabeth Chambliss and Howard S. Erlanger, 'Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers' Dilemma', (1991) 13 (1) *Law & Policy* 73, p77

²¹⁸ *Ibid*

²¹⁹ *Ibid*

²²⁰ *Ibid*

social problems' and are 'largely ceremonial'.²²¹ This is done through the lawyers who draft their policies, making their structures, policies and procedures superficially look like legal rules and providing them with an aura of rationality.²²² Since organisations create the appearance of compliance, even when they fail to fix the problems the law was designed to remedy, judges and monitoring bodies often fail to recognise that these procedures are ineffective.²²³

Compliance with the Prevent duty was monitored initially by HEFCE and now by the OfS. Hence, when analysing compliance from the empirical findings, this project uses a number of theories to assess the possible effects of monitoring on compliance. The next section will explore 'crowding-out theory', 'rational cheater theory' and 'reactance theory' as viable ways to understand the effects of monitoring.

6.4.3 EFFECTS OF MONITORING

As trust and loyalty grows between the principal and the agent in an organisation,²²⁴ Bruno Frey argues that agents acquire sentiments towards the organisations in which they work, which leads to an implicit psychological contract between the principal and the agent.²²⁵ However, increased monitoring by the principal can be perceived by the agent as an indicator of distrust and as a unilateral breaking of the implicit psychological contract.²²⁶ This perception by the agent leads to a reduction of work effort, which in

²²¹ Gillian Gualtieri (n186); Paul J. DiMaggio and Walter W. Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organisational Fields', (1983) 48 *American Sociological Review* 147

²²² Lauren B. Edelman, Linda H. Krieger, Scott R. Eliason, Catherine R. Albiston, and Virginia Mellema (n185)

²²³ *Ibid*, 902

²²⁴ According to the terminology of economists, the 'agent is someone who has to do something; the principal is the 'boss' who wants it done, but for some reason is unable to do it, cheaply or well enough, himself'. See: Peter Sinclair, 'Advantages and Drawbacks of Bonus Payments in the Financial Sector', in Gerard Caprio, Philippe Bacchetta, James R. Barth, Takeo Hoshi, Philip R. Lane, David G. Mayes, Atif R. Mian, Michael Taylor (ed), *Handbook of Safeguarding Global Financial Stability*, (Academic Press 2013) p259

²²⁵ Bruno S. Frey, 'Does Monitoring Increase Work Effort? The Rivalry with Trust and Loyalty', (1993) 31 *Economic Inquiry* 663

²²⁶ *Ibid*, p663

psychological terms is referred to as the 'crowding out of work effort'.²²⁷ Likewise, effort may also become crowded out when motivation is changed. People may be intrinsically self-motivated to perform certain jobs without receiving any rewards. Psychologists such as Edward L. Deci have found that when money is used as external reward for work, it reduces intrinsic motivation, as money seemed to 'buy off' the intrinsic motivation.²²⁸ Hence, if motivation is lost either due to monitoring, leading to the breakdown of trust and loyalty, or due to external motivation replacing the intrinsic motivation, effort is said to be 'crowded out'.²²⁹

The crowding-out theory can be contrasted with the 'principal-agency theory', also referred to as the 'rational cheater model', which assumes that workers in organisations pursue their own interests and exploit opportunities to reduce their work burdens as long as they are not caught or punished by the principal.²³⁰ Workers are seen as 'rational cheaters' who, after weighing the consequences, only shirk²³¹ when the 'perceived marginal benefit of doing so exceeds the marginal cost'.²³² In response, organisations implement monitoring and introduce incentivising monetary policies to make shirking unprofitable.²³³ Daniel Nagin *et al.* conducted empirical research with a large telephone solicitation company that had 16 call centres.²³⁴ At each call centre, the call operators had a salary increase with each successful phone solicitation, which created an incentive for call operators to falsely increase the number of solicitations. To curb this

²²⁷ Ibid, p664

²²⁸ Edward L. Deci, 'Effects of Externally Mediated Rewards on Intrinsic Motivation', (1971) 18 *Journal of Personality and Social Psychology* 103, p114

²²⁹ Ibid; Bruno S. Frey (n225) p666; David Dickinson and Marie-Claire Villeval, 'Does monitoring decrease work effort? The Complementarity between agency and crowding-out theories', (2008) 63 *Games and Economic Behaviour* 56

²³⁰ Bruno S. Frey (n225) p664

²³¹ This project uses Jung and Hounghbedji's definition of shirking as 'putting less effort than the desired level'. See: Seeun Jung and Kenneth Hounghbedji, 'Shirking, Monitoring, and Risk Aversion', (2014) halshs-00965532, < <https://shs.hal.science/halshs-00965532/document> > (accessed 15 December 2022)

²³² Daniel S. Nagin, James B. Rebitzer, Seth Saunders and Lowell J. Taylor, 'Monitoring, Motivation, and Management: The Determinants of Opportunistic Behavior in a Field Experiment' (2002) 92 *The American Economic Review* 850

²³³ Ibid

²³⁴ Ibid

opportunistic behaviour, monitoring was introduced by the employer, who called back some of those who were solicited. When employees were recruited, they were informed that their activities would be monitored via 'callbacks' made by the management. In accordance with the rational cheater model, Nagin *et al.* found that a sizable fraction of the employees sharply increased the 'rate at which they engage in malfeasance' when the level of monitoring was dropped.²³⁵ Hence, monitoring is said to increase the level of effort of workers.

Frey argues that the 'disciplining effect' of monitoring raising work effort and the 'crowding-out effect' of monitoring reducing work effort can coexist.²³⁶ When relationships between the principal and the agent are close and personal, psychological contracts matter the most and loyalty and trust play a greater role.²³⁷ In such situations, monitoring is likely to have a crowding-out effect of effort.²³⁸ In contrast, in abstract and neutral relationships, where personal factors are unimportant and trust and loyalty do not play a big role, monitoring is likely to have a disciplining effect and increase effort.²³⁹

Moreover, since it is possible to view heavy monitoring and any associated severe consequences of violations of rules as threats that limit the freedoms of organisations, it is also worth assessing whether symbolic compliance could be a rebellious reaction, known as 'reactance' in psychology literature.²⁴⁰ The 'theory of reactance' was first proposed by Jack Brehm, who argued that when a person's freedom is threatened, they experience a motivational arousal to restore that freedom.²⁴¹ The reactance theory suggests that balance is desirable in a person's thoughts and feelings, and in the case of

²³⁵ *Ibid*, p870

²³⁶ Bruno S. Frey (n225) p 664

²³⁷ *Ibid*, p 666; David Dickinson and Marie-Claire Villeval, 'Does monitoring decrease work effort? The Complementarity between agency and crowding-out theories', (2008) 63 *Games and Economic Behaviour* 56

²³⁸ Bruno S. Frey (n225), p 666; David Dickinson and Marie-Claire Villeval (n237)

²³⁹ Bruno S. Frey (n225), p 666; David Dickinson and Marie-Claire Villeval (n237)

²⁴⁰ David R. Just and Andrew S. Hanks, 'The Hidden Cost of Regulation: Emotional Responses to Command and Control' (2015) 97 *American journal of agricultural economics* 1385, p1387; Mona A. Clee and Robert A. Wicklund, 'Consumer Behavior and Psychological Reactance' (1980) 6 *The Journal of consumer research* 389

²⁴¹ Jack W. Brehm, *A Theory of Psychological Reactance* (Academic Press 1966)

disequilibrium, a person will try and restore the balance, in particular if that cognitive disequilibrium was a result of a threat to freedom.²⁴² The amount of reactance is influenced by the significance of the freedom and the perceived magnitude of the threat.²⁴³ For example, James Pennebaker and Deborah Sanders conducted an experiment by placing placards in male restrooms.²⁴⁴ Some signs demanded that students did not write on the walls, whilst other signs simply encouraged them not to write on the walls. Pennebaker and Sanders found that the intensity of reactance corresponded to the magnitude of the threat.²⁴⁵ The toilets that had the placards with the greater threat had the most graffiti, whilst the toilets with less threatening placards had less graffiti.²⁴⁶

Although earlier studies focused on the application of reactance theory to the behaviours of individuals, studies have now expanded the use of reactance theory to understand organisational change. Dmitriy A. Nesterkin, for example, argues that new laws and rules often require organisational change that necessitate employees undergo cognitive restructuring, adaptation and deviation from their existing preconceived ideas, which undermines their autonomy.²⁴⁷ When organisations eliminate 'old behaviours' and impose 'new behaviours', they limit the freedom of employees.²⁴⁸ The extent to which those rules and laws undermine the autonomy of employees influences the extent to which they experience reactance and try to restore their lost freedom.²⁴⁹

²⁴² Christopher Peterson, 'A Theory of Cognitive Balance: Psychological Reactance. A Theory of Freedom and Control. Sharon S. Brehm and Jack W. Brehm. Academic Press, New York, 1981. Xiv, 432 Pp. \$36.50' (1982) 216 *Science* (American Association for the Advancement of Science) 615

²⁴³ Christina Steindl, Eva Jonas, Sandra Sittenthaler, Eva Traut-Mattausch, and Jeff Greenberg, 'Understanding Psychological Reactance' (2015) 223 *Zeitschrift für Psychologie* 205

²⁴⁴ James W. Pennebaker and Deborah Yates Sanders, 'American Graffiti: Effects of Authority and Reactance Arousal' (1976) 2 *Personality & social psychology bulletin* 264

²⁴⁵ *Ibid*

²⁴⁶ *Ibid*

²⁴⁷ Dmitriy A. Nesterkin, 'Organizational Change and Psychological Reactance' (2013) 26 *Journal of organizational change management* 573

²⁴⁸ *Ibid*, p574

²⁴⁹ *Ibid*

Mandating change can drive members of an organisation to engage in the restricted behaviour even more, which has been termed as the 'boomerang effect'.²⁵⁰

Furthermore, even if the mandated changes are not seen as a threat, a number of studies and experiments have shown that when decision makers are faced with options, they tend to stick with the status quo – which is maintaining the current position or the previous decision.²⁵¹ This is because producing behavioural change in members of an organisation is often cognitively difficult, whilst sticking to the status quo, even if it is inferior to alternatives, is mentally less laborious.²⁵² Since the consequences of change are usually less well known, complex and risky compared to the consequences of not changing,²⁵³ it has the potential to push organisations to avoid actual change.²⁵⁴ In such cases, monitoring requirements can potentially be satisfied by symbolic change, whilst at the same time avoiding the uncertainty of real change.

6.4.3.1 CHALLENGES IN CLAIMING SYMBOLIC COMPLIANCE

There are a number of challenges in attempting to establish that an organisation is symbolically compliant with laws and regulations. First, workers that are shirking are not likely to acknowledge such actions, especially if there are consequences associated with shirking or symbolic compliance. Rational cheaters are most likely to employ shirking when it is hard or expensive to detect.²⁵⁵ Hence, such conclusions need to be deduced from their behaviour or speech indirectly, which raises concerns of researcher bias where the findings may be subjective constructs of the researcher. Moreover, even if

²⁵⁰ Ibid, p577

²⁵¹ William Samuelson and Richard Zeckhauser, 'Status Quo Bias in Decision Making' (1988) 1 *Journal of risk and uncertainty* 7; Russell B. Korobkin, 'The Status Quo Bias and Contract Default Rules' (1998) 83 *Cornell law review* 608; Raymond S. Hartman, Michael J. Doane and Chi-Keung Woo, 'Consumer Rationality and the Status Quo' (1991) 106 *The Quarterly journal of economics* 141

²⁵² Dmitriy A. Nesterkin (n247) p576

²⁵³ Henrich R. Greve, 'Performance, Aspirations, and Risky Organizational Change' (1998) 43 *Administrative science quarterly* 58

²⁵⁴ Dmitriy A. Nesterkin (n247) p575

²⁵⁵ Nagin DS and others, 'Monitoring, Motivation, and Management: The Determinants of Opportunistic Behavior in a Field Experiment' (2002) 92 *The American economic review* 850

shirking or symbolic compliance is established, it is hard to determine whether the cause is monitoring, or other unobserved features in the organisation.²⁵⁶

Second, the optimal level of compliance with law in an organisation is a balance of the direct and indirect costs²⁵⁷ associated with monitoring and the benefits of compliance, such as reduction in the risk of sanctions and reputational harm.²⁵⁸ In such a balance of variables, it is difficult to determine the level of compliance. The dichotomy of symbolic compliance and substantive compliance may be insufficient in explaining organisational responses to new law and regulation.²⁵⁹ Hence, Eunmi Mun argues that depending upon 'internal logic', organisational responses to law may vary between substantive compliance, symbolic compliance and negative compliance.²⁶⁰

Negative compliance is when organisations disengage with laws by adopting new practices so that the law is no longer applicable.²⁶¹ They manipulate their internal environment to subvert the legal requirements.²⁶² For example, Mun found that when the Japanese Equal Employment Opportunity (EEO) law, first enacted in 1985 and then revised in 1997, required Japanese firms to incorporate their existing female employees into their core workforce,²⁶³ some firms responded by eliminating women from the payroll altogether and externalised female labour.²⁶⁴ Thus, those firms did not need to worry about complying with the 1997 EEO law, as the primary source of the violation – women workers – no longer existed.²⁶⁵ On the contrary, some organisations may wish

²⁵⁶ Daniel S. Nagin, James B. Rebitzer, Seth Saunders and Lowell J. Taylor (n232)

²⁵⁷ Indirect costs may include forgoing potentially unlawful but profitable transaction. Ibid

²⁵⁸ Donald C. Langevoort, 'Monitoring: The Behavioral Economics of Corporate Compliance with Law' (2002) 2002 Columbia Business Law Review 71, p79

²⁵⁹ Eunmi Mun, 'Negative Compliance as an Organizational Response to Legal Pressures: The Case of Japanese Equal Employment Opportunity Law' (2016) 94 Social forces 1409

²⁶⁰ Ibid

²⁶¹ Ibid

²⁶² Ibid

²⁶³ Women were generally excluded from the core of workforces as they were believed to be more likely to quit for family reasons, and thus were also excluded from higher pay and promotion opportunities.

See: Ibid, p1415

²⁶⁴ Ibid, p1430

²⁶⁵ Ibid, 1418

to comply substantively with the law, even if it is costly. Mats Alvesson and Andre Spicer argue that at times universities may use management systems for superficial reasons, such as 'others are doing it, it will make us look world class'.²⁶⁶ Likewise, in order to minimise legal sanctions and reputational harm, organisations may want their employees to be compliant with legal requirements.²⁶⁷

The third challenge in determining compliance stems from organisations being able to redefine what it means to comply, as argued by Mun.²⁶⁸ For example, in the United States, the 1981 Economic Recovery Tax Act was specifically designed to spur employers to create childcare centres in the United States; however, organisations avoided building expensive employer-sponsored childcare centres by creatively interpreting the federal legislation, arguing that employer-based tax breaks²⁶⁹ for employees' childcare expenses should satisfy the legal demand.²⁷⁰

The use of the reactance theory as a lens to understand compliance in an organisation is also limited, as its previous predominant use has been to study the behaviour of individuals. Although Nesterkin has tried to apply the reactance theory to organisations, he acknowledges the lack of empirical research on the role of reactance in organisations.²⁷¹ Moreover, it has been acknowledged by Christina Steindl *et al.* that the reactance theory has not been tested when the abolished freedom cannot be restored.²⁷²

²⁶⁶ Mats Alvesson and Andre Marja Flory Spicer, '(Un)Conditional Surrender? Why Do Professionals Willingly Comply with Managerialism' (2016) 29 *Journal of organizational change management* 29, p32

²⁶⁷ Donald C. Langevoort, (n258)

²⁶⁸ Eumni Mun (n259) p1412

²⁶⁹ Employer-based tax breaks allowed workers to set aside up to \$5,000 of their income each year in a special account to pay for qualified child care expenses, which was not tax deductible. See: Erin L. Kelly, 'The Strange History of Employer-Sponsored Child Care: Interested Actors, Uncertainty, and the Transformation of Law in Organizational Fields' (2003) 109 *The American journal of sociology* 606

²⁷⁰ *Ibid*

²⁷¹ Dmitriy A. Nesterkin (n247) p581

²⁷² Christina Steindl, Eva Jonas, Sandra Sittenthaler, Eva Traut-Mattausch, and Jeff Greenberg (n243)

6.4.4 STREET-LEVEL BUREAUCRACY

Universities have become large, centralised, hierarchical, bureaucratic structures with decision-making powers dominantly consigned at the top level.²⁷³ Benjamin Ginsberg argues that universities are now ‘mainly controlled by administrators and staffers who make the rules and set more and more of the priorities of academic life’.²⁷⁴ For example, senior management at universities are not only responsible for drafting policies and rules concerning the implementation of Prevent and freedom of speech duties for external speaker events, but they are also responsible for overlooking the whole process and making the final decision to approve events.

The efficiency of university hierarchical rules has been criticised by academics such as Ben Martin, who argued that in a fast moving environment that is subject to a plethora of laws and regulations, universities tend to devise overly literal ‘gold-plated’ disproportionate solutions to minor issues, to show that they are adopting best practice, which leads to more burdensome bureaucracy.²⁷⁵ The Government has also acknowledged that universities have seen a major growth in unnecessary bureaucracy, which is a distraction from their core purposes, such as research, education and innovation.²⁷⁶ In this context, members of university management are bureaucrats responsible for delivering crucial university services to students and staff. In order to analyse the role of university management in achieving compliance with the Prevent duty and freedom of speech duty, this project also uses Michael Lipsky’s concept of street-level bureaucracy.

Street-level bureaucrats, according to Lipsky, are those ‘public service workers who interact directly with citizens in the course of their jobs, and who have substantial

²⁷³ Ben R. Martin, ‘What’s happening to our universities?’, (2016) 34 *Prometheus* 7

²⁷⁴ Benjamin Ginsberg, *The Fall of the Faculty: the Rise of the All-Administrative University and Why It Matters* (Oxford University Press 2011) p1

²⁷⁵ Ben R. Martin (n273) p12

²⁷⁶ Department of Education and Department for Business, Energy and Industry, ‘Policy paper Reducing bureaucratic burden in research, innovation and higher education’ (September 2020)

<<https://www.gov.uk/government/publications/reducing-bureaucratic-burdens-higher-education/reducing-bureaucratic-burdens-on-research-innovation-and-higher-education>> accessed 21 December 2022

discretion in the execution of their work', such as teachers, police officers, social workers and other 'public employees who grant access to government programs and provide services within them'.²⁷⁷ This project argues that university management should be treated as street-level bureaucrats, even if universities do not neatly sit within the public or private sector.

The dichotomy of private sector and public sector is insufficient in describing the role of universities. In the UK, a 'Public body is a formally established organisation that is, at least in part, publicly funded to deliver a public or government service, though not as a ministerial department'.²⁷⁸ Although universities in the UK are private charitable bodies according to the Office for National Statistics,²⁷⁹ they carry out an essential service for the public by providing higher education and they receive public funding. Furthermore, universities are increasingly subject to public-sector duties and laws, such as the freedom of information duty and the equality duty, which is set out in the Equality Act 2010 and Human Rights Act 1998. Hence, Peter Knight, the vice-chancellor of the then UCE Birmingham, argued, 'I cannot recall a single item of public-sector legislation that has not been applied automatically, and with little thought, to the universities.'²⁸⁰ Even if universities are private bodies, their management are subject to the same laws as public sector workers. Hence, this project uses Lipsky's idea of street-level bureaucracy to analyse their role in the management of Prevent and freedom of speech duties.

Street-level bureaucrats are constantly the focus of political controversy due to debates on the appropriate scope and focus of government services and the potential impact

²⁷⁷ Michael Lipsky, 'The Critical Role of Street-Level Bureaucrats', in *Street-Level Bureaucracy*, (30th Ann. Ed, Russell Sage Foundation 2010) p 3

²⁷⁸ Cabinet Office, 'Classification of Public Bodies: Guidance for Departments', p5 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/519571/Classification-of-Public_Bodies-Guidance-for-Departments.pdf> accessed 08 April 2023

²⁷⁹ Office for National Statistics, 'Classification Review of Universities in the UK', (31 January 2017) <<https://www.ons.gov.uk/news/statementsandletters/classificationreviewofuniversitiesintheuk>> accessed 08 April 2023

²⁸⁰ Peter Knight, 'So, are universities public or private?', *The Guardian* (20 June 2006) <<https://www.theguardian.com/education/2006/jun/20/highereducation.comment>> accessed 08 April 2023

their services have on citizens.²⁸¹ Lipsky argues that the decisions of street-level bureaucrats, some of which are made on the spot, have a direct and personal effect on citizens.²⁸² Hence, street-level bureaucrats have to face the reactions of the people they serve for the decisions they make, which could be angry responses due to perceived or actual injustices.²⁸³ As a result of their discretion in how services are provided and government programs are run, Lipsky argues that street-level bureaucracy is not impersonal decision making, as citizens expect not only a sympathetic hearing but also a favourable response from those who can impact their lives.²⁸⁴ Moreover, the concept of 'public interest' also allows citizens to expect a benign or favourable orientation from street-level bureaucrats.²⁸⁵ Marcia Meyers and Vibeke Nielson argue that 'positive discrimination' by front-line workers is common as they use their discretion to the benefit of the citizens by taking their personal circumstances into account.²⁸⁶

The scope of discretion in implementing government policy and services also depends upon the clarity or ambiguity of the rules and policies.²⁸⁷ Ambiguity in law and policy allows street-level bureaucrats de facto discretion – what they are *informally* allowed to do.²⁸⁸ Meyers and Nielson argue that the more unclear and ambiguous the wording of the policy, the more scope there is for bureaucrats to exert their own understanding and values in the implementation of the policy.²⁸⁹ Hence, street-level bureaucrats can have significant influence over how written policy is performed, which may not always

²⁸¹ Michael Lipsky (277) p 4

²⁸² *Ibid*, p 8

²⁸³ *Ibid*, p 9

²⁸⁴ *Ibid*

²⁸⁵ *Ibid*

²⁸⁶ Marcia K. Meyers and Vibeke Lehmann Nielsen 'Street-Level Bureaucrats and the Implementation of Public Policy', in Jon Pierre and Guy B. Peters, (ed) *The SAGE Handbook of Public Administration* (SAGE Publications Ltd 2012), p311

²⁸⁷ Lars E. F. Johannessen, 'Negotiated Discretion' (2019) 42 *Symbolic interaction* 513, p515

²⁸⁸ *Ibid*

²⁸⁹ Marcia K. Meyers and Vibeke Lehmann Nielsen (n286)

align with the intentions of policy makers, giving them the label of 'informal policy makers'.²⁹⁰

However, Johannessen critiques the earlier understanding of street-level bureaucracy, arguing that although the original theory characterises direct interaction with citizens as a key part of street level bureaucracy, it suggests that 'bureaucrats alone translate public policy into actual practice' and it overlooks the 'interactional dynamics of street-level encounters'.²⁹¹ Johannessen posits that a better understanding is that street level discretion is negotiated between the bureaucrat and the client they serve.²⁹² He also views street level bureaucrats as gatekeepers who control access to public services.²⁹³ Johannessen studied the role of triage nurses as street-level bureaucrats in a Norwegian emergency service, who worked under competing expectations from patients and management, due to restricted resources.²⁹⁴ Since queuing was commonplace at the clinic due to patients using it as a walk-in GP service, patients had to wait for several hours before seeing a physician. Nurses did not have the discretion to deny patients access to the clinic, but they were permitted to 'advise' patients to seek help elsewhere. There was some ambiguity over the scope of what could be regarded as 'giving advice' and how strongly they could phrase their advice. Johannessen found that, due to the face-to-face character of street-level bureaucracy, nurses enacted 'advising' with open-ended negotiation with patients in what seemed like a tug-of-war between them.²⁹⁵ Johannessen argued that although not every encounter in street-level bureaucracy will

²⁹⁰ Lars E. F. Johannessen, (n287) p516; Peter J. May and Soren C. Winter, 'Politicians, Managers, and Street-Level Bureaucrats: Influences on Policy Implementation' (2007) 19 *Journal of public administration research and theory* 453

²⁹¹ Lars E. F. Johannessen (n287) p514

²⁹² Ibid; Lars defines negotiation as:

[I]nteractions involving two or more actors who express disparate views, preferences, and demands, and who attempt to resolve these differences through processes of convincing, persuading, or bargaining with each other. Ibid p517

²⁹³ Gatekeeping is defined as: 'the social processes through which individuals label clients' behavior and subsequently grant or withhold access to resources within particular institutional domains'. Ibid, p518

²⁹⁴ Ibid

²⁹⁵ Ibid, p531

be a negotiation, such as the encounter between a suspect and a police officer, it is a feature in some street-level encounters which earlier theories overlooked.²⁹⁶

Meyers and Nielson also argue that a simple model of 'top-down' political influence or just 'bottom-up' control over policy outcomes is insufficient to explain the complexity of bureaucratic decisions.²⁹⁷ They argue that influences can emerge from a number of factors: from political officials who draft policies, from organisational implementation machinery and resource constraints, and from ideology, individual interests, professional norms and the process through which they construct meaning.²⁹⁸

Lipsky's concept of street-level bureaucracy is a useful tool to understand how university management make decisions regarding events organised by students and staff that include external speakers, some of which may be through face-to-face encounters. It provides grounds to question whether their decisions are a compromise from a tug-of-war with students and staff. It provides grounds to test the various influences that may shape the decisions of university management. The research data in this project will be explored through street-level bureaucracy, symbolic compliance and reactance theory to produce viable explanations of the research findings.

CONCLUSION

Since UM are required to risk-assess external speaker events under Prevent as a safeguarding duty, this chapter set out to explore existing research regarding risk assessment and safeguarding under Prevent, and the theoretical framework that previous studies have used to analyse Prevent. Academics such as Dresser, Amoore and de Geode have shown that risk management under Prevent functions to intervene before any crime has been committed and thus it has a future-orientation. Prevent attempts to make the unknown future risk actionable in the present through 'premediation', by visualising as many futures as possible through media outlets and cultural industries. The visualisations of radicalisation are then depicted as cataclysmic, requiring pre-emptive immediate action in the present.

²⁹⁶ Ibid

²⁹⁷ Marcia K. Meyers and Vibeke Lehmann Nielsen (n286)

²⁹⁸ Ibid

This chapter has also highlighted that research conducted by Dresser, Pettinger, and Heath-Kelly and Strausz has shown that decisions regarding future risk are made using gut feelings and 'professional intuition'. Dresser deploys Massumi's affect theory to argue that gut feelings serve the strategic purpose of standing as trustworthy quasi-evidence in the absence of clearly defined and observable risk indicators. These were simple feelings that people could relate to and easily understand, which in turn reduced critical reflection and dissonance, even when there was conceptual ambiguity. Pettinger's study with former combatants from the Northern Ireland conflict revealed that far from being trustworthy devices, gut feelings were subjective and steeped with bias. Pettinger argued that knowing risky subjects from non-risky subjects under Prevent is speculative guesswork. The participants in Heath-Kelly and Strausz's study on how the Prevent duty is implemented in the NHS also revealed that initially participants claimed that 'professional intuition' was a suitable tool to spot signs of radicalisation, but when they were presented with mildly complex scenarios regarding Middle Eastern politics and war, they lost confidence that they could spot radicalisation. Heath-Kelly and Strausz also found that NHS staff relied upon popular culture from the media for their knowledge regarding indicators of radicalisation, which institutionalises stereotypes and prejudices, and not on official Prevent training.

This chapter has also highlighted that Prevent is presented as a safeguarding duty, which has been critiqued by academics such as Heath-Kelly and Dresser using the theoretical concept of governmentality and the related body of theoretical literature. In Foucauldian terms, Prevent is viewed as a 'technique of governance' that controls how people behave, and the radicalisation narrative is seen as a 'political rationality' that justifies the exercise of power through Prevent. According to Dresser, the depoliticised language of safeguarding allows professionals from other fields, such as teachers and NHS workers, to become allies of the government in countering terrorism. Busher *et al.*'s study on the implementation of Prevent in schools also revealed that one of the main underlying causes for the acceptance of the Prevent duty in schools was its framing as a matter of safeguarding. Heath-Kelly and Strausz's study also confirmed that situating Prevent as safeguarding and in a 'pre-criminal space' made persuading healthcare professionals to comply easier. It encouraged NHS workers to report extreme views so that 'vulnerable' people could be provided with support without criminalising them.

However, Pettinger, Busher *et al.*, Heath-Kelly and Strausz have highlighted the misfit between safeguarding in other areas and safeguarding under Prevent. Prevent not only sees subjects as vulnerable people, but unlike traditional safeguarding it also sees them as ‘risks’ at the same time. Whereas traditional safeguarding protects the vulnerable, Prevent safeguarding protects society from the vulnerable.

This chapter has also identified the gap in literature that this project seeks to fill. It has shown that due to the contentious nature of Prevent, academics have conducted empirical research on the implementation of Prevent by the NHS, schools, colleges, Prevent police and practitioners. Likewise, the research conducted by Perfect and Scott-Baumann analyses Prevent in the higher education sector. However, previous research, including that of Perfect and Scott-Baumann, does not consider how the Prevent duty is being implemented in higher education from the perspective of university senior management, who are duty bound to oversee the implementation of the Prevent duty and to make final decisions regarding the approval of controversial events. Due to the significance of freedom of speech in universities, which are powerhouses that question and challenge received wisdom, it is important to question how UM assess and decide what is risky speech that needs to be banned under Prevent and what is legitimate speech that needs to be protected under the freedom of speech duty. Is the decision based upon gut feelings and intuition or is it based upon a more sophisticated method? This project aims to fill this gap in knowledge by attempting to answer the following sixth sub-question:

What are the approval processes for external speaker events and how are risk assessments carried out and decisions made?²⁹⁹

By taking into account that universities are large bureaucratic organisations, this project adds a new dimension to the research conducted by Perfect and Scott-Baumann. This perspective allows the use of new theoretical ideas – namely ‘symbolic compliance’, ‘crowding-out theory’, ‘reactance theory’ and ‘street-level bureaucracy’, which have previously not been used to analyse the implementation of Prevent for external speakers in universities by university management. This chapter has analysed the

²⁹⁹ This question is explored in Chapter Nine.

strengths and weaknesses of these theories and their usefulness in exploring the research findings of this project.

Chapter Seven

METHODOLOGY

This study can best be described as an explorative socio-legal study, which deploys a social constructivist interpretive framework to analyse and critique the data. The project uses an inductive approach employing qualitative research methods, namely semi-structured interviews and document analysis, to explore the views and experiences of university management (UM) on extremism, radicalisation and the implementation of the Prevent duty for external speaker events. This chapter will first summarise the research questions that have emerged from the gaps in the existing literature that were identified in the opening chapters. Second, it will present a full account of how the research was conducted. Lastly, it will reflect on the challenges and limitations of the methods deployed.

7.1 AIMS AND OBJECTIVES

The overall aim of this project is to shed new light on how the Prevent duty and the duty to protect freedom of speech are interpreted and implemented by UM for external speaker events. In order to address this overarching aim, the project addresses the pertinent questions raised from the analysis of key literature in the first five chapters of the thesis. In this research project, the views and experiences of UM, who have had a role in the implementation of the Prevent duty and drafting relevant university policies, are used to revisit these key issues in the debate, adding a new dimension to the already existing literature. In order to explore these key issues, this project seeks to address the following overarching research question:

How do university management interpret the requirements of the Prevent duty and the freedom of speech duty and what practical implications does it have for external speaker events?

In order to answer this question, the following sub-questions will be addressed:

1. In light of their experiences, do UM consider that universities are breeding grounds for radicalisation and extremism?¹
2. How can the views of UM be reconciled with the competing arguments that universities are either failing to implement the Prevent duty for external speaker events (as advanced by, for example Student Rights/Quilliam), or almost entirely compliant with the Prevent duty (as noted by the Office of Students/Higher Education Funding Council for England)?²
3. How do UM understand the concept of 'extremism' and how is that understanding deployed in their event approval processes?³
4. How do UM understand and implement paragraph 11 of the Prevent duty Guidance for Higher Education (HEPDG) and is there evidence of risk aversion in the implementation of the guidance?⁴
5. Do participants consider that the Prevent duty has had a direct or an indirect chilling effect on freedom of speech in the context of external speaker events?⁵
6. What are the approval processes for external speaker events and how are risk assessments carried out and decisions made?⁶

The need to study this area of law in action stems from the discussions in the extensive literature review, which show that there are serious concerns raised by academics, student groups, civil society organisations and politicians about the possible adverse effect of the Prevent duty on academic freedom and freedom of speech at universities. These concerns are particularly pertinent to external speaker events, where the risks to freedom of speech are said to be severe. Moreover, the practical implementation of the Prevent duty is still developing and little is known about the shape that the law is taking in practice. Therefore, the significance of this project is that it provides insight into how the law is being implemented by universities, drawing on the direct experiences and views of those who are responsible for implementing Prevent for external speaker

¹ This question is explored in Chapter Eight.

² This question is explored in Chapter Thirteen.

³ This question is explored in Chapter Eight and Nine.

⁴ This question is explored in Chapter Ten and Eleven.

⁵ This question is explored in Chapter Ten and Eleven.

⁶ This question is explored in Chapter Nine.

events. The project is explorative in nature and seeks to advance the debate with a new perspective on the issue that is largely absent from the academic literature to date.

7.2 SOCIO-LEGAL STUDY

This project can be situated in the field of socio-legal studies, which are ‘peripatetic interdisciplinary projects’⁷ that borrow theories and concepts from other social sciences. Difficulties can arise when legal concepts are imported into social science or, conversely, when social scientific styles of reasoning are introduced into the law discipline. David Nelken argues that social scientific styles of reasoning can threaten ‘the integrity of legal processes and the values they embody’, and thus impact legal practice.⁸ The problem, as envisaged by Nelken, is concerning conceptualisation. He argues that legal concepts and categories transform when they are imported into social science disciplines, where they are reconceptualised and do not respect ‘the doctrinal definitions of lawyers or even the relevant administrative categories’.⁹ Equally, Stanley Fish argues that when social science concepts are imported into the law discipline, the ‘imported machinery’, as he terms it, ‘will always have the form of its appropriation rather than the form it exhibits “at home”’.¹⁰

Alternatively, academics such as Roger Cotterrell view sociological inquiry into law as ‘valuable and necessary in illuminating the social or historical processes that shape legal doctrine’, which is the most practical way of viewing legal ideas.¹¹ Social-legal approaches view law for the role it plays in ‘creation, maintenance and/or change of the [social] situation’.¹² Likewise, legal ideas are the outcomes of ‘historical, cultural, political or professional conditions which sociological studies are able to describe and

⁷ Emilie Cloatre and Dave Cowan, ‘Indefensible and Irresponsible - Interdisciplinarity, truth and reviewer 2’, in Naomi Creutzfeldt, Marc Mason and Kirsten McConnachie (eds) *Routledge Handbook of Socio-legal Theory and Methods* (Routledge 2020) p98

⁸ David Nelken, ‘Can Law Learn From Social Science?’, (2001) 35 *Israel Law Review* 205, p205

⁹ *Ibid*, p206

¹⁰ Stanley Fish, ‘Being Interdisciplinary Is So Very Hard to Do’, [1989] *Profession* 15, p19

¹¹ Roger Cotterrell, ‘Why Must Legal Ideas Be Interpreted Sociologically?’, [1998] 25 *Journal of Law and Society* 171, p173

¹² David N Schiff, ‘Socio-Legal Theory: Social Structure and Law’ (1976) 39 *Modern Law Review* 287, p289

explain'.¹³ Thus, in response to the issues raised by Nelken and Fish, it can be argued that interpreting legal ideas without recognising the role of law in shaping society, and equally society shaping law, would be to understand them inadequately.¹⁴ The three guiding ideas in socio-legal research were highlighted by Cotterrell as follows: First, law is 'seen as an entity of social phenomenon'; second, it should 'be understood empirically'; and third, it 'must be understood systematically, rather than anecdotally'.¹⁵ Understanding law as an entity of social phenomenon in socio-legal research allows contributions from a wide range of disciplines, not just academic sociology, which provides a very rich view of how law is working. Emilie Cloatre and Dave Cowan point to one of the significant contributions of socio-legal studies, which is that they can highlight 'the gap between formal law and its implementation'.¹⁶ Therefore, the socio-legal approach taken in this project is vital to assessing whether or not there is a gap between the formal Prevent duty as established by the Counter Terrorism and Security Act 2015 (CTSA) and its implementation in universities for external speaker events. It not only provides a rich perspective on how the CTSA is working in a university setting, but also allows investigation of this social phenomenon through thorough empirical techniques that have been developed by disciplines outside law.

7.3 CONSTRUCTIVIST/INTERPRETIVIST APPROACH

Identifying a paradigm helps in structuring a research project, as it defines what to study, why to study and how to study.¹⁷ The paradigm used to define and explore the research questions and analyse the empirical findings in this project is a constructivist/interpretivist paradigm. Unlike a positivist paradigm, according to which there is only one reality and that is knowable, a constructivist/interpretivist paradigm sees multiple socially constructed realities that are understood through a series of

¹³ Roger Cotterrell (n11) p174

¹⁴ Ibid

¹⁵ Ibid, p183

¹⁶ Emilie Cloatre and Dave Cowan (n7) p98

¹⁷ Donatella della Porta and Michael Keating, 'How Many Approaches in the Social Sciences? An Epistemological Introduction', in Donatella della Porta and Michael Keating (eds), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (Cambridge University Press 2008)

interpretations.¹⁸ Classifications, theories and descriptions of the world, from a social constructivist paradigm, are not determined by 'how the world is', but they are convenient and partial ways to understand, represent and explain it.¹⁹ An interpretivist paradigm is very similar in that it views humans as 'meaningful actors', and thus historical events or social phenomena must be understood by looking at perceptions individuals have of the world outside.²⁰

From an ontological perspective, 'reality is ... mind dependent and a personal or social construct'.²¹ Since knowledge of reality is socially constructed or mind dependent, then from an epistemological perspective it is subjective.²² Therefore, the most suitable methodology for research that is based around a constructivist/interpretivist paradigm is one that explores people's experiences and views on reality. This project takes the view that extremism, radicalisation and freedom of speech are personal or social constructs that are mind dependent. The literature review has shown that perceptions of people differ based upon their experience, context, time and space. Thus, the qualitative research methodology and the research questions for this project have been designed to explore the views and experience of UM. In contrast to this study, organisations that the Government has relied upon to establish the need for Prevent in universities, such as Student Rights and Quilliam, take a different approach in their research. By quantifying the number of 'extremist' events and identifying the regular 'radicalisers' that visit campus in their publications, they seem to use a positivist paradigm in which extremism and radicalisation are fixed, objective realities outside the observer's mind that are discoverable and knowable. This also seems to be the view of the Government, which relied upon their research. The data of Student Rights and Quilliam is largely gathered through open-source social media, using what can be described as quantitative research. Therefore, the underpinnings of this project differ

¹⁸ Bagee Chilisa and Barbara Kawulich, 'Selecting a Research Approach: Paradigm, Methodology and Methods', in Claire Wagner, Barbara Kawulich, Mark Garner (eds), *Doing Social Research: A Global Context* (McGraw-Hill Higher Education 2012)

¹⁹ Donatella della Porta and Michael Keating (n17) p24

²⁰ Ibid

²¹ Bagee Chilisa and Barbara Kawulich (n18)

²² Ibid

from the research conducted by Student Rights, not only ontologically and epistemologically, but also methodologically with opposing paradigms.

7.4 QUALITATIVE, QUANTITATIVE OR MIXED METHODS

After establishing the research questions from a social constructivist/interpretivist paradigm, this project uses a qualitative design for its suitability to address the above research questions. The research questions are designed to seek an in-depth understanding of the experiences and views of UM concerning extremism, radicalisation, freedom of speech and how they apply the Prevent duty in the university environment for external speakers. A qualitative design is better suited to address this challenge than a quantitative approach for a number of reasons, which are outlined below.

First, qualitative research is better suited to study 'how phenomena are experienced or constructed in people's everyday activities',²³ since it deals with narrative and textual descriptions of the phenomena.²⁴ Whereas quantitative research is suited to data in the form of numbers, for example assessing the number of times a particular phenomenon occurs.²⁵ Second, quantitative designs, generally, yield a very large pool of data from a large cohort of participants, which cannot be adequately analysed to produce in-depth answers without overwhelming the researchers with information.²⁶ Whereas a qualitative approach has the advantage of providing richer and more in-depth understanding, by using techniques such as interviews and focus groups with fewer participants.²⁷ Third, quantitative research is based upon predetermined, closed-ended responses, whereas qualitative designs use techniques such as semi-structured interviews, which solicit open-ended, non-directive, general responses that allow much

²³ David Silverman, *Doing Qualitative Research* (5th Edition, SAGE Publications 2017)

²⁴ Scott W. Vanderstoep and Deirdre D. Johnston, *Research Methods for Everyday Life, Blending Qualitative and Quantitative Approaches* (San Francisco: Jossey-Bass 2009)

²⁵ Nicholas Walliman, 'Research Methods - the Basics', Routledge 2011

²⁶ Scott W. Vanderstoep and Deirdre D. Johnston (n24)

²⁷ Ibid

more flexibility in exploring values, beliefs, understandings, perceptions and meanings.²⁸ Thus, a qualitative design is more appropriate for this project, which explores the explanations, perceptions and understandings of UM on the Prevent duty and its implementation. Since a PhD project is time restricted, this approach will provide rich data whilst not overwhelming the researcher with high volumes of data.

Moreover, using quantitative methods without having used qualitative methods could be problematic, because at times it may not be clear as to 'what is being quantified'. This is a weakness found in the research by Student Rights, who have quantified the 'number of extremist events' in universities, without assessing UM's perception of 'what is an extremist'. Thus, it is important to first assess how universities view extremism, using qualitative research, before quantifying the number of extremist events that they have allegedly permitted, using quantitative research.

Ranjit Kumar argues that a qualitative-quantitative-qualitative approach, which can be termed mixed methods, is 'comprehensive and worth consideration'.²⁹ For this project that would, first, involve qualitative methods to determine the reasons and explanations behind UM decisions about external speaker events, their method of balancing Prevent and academic freedom and their perception of who is an extremist. In the second phase it would involve the use of quantitative methods to determine the extent of these findings, in other words, the number of universities that these findings relate to. In the final phase, it would adopt further qualitative methods in order to understand and explain the observed pattern. However, employing such a comprehensive approach is beyond the scope of this project and not practical, given the timescale for a PhD. Therefore, this project only focuses on the first part of the 'qualitative-quantitative-qualitative approach'. Thus, it provides a starting point for further research utilising mixed methods to provide further insights in the area.

²⁸ Charles Teddlie and Abbas Tashakkori, *Foundations of Mixed Methods Research, Integrating Quantitative and Qualitative Approaches in the Social and Behavioral Sciences* (SAGE publications 2009)

²⁹ Ranjit Kumar, *Research Methodology-a step by step guide for beginners* (4th Edn Sage Publications, 2014) p133

After having established that this project is socio-legal, uses a constructivist/interpretivist paradigm and employs qualitative research methods, it is important to highlight the precise methods by which data was acquired. It is worth noting that this research did not progress in a linear manner from start to finish; rather, the methods and topic were refined for practical reasons and to manoeuvre around the obstacles faced during the research process.

7.5 INITIAL PROPOSED PLAN AND SUBSEQUENT CHANGES

This section will note the methods used and the process by which this research has changed shape based upon the needs and deficiencies that became apparent during research. Initially, when ethical approval was sought for the research, the proposed study set out to explore the dual narrative around whether or not universities were failing in their Prevent duty regarding external speaker events. As discussed in Chapter One, influential organisations such as Student Rights and Quilliam argue that radicalisation is a problem on campuses and universities are failing in their duty to prevent students being radicalised by allowing ‘extremist’ speakers on campus. On the contrary, the Higher Education Funding Council for England (HEFCE), the then monitoring body, and Office for Students (OfS), the current monitoring body, hold an alternative view that the vast majority of universities have robust processes and fulfil their Prevent obligation.

In order to explore this dual narrative, the research was initially designed using the ‘case study’ method, which is the preferred research method in situations when the main research questions are ‘how’ and ‘why’,³⁰ as it provides an extensive and in-depth description of the case under study. It allows ‘investigators to focus on a “case” and retain a holistic and real-world perspective’.³¹ The cases were six universities and their decision-making processes for external speaker events. In order to get information-rich cases, three universities were selected on the basis that they had been identified by Student Rights as failing to discharge their Prevent duty; and a further three were selected on the grounds that they had been highlighted by HEFCE as successfully

³⁰ Robert K. Yin, *Case Study Research – Design and Methods* (Sage Publications, 2014) p2

³¹ *ibid*, p4

implementing the Prevent duty. It was deemed that a comparison of both types would shed the most light on some of the different approaches universities take in balancing their duties.

The initial proposal involved collation and analysis of three types of data for each case: (1) documentation, which included external speaker policies, Prevent policies, freedom of information requests, and application forms for external speaker events; (2) internet search for advertised events and cancellations; (3) semi-structured interviews with three classes of participants: (i) UM who were charged with developing and overseeing the implementation of the Prevent duty; (ii) members of student unions and societies who have organised events with external speakers; and (iii) external organisations, such as Student Rights and Quilliam. It was thought that semi-structured interviews with all three classes would provide an in-depth understanding of the dual narrative, whilst the documentation and internet-based searches could be used to corroborate the data from the interviews.

Approval for the research was sought from the University Ethics Committee in November 2017, which was declined on three key grounds. The first concern was that UM who were tasked with assessing external speaker events may not exist within university structures. Second, that anonymity must not just be offered but guaranteed to all research participants and their universities. Third, that organisations, namely universities and student unions, must approve that the participants can take part in the study. After subsequent amendments and demonstrating that the 'designated officer' participant class did exist in university structures, the ethical approval was granted in February 2018.

7.6 PROJECT MODIFICATIONS

Initially, the study was designed to be conducted over three phases. Phase one involved obtaining and analysing policies and documents via freedom of information (FOI) requests and online searches; phase two involved interviews with relevant UM; and phase three involved interviews with heads of student societies and student unions. In phase two, the response from the UM class of participants was positive and seven

interviews were conducted with participants from six universities. However, phase three came with difficulties, which led to some alterations.

In phase three, a total of 18 interview requests were sent to heads of student societies, such as the Islamic society, Ahlul Bayt Society and Palestine Society, who were identified from online society Facebook pages. Likewise, student union websites were examined to identify officers who were tasked with approving controversial events of student societies that were escalated to them. As such, eight interview requests were also sent in October 2018 to activities and event managers or coordinators for events from the six cases. A further interview request was also sent to Student Rights. However, most of the participants, including Student Rights, did not respond, whilst others declined the request. There could be many reasons for the lack of willingness to participate, but the sensitivity of the topic, organisational approval and bureaucracy could also be contributing factors.

The research was modified from a case study that focussed on six universities with in-depth data from several layers of participants to research that involved a much larger cohort of participants from the same class of participants, namely the UM who were responsible for implementing, overseeing and taking the final decisions on difficult requests, from a wider sample of universities. In phase two, participants from the UM class had provided rich and vital information on how the duties were implemented and how relevant policies were drafted; thus, extending the number of participants from this class in the third phase allowed the researcher to test whether the views and experiences held by participants in phase two were also shared by UM from other universities or whether there were differences. The following section will attempt to justify the sample of participants.

7.7 DESIGNATED OFFICERS

Unlike quantitative research, where randomisation in selecting a study sample is key to eliminate the risk of bias and to ensure that the sample represents the study population, in qualitative research the sample is selected based on the richness of information it will

provide.³² A search through the online policies of universities revealed that all of the universities had a 'designated officer', sometimes called the 'chief operating officer', who was a member of the management team that was responsible for drafting the relevant policies, overlooking their implementation and taking the final decision on difficult events.³³ Since the focus of the project was on 'universities and their decision-making processes for external speaker events', the relevant designated officers involved in that process were highlighted as the key information holders on the implementation of Prevent in this area. Their views regarding extremism, radicalisation and freedom of speech were deemed to play a key role in how the assessments took place. As such, they were identified as potential participants for the study. The study was not able to collect data on whether or not they had an academic background. Thus, it is not able to analyse whether their background had any influence on their perspectives and actions. Future research in this field can be strengthened by collecting data on the academic background of participants, whilst trying to ensure the anonymity of the participants.

The online policies also revealed that there were potentially other people lower down the chain of hierarchy who would filter through the event requests before escalating difficult requests to the designated officer. However, as their names or job roles did not appear on the online policies, it was difficult to identify these individuals. Moreover, it was not possible to ask the designated officer or any other UM for the names or details of those who handled the requests in the lower levels, due to ethical issues and ensuring the full anonymity that was offered to all participants. Thus, they could not be interviewed. The following is a more detailed account of how consent was sought.

7.8 CONSENT AND FULL ANONYMITY

Consent was sought in the initial email and prior to the interview using an informed consent form. The consent forms are kept secure in a university drawer that is locked, and all email correspondences were deleted. Anonymity was guaranteed to all participants in writing and orally, when requesting consent for participation. The only personal information gathered on the consent form was the name of the participant and

³² Ranjit Kumar (n29)

³³ In this project, they are also referred to as university management (UM).

the email address of those who consented to being contacted after the publication of the study, for the purpose of emailing them a link to the publication. In order to ensure full anonymity, the names of the participants and their universities were removed from all other documentation and transcripts, including indicators such as locality. Vague categories were formed on the size and type of universities in a manner that ensured specific universities or participants were not identifiable. All participants were given a number from 1 to 16, and all information that could lead to participant identification was removed. Extra care and vigilance was observed in all phases of the research to make sure individuals and their institutes were not recognisable.

When dealing with the anonymisation of data, Annukka Vainio suggests that 'identifying information that is not relevant from the perspective of theory and research questions should be excluded when describing the participants'.³⁴ Similarly, Anne Corden and Roy Sainsbury found that out of fear of being recognised, participants did not want personal details attached to their spoken words.³⁵ Reflecting on anonymisation in the context of interview participants with proximity to power or particular professional expertise, Kari Lancaster has noted that the disclosure of information provided by participants, including gender, age and ethnicity, can risk exposing them to 'retaliation ... embarrassment, potential job loss, or compromise organisational partnerships'.³⁶ The analytic categories for answering the research questions of this study were job role, university type, university size and location. Questions of gender, age or ethnicity were not relevant and therefore not recorded or reported. This project does not assume the gender of the participants, due to the sensitive nature of gender recognition and contested debates surrounding it.

³⁴ Annukka Vainio, 'Beyond Research Ethics: Anonymity as "ontology", "analysis" and "independence"' (2013) 13 *Qualitative research* : QR 685, p693

³⁵ Anne Corden and Roy Sainsbury, 'Exploring 'Quality': Research Participants' Perspectives on Verbatim Quotations' (2006) 9 *International journal of social research methodology* 97, p104

³⁶ Kari Lancaster, 'Confidentiality, Anonymity and Power Relations in Elite Interviewing: Conducting Qualitative Policy Research in a Politicised Domain' (2017) 20 *International journal of social research methodology* 93, p99

In order to maintain anonymity, the specific job titles of the participants are not provided and table 7.3 only vaguely indicates the scope of the designated officers. Moreover, the documents from named universities that have been referenced in this project do not indicate that individuals from those universities were among the interviewees. The choice to cite certain university documents was on various grounds: some were typical and reflect the general trend in most universities, including those that took place in this project; others were helpful in making a particular argument or laid out the approval process clearly.

It is worthy of noting that the monitoring responsibility shifted from HEFCE to OfS in April 2018,³⁷ but OfS published its monitoring framework for Prevent for higher education in September 2018, which applies from that point onwards. In phase two, since interviews were conducted in May and June 2018, before the new framework, the experience and views of the participants from phase two should be regarded as a reflection of their compliance under HEFCE's monitoring framework. Although the phase three interviews were conducted from December 2018 until March 2019, after the new framework had been published, participant experience and views can still be regarded as mainly stemming from the HEFCE monitoring framework, as the new framework had only been established a few months prior to the interviews. Moreover, OfS regards the year 2018-19 as the transition period. This is not to argue that the new framework did not have any bearing on the responses of the participants, as some participants made references to OfS monitoring. However, careful consideration was given to the responses in light of the monitoring context during the analysis process. Participants 1–7 were interviewed in phase two and participants 8–16 were interviewed in phase three. Next, this chapter provides a detailed account of the three phases of research.

³⁷ Office for Students, 'Prevent duty monitoring framework Year one evaluation', (OfS 2020.08, published February 2020) p3 <https://www.officeforstudents.org.uk/media/4889c0bf-f6ee-4d73-b84a-6275b9228b83/prevent-monitoring-framework_year-one-evaluation.pdf> accessed 26 October 2020

7.9 PHASE ONE

Freedom of information requests were sent out to the six universities that were identified, requesting their external speaker policy, Prevent policy, freedom of speech policy, application form for external speaker events, and other relevant documentation.³⁸ The freedom of information (FOI) request can be found in **Appendix 1**. See Table 1 in section 7.11 for a breakdown of the documentation and data that was received from FOI requests or retrieved from online searches. The documents were analysed to prepare relevant questions for the semi-structured interviews.

7.10 PHASE TWO

In April 2018, six designated officers from different universities were selected, using the criteria outlined in section 7.5 and via an online policy search on university websites. They were contacted via email and an informed consent form was also attached outlining the research project and its aims, asking them if they would participate in the study. Those who consented to take part in the study were sent a second email requesting an appropriate date, time and place for the interview. The initial email can be found in **Appendix 2** and the informed consent form can be found in **Appendix 3**. Figure 6.1 below illustrates the process of the empirical research.

³⁸ When the project was modified, information requests were sent out to a further fourteen universities.

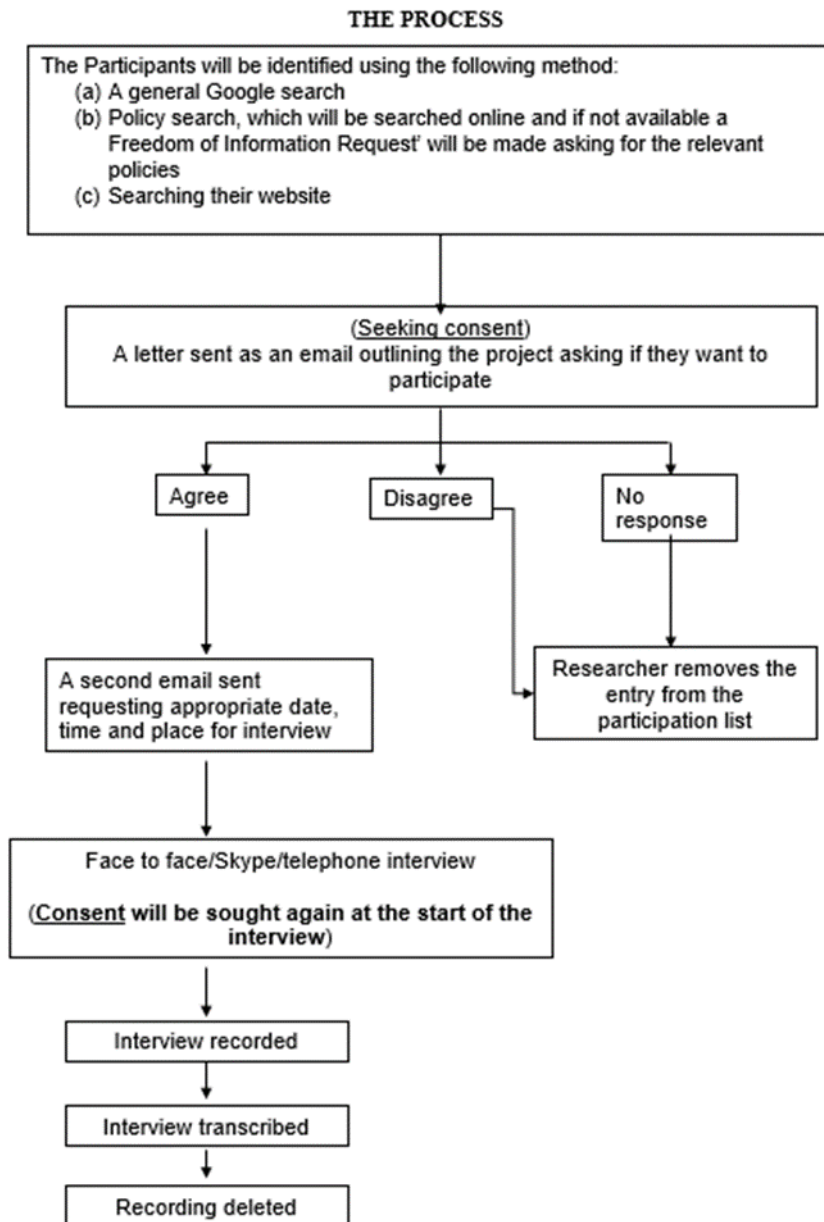


Figure 7.1: A flowchart depicting the process of participant selection and the interview process.

However, not all of the participants accepted or responded; hence more designated officers were identified and contacted until seven participants from six universities accepted the request. FOI requests were sent to the participant universities requesting relevant documentation.³⁹ Semi-structured but fully prepared face-to-face interviews

³⁹ See **Appendix 1** for the FOI Request.

were conducted in the offices of the participants in their universities. The interviews lasted between 60 and 90 minutes. The interviews covered four general areas:

1. The application process for external speaker events and method of risk assessment,
2. Extremism and radicalisation,
3. Balancing the Prevent duty and freedom of speech, and associated challenges,
4. Pressure groups such as media, students and external organisations, and their effects on the process or definition.

During the interview, participants were also handed a piece of paper with four scenarios,⁴⁰ as prompts for them to elaborate on their approach in implementing the Prevent duty and the likely outcome.

Scenario 1: Unknown speaker

Scenario 2: Labelled extremist by mainstream and/or social media

Scenario 3: Labelled extremist by Government

Scenario 4: A person from the proscribed organisations

Likewise, after exploring the participants' views on extremism, participants were also handed another piece of paper with the Prevent definition of extremism, which allowed them to make specific comments on the definition.⁴¹ This gave great insight into how they, themselves, perceived the concept of extremism before expressing their views on the Prevent definition of extremism.

The initial interviews were transcribed and analysed in July, August and September using the NVivo software to pick out key themes and arguments. This initial analysis enabled the researcher to reassess the interview questions and frame discussions during phase three of the empirical research.

⁴⁰ See **appendix 4**

⁴¹ See **appendix 5**

7.11 PHASE THREE

As the heads of student societies, student unions and Student Rights were unwilling to participate in the research, 30 interview requests were sent to designated officers from various universities. Some were pre-92 and others post-92 universities; some had a large student population and others were small in size; some were inner city universities, whilst others were campus based. These invitations resulted in another eight designated officers agreeing to participate in the research. In one of the interviews, the participant brought a colleague who was also involved in assessing external speaker events. Therefore, the total number of interviews conducted in this project was with 16 participants who represented 14 universities. FOI requests were also sent to each of the 14 universities seeking documents and information relevant to external speaker events, such as application forms, freedom of speech and Prevent policies. The tables below illustrate the documentation analysed, the participants and their backgrounds.

Table 7.1: Documentation analysed

Documents	Quantity
Freedom of speech policy	20
External speaker policies	19
Application forms for events	20
Prevent policies	3
Safeguarding policies	4
Guidance issued to student societies or student unions	1
Flow chart of the application process	16
Correspondence from members of student societies or academics highlighting difficulties and problems with the external speaker application process.	0
Prevent risk registers	1
Student union external speaker policies	20

Table 7.2: Breakdown of interview requests sent

Total requests sent	65
Breakdown	
Requests sent	Requests accepted
University designated officers: 40	16
Student union officers: 8	0
Heads of student societies: 16	0
Student Rights: 1	0

Table 7.3: Job roles of designated officers

Total Participants	16
Breakdown	
Job roles	Number of participants
Senior university roles with general and non-specific remits (<i>such as registrar, vice-provost, deputy vice-chancellor, secretary and chief operating officer</i>)	8
Senior university roles with specific remits (<i>such as director of legal services, director of health and safety</i>)	5
Upper-level management roles with specific remits in relation to student life on campus and accommodation	3

Note: Specific job titles are not provided to maintain interviewee anonymity.

Table 7.4: Types of universities that took part

Pre-92 Russell Group	6
Pre-92 Non-Russell Group	7
Post-92 (Former polytechnics)	2

Table 7.5: Student population Size

Student population (under 15,000)	4
Student population (15,000-25,000)	4
Student population (25,000 plus)	6

Table 7.6: Location

Inner city	8
Campus	6

The above tables are a rough guide to the types of universities that took part in the research and the type of documentation analysed. Post-92 universities are former polytechnics that were given university status after the Further and Higher Education Act 1992 abolished the binary divide between polytechnics and universities. However, even after the abolition, universities are not seen as equal on the basis of academic standing, influence and wealth. Clive Hunt argues that leading the informal hierarchal structure are the 24 Russell Group universities, followed by the remaining research-led universities, and lastly the post-92 or new universities.⁴² Thus, Table 7.4 divides the universities that took part into those three categories. In order to preserve the anonymity of the universities, the student population numbers in Table 7.5 are not precise; however, they provide an indicator of the size of the universities that took part.

7.12 SEMI-STRUCTURED INTERVIEWS

The study was not concerned with the frequency or the number of recorded incidents of extremist speakers at universities, but rather how universities assessed the risk of extremism; how they interpreted the definition of extremism and radicalisation; and the experience of UM in implementing the Prevent duty. Semi-structured interviews allowed an in-depth and an extensive enquiry into these issues.

⁴² Clive Hunt, 'Teachers' to 'academics': the implementation of a modernisation project at one UK post-92 university', (2016) 41 *Studies in Higher Education* 1189

The use of semi-structured interviews proved crucial as it combined the benefits of structured and unstructured interviews. It provided flexibility to formulate and raise issues on the spur of the moment and allowed exploration by digging deeper into situations, issues and problems, whilst having some structure in the questioning assured that the conversation remained on topic and that the questions were related to the objectives of the study. Furthermore, some prepared questions allowed uniform information, which assured compatibility of findings. It is also possible that participants associate more than one meaning to their experiences but when questioned only express one.⁴³ Thus, open-ended questions and semi-structured interviews allowed the researcher the flexibility to probe further responses from the participants and allowed the participants to add to their earlier answers.

To ensure that the prepared questions related directly to the objectives of the study, the objectives and research questions were clearly identified and the semi-structured interview questions were drafted based on the information required to answer the main research question and address the objectives of the study.

7.13 DATA ANALYSIS

Data generated from the interviews was transcribed by the researcher and the recordings were deleted. In stage one of the analysis, the transcripts were examined and all names, dates and other information that could be used to identify the participants or their universities was removed. Once the transcripts were fully anonymised, they were analysed using the NVivo 12 software. The transcripts were coded using an inductive approach where statements were drawn together into clusters, called nodes in NVivo. The codes were then analysed and organised around a number of themes that emerged from the interviews. These were grouped to make five main themes, which later became the results chapters:

1. Prevent concepts – extremism and radicalisation
2. Event approval process
3. Prevent and risk averseness

⁴³ David Silverman, *Doing Qualitative Research* (5th Edition, SAGE Publications 2017)

4. Direct impact of Prevent on freedom of speech
5. Indirect chilling effect of Prevent on freedom of speech

The comments and statements inside each theme were examined to form narratives around each theme.

7.14 LIMITATIONS AND DEFENCE

There are a number of limitations that must be acknowledged for this type of research. First, since qualitative research is not as rigid, structured and sequential as quantitative methods, it is difficult to replicate for the purposes of verification, unlike quantitative research. Additionally, even if the same participants were interviewed a second time by replicating the study, it is possible they may adopt different views or that their circumstances require them to give a different response. The second limitation, as identified by Robert M. Emerson, is that it is possible that the participants may 'have knowledge and experience that they cannot articulate', which could lead to distorted and over-simplified accounts.⁴⁴ A related problem to this is that the account provided by the participant may be 'intended to make the system meaningful to an outsider', which can differ from explanations that 'make the action meaningful to the actors themselves or to other actors in the same situation'.⁴⁵ Additionally, qualitative researchers 'rarely adopt a stance of being sponges whereby they simply absorb subjects' interpretations',⁴⁶ more often their observations are filtered through their own theoretical perspectives.⁴⁷ Third, it is also worth considering the 'demand characteristics', which is a concept from psychology that refers 'to participants being aware of what the researcher is trying to investigate, or anticipates finding, and what

⁴⁴ Robert M. Emerson, 'Observational Field Work', (1981) 7, *Annual Review of Sociology* 351, p356

⁴⁵ *Ibid*, p356

⁴⁶ Alan Bryman, *Quantity and Quality in Social Research* (Routledge and Unwin Hayman 1988) p73

⁴⁷ Murphy E, Dingwall R, Greatbatch D, Parker S, Watson P, 'Qualitative research methods in health technology assessment: a review of the literature', (1999) 2 *Health Technology Assessment*

this implies for how participants are expected to behave'.⁴⁸ In other words, participants try and second-guess what the researcher is after and respond accordingly.⁴⁹

Extremism, radicalisation and Prevent can be very sensitive topics to discuss and some participants did hold strong views on the subject. The sensitivity of the topic combined with semi-structured interviews, which are self-reports of the responsible UM on their own compliance of the Prevent duty, raises some key concerns about validity: (a) participants may not be candid and open in their responses; (b) they may have exaggerated certain aspects to portray their own work or their organisations favourably; (c) they may have just provided the answers according to what they perceived the researcher was looking for; and (d) the researcher's interests and perspectives may have shaped the interpretation of the interview data. This next section will highlight some of the steps taken to reduce these concerns surrounding validity, as well as providing a defence for the sample size.

7.14.1 FRANKNESS

In order to facilitate candidness and openness within the interviews, the research did not address whether the participants, themselves, hold extremist views, but rather focused on participant views on what constitutes extremism or radicalisation, and their approach in dealing with extremism, radicalisation and the Prevent duty more generally. Similarly, personal sensitive issues were not discussed with participants. However, all participants were informed that they were not obliged to answer particular questions, and they could terminate the interview at any time. Additionally, to reduce any potential concern that participants could jeopardize their job or university by what they say, they were given assurances of confidentiality and full anonymity. Participants were willing to admit a range of mistakes from previous events and difficulties they had faced in

⁴⁸ Jim McCambridge , Marijn de Bruin, John Witton, 'The Effects of Demand Characteristics on Research Participant Behaviours in Non-Laboratory Settings: A Systematic Review', (2012) 7 Plos ONE e39116, p1 < <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0039116>> accessed 12 December 2020

⁴⁹ Peter G. Aubuchon and Karen S. Calhoun, 'Menstrual cycle symptomatology: the role of social expectancy and experimental demand characteristics' (1985) 47 Psychosomatic Medicine 35

approving event requests for external speakers. Such responses are good general indicators of their openness and truthfulness.

In structured interviews participants may only produce superficial and cautious responses due to the rigidity of tight-structured interview questions.⁵⁰ Hence, semi-structured interviews with open-ended questions were used to allow flexibility to the researcher and the participants in probing and responding. This approach provided a relaxed feeling to the interview, which made it possible for the participants to be candid and the researcher to ask follow-up questions.

7.14.2 EXAGGERATION

The possibility of exaggeration during self-reporting is difficult to avoid; however, triangulation of information using online documentation and policies attained through FOI requests were compared with the narrative of the participants. Moreover, the participants were also asked to provide examples of events, which could be searched online and compared to their self-reporting. Nonetheless, the purpose of this comparison and triangulation of information was not to verify the conformity of participants' narratives with some external objective reality. Since the paradigm used in this study is social-constructivist/interpretivist and not positivist, the project's aim is not to assess truth claims. Rather, the key focus of this project is on the participants' views, experiences and insights on what they perceive to be the reality of extremism, radicalisation and freedom of speech on their campus. Thus, their responses are treated as reflections and insights on (a) how they conceptualise extremism, radicalisation, freedom of speech and Prevent, and (b) how they balance their duties in light of these reflections. The key purpose of the comparison and triangulation was to gain a more holistic insight of how those online policy documents were implemented.

It is acknowledged that the benefit of the comparison is at times limited due to the standardisation of texts and brevity of many documents and online reports. Moreover, online reporting of events in mainstream media and social media will also be written

⁵⁰ Mats Alvesson and Karen Lee Ashcraft, 'Interviews' in Gillian Symon and Catherine Cassell (ed), *Qualitative Organisational Research* (Sage Publications 2012)

from the reporter's view and perception of extremism and radicalisation on campus, which may or may not be the same as the participants of this study. As such, the comparisons yielded limited benefit in assessing whether or not the participants were exaggerating, but they do provide another view or dimension to the set of events.

7.14.3 DEMAND CHARACTERISTICS

In an attempt to reduce the effect of 'demand characteristic', psychologists have at times disguised the actual purpose of their experiments. Solomon Asch, for example, conducted an experiment in which participants believed they were taking part in a visual experiment, comparing the lengths of lines on two white cards, but Asch was actually studying conformity.⁵¹ However, since this project is interested in the views and experiences of UM, it was not possible to deploy such techniques, which are more suited for experiments. It is argued that the most efficient method of gaining the most insight into the topic is to ask open-ended questions directly related to the topic of research.

At times, 'social desirability bias' can be linked with particular attributes of the interviewer and the respondent, such as gender, race/ethnicity, social class, and age.⁵² For example, Maria Krysan and Mick Couper argue that responses provided to interviewers in studies on racial issues may differ according to the ethnicity of the interviewer.⁵³ Hence, according to Michael Weeks and Paul Moore, sensitive questions are more likely to be subject to ethnicity-of-interviewer influence as opposed to non-sensitive and non-racial questions.⁵⁴ Although the chances of this effect could have been

⁵¹ Solomon E. Asch, 'Opinions and Social Pressure', (1955) 193 *Scientific American* 31

⁵² Paul J. Lavrakas, *Encyclopedia of survey research methods* (Sage Publications 2008) p286

⁵³ Maria Krysan and Mick P. Couper, 'Race in the Live and the Virtual Interview: Racial Deference, Social Desirability, and Activation Effects in Attitude Surveys', (2003) 66 *Social Psychology Quarterly* 364; See also: Howard Schuman and Jean M. Converse, 'The Effects of Black and White Interviewers on Black Responses In 1968' (1971) 35 *Public opinion quarterly* 44; Allyson L. Holbrook, Timothy P. Johnson, and Maria Krysan, 'Race- and Ethnicity-of-Interviewer Effects' in Paul Lavrakas, Michael Traugott, Courtney Kennedy, Allyson Holbrook, Edith de Leeuw, Brady West (eds) *Experimental Methods in Survey Research: Techniques that Combine Random Sampling with Random Assignment* (Hoboken, New Jersey : Wiley 2019) p200

⁵⁴ Michael F. Weeks and R. Paul Moore, 'Ethnicity-of-Interviewer Effects on Ethnic Respondents' (1981) 45 *Public opinion quarterly* 245, p245

reduced by conducting interviews over the phone and thus concealing attributes such as race, ethnicity and age, it was deemed unnecessary to conduct interviews over the phone and limit the valuable experience of face-to-face interviews. It is, however, possible that the ethnicity of the researcher influenced the responses participants gave; research has suggested that the ethnicity of the interviewer, be it the same or different to the ethnicity of the respondent, is likely to have some effect on the responses. RE Davis *et al.*, for example, highlight that respondents feel more comfortable and honest with interviewers from their same race and ethnicity, yet homophilous pairings of interviewer and respondent can also at times lead to responses that are biased and reflect racial attitudes within a group.⁵⁵ This suggests that, in some instances, it may be advantageous for the interviewer to be from a different ethnic background to the respondent. It is difficult to determine with any degree of certainty the effects of the ethnic background of the interviewer in this project on participant responses. However, it was noted that participants did seem open and keen on expressing their views, whether critical or otherwise, on the implementation of Prevent in relation to external speaker events.

Likewise, the religiosity of the interviewer can also have an effect on the participant responses.⁵⁶ For example, Lindsay Benstead, who examined a survey of 800 Moroccans in 2007, found that religious Moroccans provided less religious responses to secular appearing interviewers, possibly to avoid embarrassment or sanction, and more religious responses to interviewers wearing a headscarf, possibly to safeguard their reputation in society.⁵⁷ Although the participants in this project may not have been Moroccan or Muslim, the researcher's Muslim appearance or the name in the email correspondence and on the consent form may have led the participants to perceive a religious orientation. This potentially could have had the effect of them responding to certain sensitive questions in particular ways, in particular due to the debates around

⁵⁵ R. E. Davis, M. P. Couper, N. K. Janz, C. H. Caldwell, K. Resnicow, 'Interviewer Effects in Public Health Surveys' (2010) 25 Health education research 14, p17

⁵⁶ Lisa Blaydes and Rachel M. Gillum, 'Religiosity-of-Interviewer Effects: Assessing the Impact of Veiled Enumerators on Survey Response in Egypt' (2013) 6 Politics and religion 459, p476

⁵⁷ Lindsay J. Benstead, 'Does Interviewer Religious Dress Affect Survey Responses? Evidence from Morocco' (2014) 7 Politics and religion 734, p736

the impact of Prevent on Muslims, as highlighted in the literature review chapters. For example, knowing the controversy surrounding Prevent and its disproportionate effect on Muslims and people from minority ethnic backgrounds, it is possible that some participants expressed more critical views of Prevent than would otherwise have been the case.

It is thus possible that an interviewer who did not appear to be of Muslim background or from a different ethnic background to the interviewee could have solicited a different set of responses. However, since this project deploys a constructivist approach, the aim is not to evaluate whether one set of responses is more accurate than another set of responses, as there is no method of verifying the understanding, views and feelings of participants. Moreover, even if the ethnic minority background and Muslim appearance of the researcher may have solicited responses that were more critical of Prevent than might otherwise have been the case, this does not mean that the findings are less reliable. A competing argument can be made that if the interviewer was white, for example, and not of Muslim appearance, then the discussions surrounding the chilling effect and impact of Prevent may not have had the same level of attention and richness. In short, it is acknowledged that the ethnicity and appearance of the researcher may have led participants to steer the discussion towards a critical assessment of Prevent, however these perspectives provide new and valuable insights in the area.

In order to reduce the effects of demand characteristics and encourage the expression of honest opinion, two tactics were employed. First, the wording of the questions was carefully structured to avoid leading questions that suggest an answer. Likewise, care was taken to avoid using wording which reflects any inclination or view of the researcher on the topic. At times words were used to show non-judgemental acceptance of all views, prior to asking the participant for their view, to show that there are no wrong answers, for example, 'there are many recognised views in the debate around [...] in academia, how does your experience relate to [...]?'. Second, full anonymity and confidentiality was guaranteed to all participants and their organisations, which allowed them to be frank and not just give socially acceptable answers. Hence, the lengthy, detailed and critical responses from participants are good indicators that they were candid, open and unafraid of speaking their mind.

7.14.4 RESEARCHER INFLUENCE

Finally, during the interpretation and analysis of the interview data, the extensive use of verbatim quotes was an attempt to reduce distortion of the accuracy of participants' accounts. Extensive use of quotes provides a greater voice to the views of the participants in comparison to the researcher's interpretation based upon the researcher's own perspectives and views. Ultimately, it is inherent in qualitative research that the researcher's perspectives and views do influence and shape, to some degree, the direction of the research and interpretation of the findings.

7.14.5 PARTICIPANT UNWILLINGNESS

It is also important to address the limiting effect of participant unwillingness on the research. The change in the empirical section of this project has meant that it was unable to fully explore the dual narrative around whether or not universities are failing in their Prevent duty, as it was not possible to secure an interview with Student Rights. Therefore, the data used to explore their narrative was solely from their website and publications, which is a limitation in this project. Likewise, the lack of response from student societies and unions was also a limiting factor, as such the project does not have original data on the views of those whose events are assessed. Nonetheless, the views and perceptions of student societies and unions has been addressed by other researchers, as outlined in section 5.3.5 of Chapter Five. Instead, the focus of this project has been on the accounts of the designated officers, since the best source of explanation of the decision-making processes are the decision makers themselves. Therefore, this project sheds new light using the accounts of UM on the previous set of literature, which has predominantly focussed on the perceptions and views of the student class. Finally, this chapter will address the sample size of participants and generalisability of the results.

7.14.6 SAMPLE SIZE

There is no set number of participants required in qualitative research. The number of participants can depend not only upon constraining factors such as funding, deadlines and the lack of willingness of people to participate, but also upon saturation. This section

will be a defence for the number of participants in this project, in light of constraining factors and saturation.

The change in direction of the empirical research in this project is an indicator of constraining factors, including the lack of willingness from potential participants to accept interview requests. Many qualitative studies defend their sample size arguing they have reached saturation, which is regarded as a 'gold standard by which purposive samples are determined', yet it is poorly conceptualised, and descriptions of how to determine saturation are vague.⁵⁸ The notion of saturation can be traced back to Barney Glaser and Anselm Strauss in 1967:

The criterion for judging when to stop sampling the different groups pertinent to a category is the category's theoretical saturation. Saturation means that *no additional data are being found* whereby the sociologist can develop properties of the category. *As he sees similar instances over and over again*, the researcher becomes empirically confident that a category is saturated.⁵⁹ (Emphasis added by author of this project)

Kathy Charmaz clarifies that it is not 'witnessing repetition of the same events and stories', but rather 'categories are saturated when gathering fresh data no longer sparks new theoretical insight, nor reveals new properties of your core theoretical categories'.⁶⁰ However, this is not the only meaning of saturation in qualitative research, it has also been equated with 'no new data', 'no new themes', and 'no new codes',⁶¹ which have 'resulted in its meaning becoming diffuse and vague'.⁶² Thus, Saunders *et al.*

⁵⁸ Greg Guest, Arwen Bunce, and Laura Johnson, 'How Many Interviews Are Enough?: An Experiment with Data Saturation and Variability', (2006) 18 *Field Methods* 59, p60

⁵⁹ Barney G. Glaser and Anselm L. Strauss, 'Discovery of Grounded Theory : Strategies for Qualitative Research', (first published 1967, Routledge 2017) p61

⁶⁰ Kathy Charmaz, *Constructing Grounded Theory : A Practical Guide through Qualitative Analysis* (Sage Publications 2006) p113

⁶¹ Konstantina Vasileiou, Julie Barnett, Susan Thorpe and Terry Young, 'Characterising and Justifying Sample Size Sufficiency in Interview-Based Studies: Systematic Analysis of Qualitative Health Research Over A 15-Year Period', (2018) 18 *BMC Medical Research Methodology*, p3

⁶² Greg Guest, Arwen Bunce and Laura Johnson (n58) p65

broadly describe it as the criterion used in qualitative research 'for discontinuing data collection and/or analysis', acknowledging that the specific criterion used differs between researchers.⁶³

Whilst accepting this is a contended area, it is worth considering what some qualitative researchers have suggested as the smallest sample size needed to reach saturation. Jacqueline Low posits that arguments for large samples sizes in qualitative research 'are predicated on the logic of statistical not qualitative analysis and thus a false rubric for assessing theoretical saturation in a qualitative research project'.⁶⁴ In other words, since qualitative research does not rely upon large numbers of participants or statistical data, but focuses on contextualised and in-depth research with fewer participants, saturation does not require large numbers of participants. According to Greg Guest *et al.*, who regard saturation 'as the point in data collection and analysis when new information produces little or no change to the codebook', saturation occurs by the time the first 12 interviews are analysed, after which new themes only emerge infrequently and progressively.⁶⁵ Janice Morse posits that if each participant is interviewed several times and is able to provide a large amount of data, then participants as few as six could produce saturation.⁶⁶ By such standards, the 16 in-depth candid interviews combined with universities' policies, forms and documents acquired through online searches and FOI requests allow an argument in favour of possible saturation.

However, assessing saturation during a time and resource-restricted PhD research is problematic. Analysing the interview data to work out saturation of themes can be superficial in the early stages of data collection, as analysis is a progressive task that can continue until the end of the PhD and themes are constantly developed and reformed.⁶⁷

⁶³ Benjamin Saunders, Julius Sim, Tom Kingstone, Shula Baker, Jackie Waterfield, Bernadette Bartlam, Heather Burroughs and Clare Jinks, 'Saturation in Qualitative Research: Exploring its Conceptualization and Operationalization', (2018) 52 *Quality and Quantity* 1893, p1894

⁶⁴ Jacqueline Low, 'A Pragmatic Definition of the Concept of Theoretical Saturation', (2019) 52 *Sociological Focus* 131, p135

⁶⁵ Greg Guest, Arwen Bunce and Laura Johnson (n58) p65

⁶⁶ Janice M. Morse, 'Determining Sample Size', (2000) 10 (1) *Qualitative Health Research* 3

⁶⁷ Benjamin Saunders, Julius Sim, Tom Kingstone, Shula Baker, Jackie Waterfield, Bernadette Bartlam, Heather Burroughs and Clare Jinks (n63)

Therefore, it is problematic to conclude saturation prior to a thorough analysis; however, by the time a thorough analysis is done, time constraints may not allow the researcher to increase the sample size. Moreover, Nelson argues that the lack of clarity concerning the process and method of assessing saturation can lead to anxiety and uncertainty, and preoccupation with saturation ‘can have the effect of distracting the researcher from the fundamental tasks of building familiarity with the data and analyzing the complex and rich meanings within it’.⁶⁸ Informal guidelines on sample sizes surface in many articles, which Kevin Roy *et al.* argue are too proscriptive and ‘can be misleading and unintentionally interfere with goal of nuance and complexity’.⁶⁹ Instead, Nelson argues that ‘sufficient depth of understanding that can allow the researcher to theorise’ may be more appropriate than saturation.⁷⁰ Roy *et al.* argue that there could be reasons to tailor the ‘sample size according to the goals and design’, and in qualitative analyses that would translate as ‘less focus on frequency and more focus on quality of experience’.⁷¹ Thus, it is argued that saturation may not be a suitable standard to determine the sample size of this project; rather, the relevant question is whether there is sufficient data to support the claims made in this project.

A. Kimball Romney *et al.* have found that small samples of even four participants can be sufficient in providing information accurately and decisively if they have a high level of competence and expertise in the field in question.⁷² Since the participants of this study were those UM who not only overlooked the whole process of external speaker events, but also shaped the policies and took the final decisions on difficult events, they could be regarded as very knowledgeable people with the most experience concerning the implementation of Prevent in external speaker events.

⁶⁸ James Nelson, ‘Using Conceptual Depth Criteria: Addressing the Challenge of Reaching Saturation in Qualitative Research’ (2017) 17 *Qualitative Research* 554, p557

⁶⁹ Kevin Roy, Anisa Zvonkoic, Abbie Goldberg, Elizabeth Sharp and Ralph LaRossa, ‘Sampling Richness and Qualitative Integrity: Challenges for Research With Families’ (2015) 77 *Journal of Marriage and Family* 243, p248

⁷⁰ James Nelson (n68) p556

⁷¹ Kevin Roy, Anisa Zvonkoic, Abbie Goldberg, Elizabeth Sharp and Ralph LaRossa (n69) p350

⁷² A. Kimball Romney, Susan C. Weller and William H. Batchelder, ‘Culture as Consensus: A Theory of Culture and Informant Accuracy’, (1986) 88 *American Anthropologist* 325

The sample size was sufficient in providing a rich, insightful and contextualized understanding of how extremism, radicalisation, Prevent and freedom of speech are viewed and balanced for external speaker events by 16 designated officers from a range of universities that differ in size, location, campus types and category of university. The project does not claim that its findings are generalisable beyond the sample size and nor does it infer causal relationships. In order to make such claims, the sample size would need to be increased and a strong case of saturation would be needed to show that new data or themes are not likely to merge by further increasing the sample size. Moreover, as the participants were the final decision takers on events that were escalated to them, their views and experiences may not reflect the views of the staff below them, who are tasked with escalating events that they think are controversial or involve Prevent-related concerns.

However, the potential lack of generalisation does not reduce the importance of this study. The findings can be used to either (a) corroborate, modify, reject or advance already established theoretical concepts or (b) aid in creating new concepts, which Robert Yin refers to as 'analytic generalisation'.⁷³ These theoretical concepts have the potential to apply to a variety of situations beyond the participant group.⁷⁴ Thus, the debate and arguments surrounding the implementation of Prevent in universities is revisited in the results chapters in light of the findings, with the aim of corroborating, modifying, rejecting or advancing those arguments and debates in literature.

The project did seek to find commonalities and themes running through all of the participants' responses regarding their views and approaches in implementing the Prevent duty for external speaker events. Given the different types and sizes of universities they represented and their varied job roles, the results show that there are many common practices and similarities in views and experiences, which provides good reason to test whether or not these views are also shared by designated officers from other universities through further research.

⁷³ Robert K. Yin (n30) pp40-41

⁷⁴ Ibid

As the implementation of Prevent develops and becomes more refined over time, the findings of this project will provide valuable insight into how that progress was achieved. It provides a snapshot in time of developing practices in universities around Prevent, which can be used to ascertain the possible shape and direction of Prevent in the future. It reflects the views and practices of designated officers under the monitoring of compliance by HEFCE and during the period when the OfS framework was first introduced in September 2018 and updated in January 2019, which is referred to as the transition period. The views of designated officers may have shifted since then, as practice in the area is constantly evolving.

Next, this project will present its findings. The following chapter will present the views of participants concerning radicalisation and extremism.

Chapter Eight

RADICALISATION AND EXTREMISM

This chapter is divided into two parts: radicalisation and extremism. Both concepts are integral components of the argument that the Government has used to establish the need for the Prevent duty. For example, the purpose of the Prevent duty can be summarised as ‘to prevent people from being drawn into terrorism’,¹ and according to the Prevent Duty Guidance issued by the Government, terrorist groups use extremist ideology to radicalise and recruit, as explored in section 2.2.1.1 of Chapter Two in the literature review.² Thus, this chapter will explore both concepts in light of the views and experiences of the participants, who are responsible for shaping how Prevent is implemented in universities for external speaker events. First, it will analyse participants’ views regarding the risk of radicalisation at universities. Second, it will analyse the participants’ views regarding the concept of extremism and the Prevent definition of extremism.

8.1 RADICALISATION

Participants did not express their views regarding the concept of radicalisation, rather they spoke of it in a manner that seemed to suggest it was an accepted and undisputed concept. However, participants did seem very candid in their responses regarding its risk at universities and were very critical of the Government’s narrative, as the following section will demonstrate. It will present the views and reasons of the participants regarding (a) whether or not universities are places where radicalisation happens, and (b) whether or not universities are unique in this respect when compared to other places outside the university environment. Two distinct views on the above questions have emerged from the interview data. Whilst some participants acknowledged that there

¹ Counter-Terrorism and Security Act 2015, 26 (1)

² The Prevent Duty Guidance states: ‘Terrorist groups often draw on extremist ideology, developed by extremist organisations. Some people who join terrorist groups have previously been members of extremist organisations and have been radicalised by them’.

HM Government, ‘Revised Prevent duty guidance: for England and Wales’ (updated 10 April 2019) para 7, <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 10 November 2020

was a risk of radicalisation due to vulnerability of students, others asserted that radicalisation was not a problem in universities in general. Next, this chapter will present and analyse the two views and their reasons, as shown in figure 8.1.

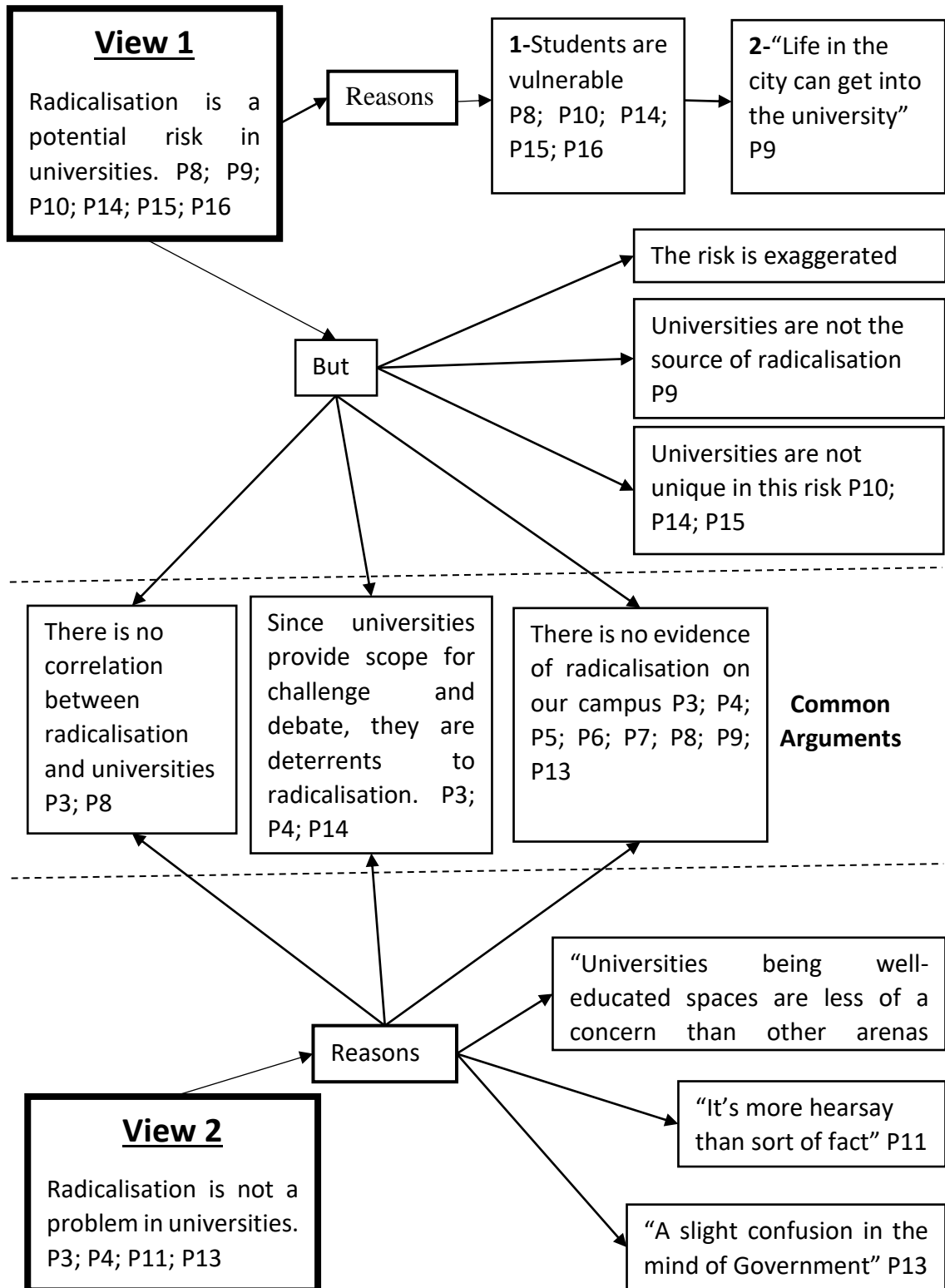


Figure 8.1 – Participants’ views on radicalisation

8.1.1 FIRST VIEW – RADICALISATION IS A POTENTIAL RISK

To give further details of the rough positions outlined above, six participants argued that radicalisation was a potential risk. Five of those participants³ expressed the view that it was due to student vulnerabilities, whilst one argued ‘life in the city can get into the campus’.⁴

The vulnerability of students was thought to be a result of the following factors: (a) ‘because they’re at times in their lives where lots of things are changing and they are potentially vulnerable’;⁵ (b) ‘some people have vulnerabilities in terms of mental health issues and isolation’, which they argued are ‘factors that will be present with individuals on campus’;⁶ (c) ‘vulnerability comes from grievance, an inability to feel that your voice can be heard. It comes from a feeling that other voices are being heard over your voice’;⁷ and (d) ‘young people are exposed to all sorts of different ideas and concepts. I think, being radicalised, whether it’s far left, far right or religious extremism, is clearly one risk’.⁸ Thus, age, mental health, grievance, and exposure to certain ideas and concepts were mentioned as factors of vulnerability to radicalisation. Participant 14 also gave two examples from their university of students who were vulnerable due to mental health:

We've had a student who was posting anti-Semitic imagery on group chat lines and we intervened on that. He had mental health issues. Now if he hadn't had mental health issues, we'd have dealt with it as a discipline matter, but he had mental health issues. So, it's a safeguarding issue with a disciplinary aspect on it. So, we stepped in; we've got a duty to protect; we've got a duty to stop him doing it and sort it out, and put a strong message out.⁹

³ P8; P10; P14; P15; P16

⁴ P9

⁵ P8

⁶ P16

⁷ P10

⁸ P14

⁹ P14

A North American splinter church which had attracted and I could use the word groomed a young student and that student had mental health issues. But was also being exposed to vehemently homophobic propaganda and was reproducing that and propagating that. So again, I think, it's reasonable that universities stepped in there from a safeguarding perspective, both to protect that individual student and also the student community more generally.¹⁰

This seems consistent with the Prevent narrative around vulnerability to radicalisation. According to the Government, certain people have vulnerabilities which 'are exploited by those who want them to embrace terrorism';¹¹ thus, the Government argues Prevent is intended to 'safeguard and support those most at risk of radicalisation through early intervention'.¹²

However, participants who acknowledged the possibility of radicalisation also seemed keen on advancing arguments that seemed to downplay this risk. Some argued that the risk was not substantial, whilst others seemed to divert the cause of the potential risk away from universities. For example, Participant 8 argued, 'I have not seen any real evidence that there is a huge problem of radicalisation in universities'. This shows that although acknowledging the risk of radicalisation due to student vulnerabilities seems to be consistent with the Government's view, the severity or the extent of that risk is understood differently by the participants, as expressed by Participant 8: 'what I'm trying to say is that the radicalisation risk is far lower than the Prevent duty would have us believe. I think, there is a risk, but actually, I don't think it's that high'. Participants also differed from the Government view that students 'may become radicalised whilst attending a RHEB *due to activity on campus*' [emphasis added by author].¹³ Participant

¹⁰ P14

¹¹ HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism', (Home Office, 2020) para 14, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964567/6.6271_HO_HMG_Channel_Duty_Guidance_v14_Web.pdf> accessed 10 November 2020

¹² Ibid, para 7

¹³ HM Government, 'Prevent duty guidance: for higher education institutions in England and Wales', (updated 10 April 2019) para. 2, <<https://www.gov.uk/government/publications/prevent-duty>>

9 argued, 'we don't think of university as a source of radicalisation'. At another point in the interview, they argued that radicalisation in general 'wasn't necessarily happening in university ... [rather,] life in the city can get into the university and we could have a cell'. Thus, participant views, although similar in certain aspects, diverged from the official argument that underpins the application of the Prevent duty on universities.

Moreover, Chapter One highlighted that, leading up to the Counter-Terrorism and Security Act 2015 (CTSA), universities were seen as places that were targeted by extremist speakers and as 'breeding grounds of Islamic extremism'.¹⁴ However, participants seemed to differ, arguing that the risk of radicalisation in universities was no different to other places.

The guy who did the Finsbury Park mosque attack, he wasn't at university. So, saying that universities are a place for radicalisation, yeah, by virtue of being a place. [Participant 10]

Participant 14 argued a similar point:

I don't accept that they're necessarily at any more risk than other parts of the population. You've got lots of Britain First activists that have been radicalised. They're not in bloody university, are they? So, I don't accept that universities, in and of themselves, are breeding grounds. I do accept that we have a responsibility to protect all young people, and ours are our student body, from being exposed to exploitation, manipulation by others.

Thus, participants who argued that there was a risk of radicalisation viewed the level of that risk as far lower than argued in the official narrative in support of Prevent.

[guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales](#) accessed 10 November 2020

¹⁴ The Centre for Social Cohesion, 'Radical Islam on UK Campuses - A Comprehensive List of Extremist Speakers at UK Universities' (2010) <<http://henryjacksonsociety.org/wp-content/uploads/2013/01/RADICAL-ISLAM-ON-CMAPUS.pdf>> accessed 10 November 2020

8.1.2 SECOND VIEW – RADICALISATION IS ‘MORE HEARSAY THAN SORT OF FACT’¹⁵

The second view that emerged from the interviews was that radicalisation is not a problem in universities in general. For example, Participant 3 asserted that ‘I don’t have the view or the opinion that we have a radicalisation problem on our campus or probably in universities in general’. Participant 3 further added that ‘the fact that some of the people who have gone on to do terrible things have been to university, I’m not sure if there is a direct correlation between the two’. Participant 11 pointed out that the occurrence of radicalisation on campuses is ‘more hearsay than sort of fact’. They argued that ‘there's a lot of hearsay in relation to the experiences some students are having in university and their political views. So, I don't think it's occurring, I don't think it's a hard fact that students are radicalised on campuses’. Contrary to the earlier view, this view seems to deny that radicalisation is a risk in any university.

Some participants pointed to their experience when making this argument. For example, Participant 5 argued, ‘I don’t think there was *ever* any significant concern about a person radicalising the audience or potentially drawing anybody into being radicalised or terrorism’. Participant 7 commented that in ‘the two universities I have worked in the last 10 years, I haven't perceived a problem of radicalisation’. Participant 13 attributed the idea of radicalisation in universities to the Government being slightly confused:

A slight confusion in the mind of Government. I think, because they think universities must be a hot bed of radicals, extremists. Something I wouldn't recognise. It is an easy mistake to make and I don't blame them. It is a place where many young people are gathered together and you can sort of see them, more or less literally. But there are many, many young people and many, many people at other ages who have the potential to be radicalised or be extreme or to behave badly or unwell who are not in universities. We just happened to be a convenient place for the Government to express its interests in what’s going on.

One of the reasons provided for this view was that universities are places where free and open debate happens and views get challenged. Thus, the university environment

¹⁵ P11

is not conducive to radicalisation. In other words, the function of a university, by its nature, is such that radicalisation could not flourish.

But universities being well-educated spaces are less of a concern than other areas outside. And most events we have are not closed to a specific society or group of people. So, other people with different views will often come along and that's where we get some of the challenges around managing those events. We will have people who come along to deliberately speak out. [Participant 3]

A similar point was put forward by Participant 4:

But I think part and parcel of trying to keep the events on campus is that you are more aware of them. Whereas, if you say no, and they took the event somewhere else, you'd be far less confident that you knew what was going on. So, the fact that we try and facilitate them, in fact, is a deterrent to radicalisation some ways rather than assistance to radicalisation. Here, it's out in the open; here, anyone can attend and therefore views do get challenged. Whereas if you'd said no to that particular speaker, and that speaker then chose to speak in another location to a closed audience, the likelihood is that, that maybe a slightly different move with a slightly different outcome.

The argument here is that universities being well-educated spaces that allow speakers to be challenged are unlikely spaces for radicalisation – and indeed are less risky than non-university spaces – for the reason that extremist views can be debated and their weaknesses exposed. This reasoning seems to be grounded in Mill's argument in Chapter Two of *On Liberty*, that when truth collides with error, the perception and impression of truth becomes clearer and livelier, which is a benefit that can be lost if opinions that are assumed to be false are suppressed.¹⁶ Likewise, Holmes SCJ said, in his famous dissent in *Abrams v United States*, 'the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market'.¹⁷ Since it can be argued that universities are

¹⁶ J. S. Mill, *On Liberty* (Liberal Arts Press 1956)

¹⁷ Justice Oliver Wendell Holmes, 'Dissenting opinion in *Abrams v United States* 250 U.S. 616 (1919)

the 'marketplaces of ideas', ideas that may lead to terrorism will be exposed for their weaknesses and radicalisation is not likely to happen. The second view is diametrically opposite to the argument underpinning the Prevent duty, which asserts that radicalisation can occur 'due to activity on campus'.¹⁸ The 2011 Prevent Strategy argues that extremist preachers and groups like Hizb ut-Tahrir and al-Muhajiroun specifically target universities and colleges, especially those that have high number of Muslim students, with the objective to radicalise and recruit.¹⁹ The Strategy also states that '[t]here is evidence to suggest that some people associated with some Islamic student societies have facilitated this activity and that it has largely gone unchallenged'.²⁰

It is also important to note the shared arguments between participants from both camps. Irrespective of whether participants thought radicalisation was a potential risk or not, there were three arguments that were shared by some participants. The dominant shared assertion was that radicalisation was not a problem on their own campus or that there was no evidence of radicalisation on their campus. Thus, in light of this assertion, it can be argued that they do not see the foundational argument that establishes the need for the statutory Prevent duty as relevant on their campuses. Their views are in stark contrast with the view and argument that led to the creation of the Prevent duty.

Those who have argued for the need of the Prevent duty may perceive the views of the participants in this project as 'reluctance to recognise their full responsibilities', as argued by Lord Carlile, due to the 'unambiguous evidence to indicate that extremist organisations have been active, and successful, in extremist and radicalising activity in British universities'.²¹ Similarly, Peter Neumann when giving evidence to the Home Affairs Committee in 2011 argued:

¹⁸ HM Government (n13) para 2

¹⁹ HM Government, *Prevent Strategy*, (Cm 8092, 2011) para 10.66

²⁰ *Ibid*, para 10.67

²¹ Lord Carlile, 'Report to the Home Secretary of Independent Oversight of Prevent Review and Strategy' (HM Government, 2011) para. 51,

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97977/lord-carlile-report.pdf> accessed 02 October 2016

... there have been a lot of cases of people who were radicalised as a result of going to university. I am not doing myself any favours here because I am working for a university, *but I do think that university administrations have been a little bit complacent about this in the past.*[Emphasis added by Author]²²

It is beyond the scope of this study to determine whether university management (UM) are not recognising their full responsibilities and are being complacent, or whether their view is a genuine reflection of their experiences. Nonetheless, considering that even those participants who acknowledged the risk of radicalisation seemed to argue that (a) the risk was 'far lower than the Prevent duty would have us believe'; (b) universities are not the 'source of radicalisation'; (c) students are not 'necessarily at any more risk than other parts of the population' (d) going to university and doing 'terrible things ... are not connected', and (e) 'we've never thought that it was happening at our university campus', radicalisation does not appear to be a major concern for them.

Next, this chapter will consider the views of participants concerning extremism, the second key concept used in the Government's argument for implementing the Prevent duty in universities.

8.2 EXTREMISM

Participants spoke about extremism when they were presented with four hypothetical scenarios of escalated events and asked to comment on their approach in risk assessment. The four scenarios of escalated events were (a) an event with an unknown speaker; (b) an event with a speaker labelled extremist by mainstream and/or social media; (c) an event with a speaker labelled extremist by the Government; and (d) an event with a speaker from a proscribed organisation. These scenarios were intentionally kept very general to allow the participants more flexibility to discuss and explain their approach and understanding of extremism. They served as prompts in starting discussions, which developed as the interview progressed. Since participants did not have, and were not provided with, the Prevent definition of extremism, they spoke

²² House of Commons Home Affairs Committee, '*Roots of Violent Radicalisation*', (2010-12, HC 1446) Ev 71, <<https://publications.parliament.uk/pa/cm201012/cmselect/cmhaff/1446/1446.pdf>> accessed 10 November 2020

about extremism as they understood it and how they would apply it when tackling the four scenarios. After the discussion on the four scenarios, they were presented with the Prevent definition of extremism and the conversation moved to the definition. Thus, the next section will first present the views of participants on extremism as they understood it, and then their views concerning the Prevent definition of extremism.

8.2.1 THE CONCEPT OF EXTREMISM

Participants did not provide definitions of extremism and nor did they give any indication of how they understood what constitutes an extremist. On the contrary, they seemed to argue that the concept was problematic due to its ambiguity and varied use. The main concern was that the lack of a shared understanding of extremism, together with the lack of an established measure to ascertain whether or not an act or statement is extreme, led to different views on extremism that in turn made it a difficult concept to utilise. In the words of Participant 1, 'one person's extremist is another person's normal and also perfectly acceptable person' and in the words of Participant 7, 'one person's extremist is another person's sensible politician'.

One of the possible causes of multiple understandings of the concept could be, as Participant 15 argued, that the focus of extremism is constantly evolving and shifting, which can also cause difficulty in assessing extremism. When questioned whether the concept of extremism was easy to define, the response was:

No, it isn't and I think it changes. A couple of years ago the focus around extremism was very much around terrorism associated with the Muslim religion, whereas there's a definite shift now. So, I'm thinking about right-wing or extreme right-wing views and extremism and terrorism associated with those groups, which is very different. So, I think, those people that are involved in that type of work have an understanding that the perception has shifted. [Participant 15]

Participants also pointed out that the term was misused for political reasons.

I think, that's a term that is just thrown around willy-nilly and often by people for political reason of their own. [Participant 10]

When speaking about extremism, none of the participants made references to the Prevent definition and instead spoke of it in a general sense, until they were presented

with the definition on a piece of paper, as explored in the next section. Thus, it can be argued that the understanding of extremism deployed by the participants when assessing the risk of extremism may not be as described in the Prevent definition of extremism. In other words, UM, who are responsible for assessing and approving external speaker events, seemed to talk about extremism as it is understood in ‘everyday’ discourse,²³ rather than talking about extremism with the meaning it is given in the official Prevent discourse. This is a surprise finding since participants were those members of UM responsible for implementing the Prevent duty with respect to external speaker events. The next section will explore their views concerning the Prevent definition of extremism.

8.2.2 THE PREVENT DEFINITION – ‘LOVELY WORDS, NOT PARTICULARLY HELPFUL’²⁴

Participants presented a mixture of views on the usefulness of the definition.²⁵ Only four participants found the definition useful,²⁶ with Participant 5, for example, arguing that they had received ‘a reasonable amount of training and briefing’ and felt that the definition gave them ‘a sufficient idea to be able to make an informed decision’. Similarly, Participant 16 pointed out:

²³ ‘Everyday discourse’ indicates to all discourses on extremism outside of the official Prevent narrative as presented by HM Government. From ‘everyday discourse’, it should not be understood as that there is a particular understanding of extremism that is used in everyday discourse. Rather, that the understanding of university administration staff concerning extremism reflects all of the varied and mixed conceptions found in everyday discourse.

²⁴ P13

²⁵ It is defined as:

‘vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces’.

See: HM Government, Revised Prevent duty guidance: for England and Wales (Updated 1 April 2021) para 7 <<https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales>> accessed 25 September 2021

²⁶ P5; P7; P16; P15

It's a workable definition for me. I don't see that being at all out of line with my view of extremism or the way that the University applies its procedures around freedom of speech or Prevent strategy.

From the four participants who found the definition useful, only Participant 15 criticised the definition for using the phrase 'fundamental British values', which is discussed shortly; the other three did not identify any problems with the definition. Moreover, it is questionable whether the four participants actually used the definition, as none of them referred to it when speaking about extremism prior to the definition being handed to them on a piece of paper. Prior to seeing the definition, they all seemed to critique the term 'extremism' using its 'everyday' meaning. For example, Participant 7 had argued, 'one person's extremist is another person's sensible politician' and Participant 15 had argued that extremism was both difficult to define and changeable.

Three-quarters of the participants were highly critical of certain aspects of the definition and did not find it useful.²⁷ Participant 3, for example, asserted that 'I don't think that the definition is particularly helpful overall. I don't think it's that clear'. Likewise, Participant 13 argued that 'it's great to have the words written down but does it provide a rule book or a yard stick? Not really'. They further added 'lovely words, not particularly helpful, because there's lot of work that goes on to map a particular circumstance to the definition'. The participants that found the definition problematic identified certain aspects as too broad to be helpful, such as 'fundamental British values', 'democracy', and 'rule of law'. The next section will highlight and analyse those concerns.

8.2.2.1 BREADTH

The breadth of the definition was seen as a positive aspect by Participant 5 and Participant 7.

I think it needs to be a relatively broad definition to be able to capture everything that's going on. If it's over prescribed, then the likelihood is that it could well

²⁷ P1; P2; P3; P4; P6; P8; P9; P10; P11; P12; P13; P14

miss a particular group or section, so being reasonably broad doesn't present any major problems to me or my team. [Participant 5]

Participant 7 asserted that the definition 'doesn't cause any problems, but it does leave room for judgement and that isn't necessarily a bad thing'. This participant added:

I actually don't think you could write a statement that is completely water tight and you could churn the names into a machine and it spits out whether you should ban them or not. There is always going to be room for judgement. [Participant 7]

The argument from both participants can be summarised as follows: breadth is a necessary aspect of the definition, as it allows the Duty to be flexible and applicable in many situations. However, for most participants,²⁸ the definition was too broad and too problematic. Participant 2 pointed out that 'it's quite poorly worded and probably is too broad. It seems to me that this could be argued to catch things which it's not intended to catch'. Likewise, Participant 1 argued:

I think, one of the issues with the prevent guidance is the kind of spectrum it covers from a terrorist act to a legal act and the definition of extremism, which is not so clear. And I think that is one of the issues with it, where do you land on that?

By comparing the two arguments, it becomes clear that breadth can have two opposite effects, one desirable and the other undesirable. It could have the desirable effect of being 'able to capture everything that's going on' and 'leave room for judgement', for which it could have intentionally been left broad. It could also have the undesirable effect of 'catch[ing] things which it's not intended to catch'.

In support of the first view, it could also be argued that the breadth in the CTSA 2015 or the Prevent Duty Guidance is not unique, rather at times some ambiguity is created intentionally in order to allow the courts to determine its meaning later, which 'allow[s]

²⁸ P1; P2; P3; P4; P6; P8; P9; P10; P11; P12; P13; P14; P15

laws and regulations to avoid dependence on technologies or practices that could change over time'.²⁹ Aaron Massey *et al.* point out that words like 'reasonable' are commonly used with the intent of keeping interpretation open, 'because what might have been 'reasonable' ten years ago could be 'egregious' today'.³⁰

However, to the contrary it has also been argued that courts have not always been successful in providing clarity of broad terms, such as reasonableness. For example, Andrew Sanders *et al.* argue that the few cases regarding 'reasonable suspicion' have done 'little to define it', except to clarify that 'it may be based on material, such as hearsay'.³¹ Moreover, the argument that breadth is sometimes intentional to allow courts to interpret the law, can be countered with the argument that, even if it is intentional, broad and ambiguous laws or duties are difficult to interpret and implement, simply because laws are created first and the courts only interpret them when a case comes to them, which could be years later. This gap leaves organisations in a position where they must interpret and implement the law without a great deal of guidance. Since the act of interpretation itself is inherently subjective, this creates legal uncertainty. Furthermore, it is not always the case that the courts are able to clarify the uncertainty and ambiguity of definitions.

For example, extremism under Prevent, which includes non-violent extremism, was considered by the High Court in the *Butt* case in 2017,³² and then later in the Court of Appeal in 2019.³³ In both judgments, the judges held that 'non-violent extremism which

²⁹ Aaron K. Massey, Richard L. Rutledge, Annie I. Antón, Justin D. Hemmings and Peter P. Swire, 'A Strategy for Addressing Ambiguity in Regulatory Requirements', (2015) <<https://pdfs.semanticscholar.org/2414/cdfcbc8b43137ef80ead0e7575cdd0ec46d2.pdf>> accessed 14 September 2019

³⁰ *Ibid*

³¹ Andrew Sanders, Richard Young and Mandy Burton, *Criminal Justice* (edition 4, Oxford University Press 2010) section 2.2.1.1

³² *Salman Butt v. Secretary of State for the Home Department* [2017] EWHC 1930 (Admin), [2017] 4 W.L.R. 154

³³ *Regina (Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256, [2019] 1 W.L.R. 3873

carries no risk of drawing people into extremism is not subject to the guidance'.³⁴ This does not sufficiently clarify the definition of extremism, or address the issues that participants have raised concerning the definition. It should be noted that the High Court judgment came out in July 2017, and the interviews conducted for this study began in January 2018, which demonstrates that even after that piece of clarity from the court, participants still had a number of questions and uncertainties when it came to the definition of extremism. Therefore, the courts have not been successful in removing the ambiguity from the definition.

Moreover, broad terms leave too much discretion to those who are charged with implementation, which historically has shown to lead to gross violations of human rights. For example, it has been argued that a public inquiry police behaviour at the Orgreaves Coking Plant was dismissed, because the broad powers established by the Police and Criminal Evidence Act 1984 were 'deliberately drafted in such a way as to maximize police discretion while limiting the opportunity for legal challenge'.³⁵ It has been argued that officers rely upon high levels of discretion in interpreting and implementing broad laws, which leads to selective, uneven and at times corrupt enforcement of law.³⁶ This argument can also be applied to the definition of extremism and it can be argued that the breadth and elasticity of definition allows it to be implemented in a manner that may curtail free speech and cause risk averseness.

Those participants that found the definition broad and problematic pointed to 'fundamental British values' as an ambiguous term, which the following section will explore.

³⁴ [2017] EWHC 1930 (Admin), para 129; [2019] EWCA Civ 256, para 155

³⁵ Joanna Gilmore, '*Lessons from Orgreave: Police Power and the Criminalization of Protest*', (2019) 46 JLS 612, p615

³⁶ Karen Bullock and Paul Johnson, '*The Impact of the Human Rights Act 1998 on Policing in England and Wales*', (2012) 52, BRIT. J. CRIMINOL. 630, p632

8.2.2.2 FUNDAMENTAL BRITISH VALUES – ‘DON’T KNOW WHAT THAT MEANS’³⁷

The inclusion of fundamental British values in the definition of extremism was seen as problematic, with Participant 3 arguing, ‘Why should people not be able to be vocally against British values?’ The key concerns of the participants revolved around the following aspects of fundamental British values: (a) it is not defined; (b) there is no consensus over what they are; and (c) their scope is undefined. The argument by Participant 15 succinctly summarises the first two points:

‘I don’t know if there is a definition of fundamental British values. I don’t know if the Government produces one. If you spoke to a range of different people living in different communities in different parts of the country and ask them to define British values, they would all give you very different answers’.³⁸

It should be noted that Participant 15 had found the definition of extremism to be useful when they were presented with it. However, when they started to discuss the definition, they pointed to the breadth being problematic. Other participants, likewise, made similar arguments about the lack of consensus, with Participant 3 arguing ‘one person’s British values are another person’s extremism to some extent’. Participant 4 seemed to highlight that the meaning of British values depended upon certain factors, such as race, age and background.

That’s difficult, because I am white, I am British, I have a sense of what British values are, based on how I was brought up in the 1960s and 1970s. You are not white but you are British and you are probably brought up by a couple that came some generations later than I have. So, your understanding of it is different. Unless someone is prepared to define that more clearly, it’s very hard to determine how you’re meant to interpret it, because my version and your version of the same statement will be different. Will they not?³⁹

³⁷ P9

³⁸ P15

³⁹ P4

Not only did participants point to the lack of definition of fundamental British values, but they also argued that the scope of fundamental British values was not clear, as the word 'including' indicated that there were more fundamental British values which are not mentioned in the definition:

The bit about 'fundamental British values including democracy, bla bla blaa', well I'd like to know what the other values are.⁴⁰

Participant 13 said 'where would I find a list of them? Of course, you are not going to find one. A court of law would have a field day defining one or digging into this'. Most participants seemed very critical of fundamental British values, with Participant 6 remarking, 'I can see it to be inflammatory' and 'that strikes me as incorrect'.

Since the definition states that 'fundamental British values' include democracy, individual liberties and the rule of law, participants also addressed the ambiguity in those concepts. For example, Participant 8 asserted:

If I ask you, you and I would come to a very, very clear, quick definition of what democracy was. But actually, let's take Brexit as an example, you might say it's democratic to have another vote, and I might say it's undemocratic to have another vote. Because I would say we've already had a vote, and you might say, you know, things have changed. Well wait a minute. We are already disagreeing about what's democratic.⁴¹

Participant 2 found 'rule of law' to be problematic, arguing 'what does the rule of law mean? It could mean that I encourage you all to go out and break the law, and that would be unacceptable. It could be seen to encompass somebody standing up and saying: I don't think this piece of law is right and I'm not following it, quite different'. Participant 12 questioned the meaning of individual liberties, 'what are individual liberties?'

⁴⁰ P2

⁴¹ P8

To summarise, most participants found the definition of extremism and the terms used within the definition, such as ‘fundamental British values’, ‘democracy’, ‘rule of law’, and ‘individual liberty’, as problematic, ambiguous and too broad. The findings of this project seem to substantiate studies that suggest many in the academic sector do not recognise fundamental British values. For example, Sally Elton-Chalcraft *et al.* showed that 47% of student teachers in their study did not believe there were particular values associated with being British, whilst 53% of the student teachers thought that there were particular values associated.⁴² However, when their values were examined, they were found to be naïve notions of Britishness, such as monarchy, caring for animals, queuing, humour and being polite.⁴³ Elton-Chalcraft *et al.* argue that the uncritical notions of Britishness, on the one hand, may be just naïve notions:

[B]ut on the other hand, they may be “safe” expressions of Britishness, which do not require the student teachers to tread into unknown, unsafe and difficult territory of engaging on a deeper level with what it means to be British because by venturing into this domain they may have to engage with “difficult” topics such as faith, culture, “race” and ethnicity, racism and Muslims/Islamophobia.⁴⁴

A similar argument can also be applied to the participants in this project. Many universities’ websites point out that fundamental British values are well incorporated in their policies, practices and teaching.⁴⁵ However, since most participants in this study identified the meaning and scope of fundamental British values to be unclear and problematic, it could be argued that universities’ websites reflect ‘safe’ expressions of

⁴² Sally Elton-Chalcraft, Vini Lander, Lynn Revell, Diane Warner and Linda Whitworth, ‘To promote, or not to promote fundamental British values? Teachers’ standards, diversity and teacher education’, (2017) 43 *British Educational Research Journal* 29, p36

⁴³ *Ibid*, p36

⁴⁴ *Ibid*, p43

⁴⁵ For example, University of Hertfordshire website states, ‘Embedded throughout the University is the celebration and understanding of British values’ <

acceptance to show compliance⁴⁶ with their Prevent duty for Office for Students (OfS) inspections, whilst the candid responses of the participants offer an alternative picture. Section 8.2.3 will demonstrate that their actual approach is to overlook the definition of extremism due to the problematic meaning and scope of 'fundamental British values'.

However, it is not the case that all teachers or staff will employ 'safe' expressions of Britishness; some may adopt 'hard' views that create notions of 'insider-outsider' citizens. Vini Lander has argued that due to the lack of training and the diminution in critical space, 'teachers and student teachers rely on nostalgic imperialist constructions of Britishness', where whiteness is associated with national identity.⁴⁷ Although participants in this project did not seem to express such views, the relatively small number of participants means that the use of nostalgic imperialistic constructions of Britishness cannot be totally ruled out, especially since Lander has shown that those studying for academic jobs use such constructions.

Additionally, it has been argued that 'Prevent has become a performative industry based on signs of an ostentatious sort', where a large range of 'signs' signify radicalisation, such as shifts in acquaintances, behaviours and clothing, or expressions of undesirable ideas, emotions or identities.⁴⁸ Thus, opposition to fundamental British values can also be viewed as a 'sign' of extremism or radicalisation. Christian Beighton and Lynn Revell found that those responsible for implementing Prevent in the Further Education sector differed in interpreting the 'signs' of radicalisation.⁴⁹ Some saw the signs as 'univocal', meaning that they indicate to 'just one thing at a time' and that is radicalisation. Whilst others saw signs as 'polyvocal', as having possibly more than one meaning or interpretation.⁵⁰ Treating signs with univocality can lead to 'concrete implications and ... seamless, codified responses to the threat of radicalisation', where targeted training is

⁴⁶ The likelihood of symbolic compliance is explored in section 10.2.5 in Chapter Ten.

⁴⁷ Vini Lander, 'Introduction to Fundamental British Values', (2016) 42 *Journal of Education for Teaching* 274, p276

⁴⁸ Christian Beighton and Lynn Revell, 'Implementing the 'Prevent Duty' in England: the Semiotisation of Discourse and Practice in Further Education', (2020) 41 *Discourse: Studies in the Cultural Politics of Education* 516, p517

⁴⁹ *Ibid*

⁵⁰ *Ibid*, pp526 - 527

deployed to remove doubt of whether a sign indicates radicalisation, and any challenge to the Prevent policy is seen as ‘unprofessional’ and ‘unacceptable’.⁵¹ In contrast, ‘criticisms of Prevent are accepted and welcomed’ when using a polyvocal approach to signs of radicalisation.⁵²

In light of the above, most participants in this study viewed opposition to fundamental British values as polyvocal signs of extremism or radicalisation. The words of Participant 3, ‘one person’s British values are another person’s extremism to some extent’, not only indicate that British values have multiple meanings and connotations, but also that to some their expression can be a sign of ‘extremism’ in itself. This is the diametrical opposite of the Prevent narrative, which sees British values as a safeguard against extremism. Since most participants seemed to view Prevent in this manner, where semiotisation⁵³ is polyvocal, it has allowed them to be highly critical of the Prevent duty and the narrative around radicalisation and extremism. Conversely, the Prevent narrative arguably seems to use the ‘signs’ of radicalisation with univocality. The Prevent duty requires universities to do a risk assessment of extremism, which is essentially an assessment of whether or not speech constitutes as ‘opposition to fundamental British values’. Arguably, using ‘fundamental British values’ as the yardstick for extremism is treating opposition to ‘fundamental British values’ as a fixed univocal sign of radicalisation.

8.2.2.3 ‘WE DON’T USE THAT DEFINITION’⁵⁴

In light of the highly critical views of the participants concerning various aspects of the definition, it was not surprising that participants argued, ‘We don’t use that definition explicitly, because the definition of British values is so hard to pin down’.⁵⁵ Seven participants suggested that they did not use the Prevent definition of extremism, due to

⁵¹ Ibid, p526

⁵² Ibid, p527

⁵³ Semiotics can be defined as ‘the study of signs and signification’, see: Alin Olteanu and Cary Campbell, ‘A Short Introduction to Edusemiotics’, (2018) 14 Chinese Semiotic Studies 245

⁵⁴ P8 (In reference to the Prevent definition of extremism)

⁵⁵ P8

the problem of broadness and lack of clarity.⁵⁶ Three participants submitted that they had never been in a situation that required them to look at it.⁵⁷ This perhaps also explains why none of the participants referred specifically to it in the first part of the discussion, prior to being given the Government's definition.

Participant 10, for example, argued that 'there is no kind of defined fundamental British values... So, I try as far as a possible to, when we need to, to revert back to different definitions under law'. Participant 9 argued:

I tend to avoid the word extremism, because I think it's useless. We've had plenty of Marxist scholars, who some people might think are extreme, but are highly respected scholars. We use the other legal definitions: are they going to incite hatred? Are they going to incite violence? What's the legislation? Can't remember what it was called now, but we'd look at law.⁵⁸

Three participants took a slightly different approach and suggested that they have never used the definition, as opposed to arguing that they would not consider it. They seemed to assert that they had not yet received an external speaker request that required them to look at the definition, for example Participant 13 argued, 'it's hypothetical, we've never got there'. Likewise, Participant 4 argued, 'We haven't had to get into that level of detail when reviewing any applications, because as I said to you before, it's very rare that we have speakers who haven't spoken previously at the university'. This suggests that the reason they have not applied the definition is that the need to use it has never arisen. In any case, it is a surprise finding that a large number of participants did not consider the Prevent definition of extremism, considering that tackling extremism was intended to be at the heart of the Prevent duty, as indicated in the CONTEST strategy 2011:

⁵⁶ P2; P3; P6; P8; P9; P10; P14

⁵⁷ P4; P13; P11

⁵⁸ Most participants at some point in the interview asserted that they relied upon law when assessing external speaker events, with the aid of external agencies, such as police, Prevent coordinators and lawyers. A detailed discussion of the decision making process is discussed in the next chapter.

We believe that Prevent work to date has not clearly recognised the way in which some terrorist ideologies draw on and make use of extremist ideas which are espoused and circulated by apparently non-violent organisations, very often operating within the law. ... But preventing radicalisation must mean challenging extremist ideas that are conducive to terrorism and also part of a terrorist narrative.⁵⁹

Participant 14 acknowledged that the problems associated with extremism did have the impact of reducing the extent of implementation of the Prevent duty:

There are three criteria for restricting a speaker. The third one, which is the statutory duty, effectively the Prevent duty, I think, would be the least likely we would use, because of the nature of how do you define extremism. I mean there are lots of people who would count as radicals, I mean they're teaching in some of our departments.

Edelman *et al.* argue that laws regulating organisations are generally vague and broad and as a result there is often widespread legal and social debate as to the meaning of legal rules.⁶⁰ 'As long as the debates are unresolved, organizations have wide latitude to determine how, if at all, to comply'.⁶¹ Edelman *et al.* argue that this results in the creation of 'symbolic structures' that point to 'structural change as evidence of its compliance, without necessarily creating significant change in behaviour'.⁶² This project will assess in subsequent chapters whether the argument of Edelman *et al.* can be applied to the implementation of the Prevent duty for external speaker events, as definitions such as extremism and radicalisation were not clear to the participants of this study and, as argued by Participant 10, 'the difficulty is that the term extremism is a term that is much debated and there isn't a kind of generally agreed on principle'.

⁵⁹ HM Government, *CONTEST the United Kingdom's strategy for Countering terrorism*, (Cm 8123, 2011) para 5.3

⁶⁰ Lauren B. Edelman, Stephen Petterson, Elizabeth Chambliss, Howard S. Erlanger, 'Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers' Dilemma', (1991) 13 Law & Policy 73

⁶¹ *Ibid*, p75

⁶² *Ibid*, p75

Therefore, using the argument of Edelman *et al.*, universities that are charged with applying these definitions under the Higher Education Prevent Duty Guidance (HEPDG) are likely to create symbolic structures to show compliance. Risk assessment of extremism is an integral aspect of the HEPDG, and under the CTSA 2015, universities are required to have 'regard to any such guidance [issued by the Secretary of State] in carrying out that duty'.⁶³ However, a large number of participants admitted that they did not use the Prevent definition of extremism found in the HEPDG. Thus, the likelihood of symbolic compliance seems a tenable proposition to explore considering the findings of this chapter.

CONCLUSION

The Prevent narrative suggests that radicalisation is a real problem in universities, and may even be a result of activity on campus, which is a view that is also promoted by influential lobbying organisations such as the Henry Jackson Society (HJS) and Quilliam. However, by using the views and experience of UM, this chapter adds another dimension to the debate on whether or not universities are breeding grounds for radicalisation and extremism, and thus it sheds light on the first research question of this project:

In light of their experiences, do UM consider that universities are breeding grounds for radicalisation and extremism?

The participants in this study had a spectrum of views that stemmed from their experience and contradicted the narrative of the HJS and Quilliam. Some argued that universities were not places where radicalisation took place, instead it was 'more hearsay than fact' or that the Government is 'confused'. The arguments of these participants can be summarised as follows: (a) universities contain well-educated people and are thus of less concern when compared to places outside; (b) there is no correlation between radicalisation and universities; (c) universities are deterrents to radicalisation, as ideas are challenged; and (d) there is no evidence to show radicalisation is a problem on campus. Other participants did acknowledge the potential risk of radicalisation;

⁶³ Counter-Terrorism and Security Act 2015, Section 29 (1) and (2)

however, they seemed to regard the risk as small or argued that the problem was imported from outside the university.

Moreover, this chapter also addresses the following sub-question:

How do UM understand the concept of 'extremism' and how is that understanding deployed in their event approval processes?

When speaking about extremism, participants did not refer to the definition of extremism under the Prevent duty, even though participants were responsible for implementing the Prevent duty. On the contrary, they spoke about extremism as it is used in 'everyday' discourse. Moreover, when the Prevent definition of extremism was presented to them, most were highly critical and argued that due to the definition being vague and broad, they did not use it. Instead, many spoke of alternative methods of assessing external speaker events, which will be discussed in Chapter Ten.

Holding the view that radicalisation is not a problem in universities, or arguing that the risk is far lower than argued by the Government, arguably reduces the impetus to investigate whether radicalisation is happening and thus can reduce the likelihood of compliance with the Prevent duty in a manner the Government may have intended. In order to explore the actual approach of the participants, it is important to first understand the context in which the Prevent duty is implemented. In this project, the context is the external speaker approval process. Thus, the next chapter will analyse the interview data and online policies to create a rich, clear picture of the context in which the Prevent duty sits.

Chapter Nine

EVENT APPROVAL PROCESS

This chapter will analyse the application process for external speaker events using the insight provided by the participants who are responsible for overseeing and implementing Prevent and other related policies. The outline of the application process for external speaker events is mostly laid out in university policies online, housed on university or student union websites, making it easily accessible for those who wish to organise events with external speakers. The interview data will be supplemented with references to these online university policies to build an overall picture of the whole process. This will help in contextualising the analysis in subsequent chapters. Thus, this chapter will attempt to answer the following sub-question:

What are the approval processes for external speaker events and how are risk assessments carried out and decisions made?

First, this chapter will identify the two channels for applications, namely the student channel and the academic staff channel. Then it will analyse the four stages through which a controversial application passes. The four stages are: (a) the initial risk assessment; (b) the escalation of the application; (c) the second risk assessment and the final decision; and (d) the appeals process.

9.1 THE APPLICATION CHANNELS

All of the participants highlighted that there were two channels to process event applications; one for students and the other for academic staff. Student events are generally processed by the student unions, whereas academic staff events are processed by a university department, usually the room booking team (or equivalent). However, many participants noted that controversial student events were also escalated from their student union up to their office for them to assess and to make a decision. Therefore, the two channels sometimes merged together in the offices of the participants. For example, Participant 5 described the process at their university as follows:

So, stage one goes through to the Students' Union and they will have a look at it to see if it's in accordance with a ratified society. Does it need to be ticketed?

Does it need to have door safe? What are the support arrangements that can be allocated to that request for it to be facilitated and go ahead? At the same time that's happening, if it requires room booking, security, door safe, catering, lighting or whatever, that goes to colleagues in those areas... It also comes through to the health and safety department. We can then see and monitor the risk assessment process. What controls are in place for that? If an external speaker has been brought in, we all do a quick check to make sure that the speaker is of a reputational or ... that approach. So, we do a social media check to see if they're of a controversial nature, and if they are, then what's the panel? What's the location? What's the environment? So that, from the onset we're able to provide both a safe environment for that to go ahead and the fact that there's a balanced panel or a balanced approach to facilitate both sides of that topic. Once all of those checks and balances have been done effectively, we have the final say and sign off.

Not only did participants describe how the two channels of application converged in their offices and they had the final say, but many university and student union policies and codes on freedom of speech also highlighted this point. For example, the University of Manchester standard operating procedure,¹ after highlighting the two channels for application as (a) Academic-related events and (b) Student Society / Students' Union Events, states that escalated events from both channels are sent to the office of the Deputy Secretary at the University, who considers and assesses all higher risk events. The Deputy Secretary then is responsible for reporting the decision taken on the event to the Students' Union or to the principal organiser of an academic-related event.²

Likewise, Sheffield Hallam University's Freedom of Speech Code of Practice highlights that 'the Chief Operating Officer is authorised to decide whether or not an event should go ahead and to decide if an event underway should be terminated'.³ It further states

¹ University of Manchester Standard Operating Procedure, <http://documents.manchester.ac.uk/display.aspx?DocID=34537> accessed 13 January 2020

² Ibid

³ Sheffield Hallam University Freedom of Speech Code of Practice, para 20 https://students.shu.ac.uk/regulations/conduct_discipline/FreedomOfSpeech.pdf accessed 13 January 2020

that this 'covers events organised by the Students' Union or to take place on Student Union premises as well as events organised by the University or to take place on University premises'.⁴ Figure 9.1 is an illustration of the overall structure, which was created using the interview data as well as online freedom of speech policies of various different universities, including those that did not participate in the study.⁵ It provides an outline of the process, which will be explored and analysed in this chapter.

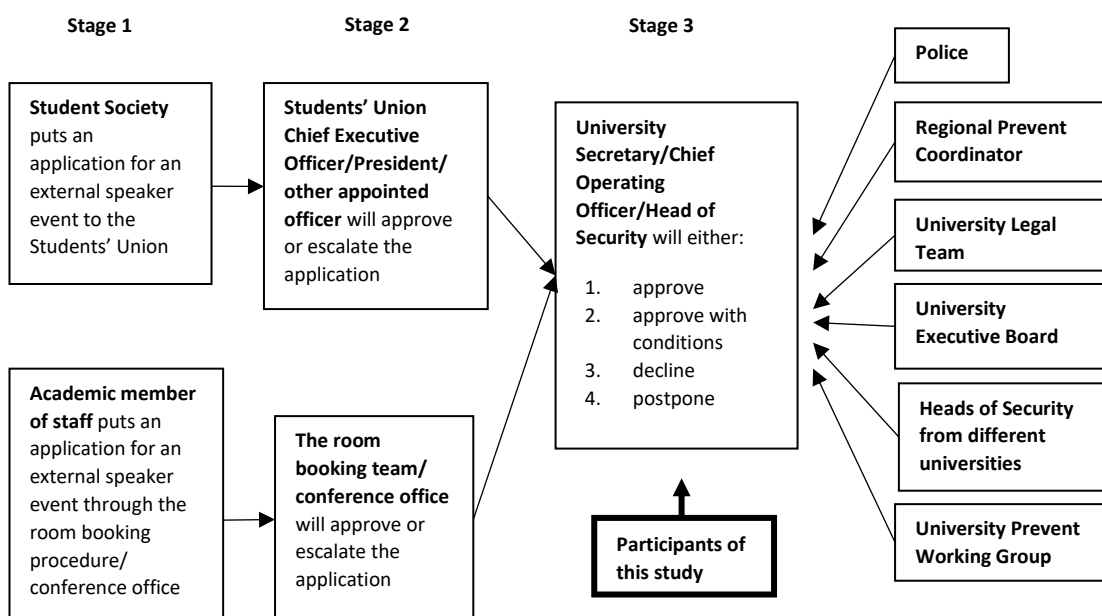


Figure 9.1: Summarised application process for external speaker events

Furthermore, research conducted by the Higher Education Policy Institute (HEPI), using a sample of 20 policies, suggests that at most institutions the regulations contained in their codes of practice on freedom of speech were applicable across all university premises, including student unions.⁶ Therefore, not only do the two channels merge, but also the regulations governing the academic staff channel apply to the student union channel. This was also acknowledged by Participant 14, 'The Student's Union have the

⁴ Ibid, para 21

⁵ The choice to cite certain university documents in this thesis is on various grounds: some are typical and reflect the general trend in most universities, including those that took place in this project; others are helpful in making a particular argument or lay out the approval process clearly.

⁶ Higher Education Policy Institute, 'Cracking the code: A practical guide for university free speech policies', HEPI Report 109, p35 <<https://www.hepi.ac.uk/wp-content/uploads/2018/07/Cracking-the-code-A-practical-guide-for-university-free-speech-policies.pdf>> accessed 15 January 2020

same policy as we have. The external speaker policy is the same as ours in terms of what it looks for. So, it's not a separate policy'. HEPI found that from the university policies they researched, only the code of the University of East Anglia (UEA) stipulated that its student union was bound to different requirements.⁷ The University of East Anglia policy states 'the Students' Union will operate its own arrangements for reviewing activities and bookings on University premises made by its officers, staff, clubs and societies'.⁸ However, the University of East Anglia Students' Union guidance for room bookings states that 'events at which a visiting speaker will be in attendance will need to be agreed by UEA and the Union'.⁹ This shows that although they have distinct and independent channels, they do merge for events that host visiting speakers.

The participants of this study were those members of the university who were in this final position and who made the definitive decisions when events were escalated to them. Therefore, the interview data provides a rich insight into how they made their final decisions for external speaker events from both channels. Next, this chapter will explore the four distinct stages of the application process.

9.2 STAGE ONE – INITIAL RISK ASSESSMENT

The first stage in the application process involves a member of the student society or an academic member of staff, referred to as the 'principal organiser', filling in an application form to book a room, as well as conducting the initial risk assessment. Online university policies on freedom of speech and event application forms provide a list of questions for the initial risk assessment, in order to identify which events should be escalated for approval. For example, the following set of questions are taken from Plymouth University's policy¹⁰ and are reflective of similar policies at other universities:

⁷ Ibid

⁸ University of East Anglia, 'Code of Practice Relating to Freedom of Speech and Activities, Events and Meetings' <<https://portal.uea.ac.uk/documents/6207125/7465906/Section+3+Code+of+Practice+-+Freedom+of+Speech.pdf/e2147e9a-e409-4423-aa1a-de813a7dcf4b>> accessed 15 January 2020

⁹ UEA Students' Union, 'Important information for Student Room Bookings' <<https://www.uea.su/pageassets/opportunities/committee-hub/room-and-hive-bookings/room-bookings/Room-Booking-Info-for-Societies-and-Students.pdf>> accessed 15 January 2020

¹⁰ Plymouth University, 'External Speakers And Events Policy, Guidance and legal obligations relating to external speakers at Plymouth University'

Question 1: Will the event be open to the general public?

Question 2: Will the external speaker be primarily speaking in a language other than English?

Question 3: Will the event be broadcast, streamed or offered for download by the organisers?

Question 4: Does the proposed title or theme of the event present a potential risk that views/opinions expressed by speakers may be in breach of the Guidance for External Speakers?

Question 5: Has the speaker previously been prevented from speaking at Plymouth or another university or similar establishment, or previously been known to express views that may be in breach of the Guidance for External Speakers?

Question 6: Is the subject matter or the speaker likely to attract protest, negative media coverage or otherwise be a potential threat to the reputation of the University?

Question 7: Is there any possibility of a situation arising in which people might experience harassment, intimidation, verbal abuse or violence, or that those in attendance might be incited to engage in harassment, intimidation, verbal abuse or violence directed at others, as defined within law and within the University's policies governing bullying and harassment, either within the UK or abroad?¹¹

It is worth noting that there is no explicit mention of Prevent in these questions, although Question 4 may have been drafted with the intent to cover an assessment of the risk of radicalisation or extremism as part of the Prevent duty. During the interviews, some of the participants likewise indicated similar risk assessment questions on their application forms. They too seemed to suggest that the role of Prevent was minimal in

<https://www.plymouth.ac.uk/uploads/production/document/path/7/7327/Plymouth_University_External_Speakers_Policy_v5.pdf> accessed 07 January 2020

¹¹ Ibid

their risk assessments; for example, Participant 3 seemed keen to point out that the focus was on general issues rather than especially on Prevent:

There is a checklist for all external speakers, which is part of that risk assessment process. A lot of it is driven by issues around have there been known protest, are they known to be controversial, and these are general issues rather than just Prevent. I think the approach we take is that Prevent is part of one in many things we look at, rather than a specific thing. [Participant 3]

Participant 14 described their list of questions as follows:

So, they are looking for: is there going to be a health and safety breach or threat? Is it going to be unlawful in terms of what happens? Is someone going to come and be racist or whatever? And the third one is, is it going to leave the University in breach of its statutory obligation? What that really means is, is it going to draw people into violent extremism? [Participant 14]

The term 'statutory obligation' in the third question of Participant 14 seems to indicate that it is related to the statutory Prevent duty, which the Participant describes as 'will it draw people into violent extremism?' However, section 3.2.1 of Chapter Three has shown that the remit of Prevent is intended to be wider as it also covers non-violent extremism. Thus, it seems that the role of Prevent in university external speaker application processes may not be as the Government intended it to be.

9.3 STAGE TWO – ROOM BOOKING AND ESCALATION OF THE APPLICATION

Provided that the principal organiser follows the procedure, events proceed to the second stage. The second stage is usually the university conference or room booking team that deals with the application once it is submitted. They provide guidance and support to the principal organiser, as well as being responsible for escalating an event to the designated officer¹² if the principal organiser has identified a risk. For example, the Plymouth University policy states that if the answer to all questions is 'no', then it is

¹² This is normally a senior member of the management who is responsible for overseeing and approving controversial events.

a low-risk event and it can continue without further action.¹³ However, if the answer to any of the questions 1-3 is 'yes', then it is a medium-risk event and advice must be sought 'from the appropriate line manager or head of service, whose responsibility it will be to further review the speaker(s) against the questions above'.¹⁴ If the line manager is satisfied then no further action is required. However, should any one or more of the questions remain unresolved, then the request is escalated to the Deputy Vice Chancellor.¹⁵ Similarly, if the answers to questions 4-7 are 'yes', then it is a high-risk event and it is escalated to the Deputy Vice Chancellor for a decision.¹⁶

The online policies of various other universities also highlight that the initial risk assessment is to determine if events are low, medium or high risk.¹⁷ Some of the participants also confirmed similar approaches at their universities, for example Participant 3 pointed out:

When you book a room, you are asked a series of questions and if you answer yes to a number of those, effectively it triggers a slightly higher level of risk assessment of the process. So, that will be things like: if the capacity of the room that your booking isn't sufficient for the number of people, kind of health and safety aspect, through to if you've got an external speaker, who is known to have a media presence and that's not always going to be a Prevent concern, because they might be famous and we might get lots of people coming, whatever else it might be, through to ones which are a concern... and we have known about protests. So, there are loads of flags, if they are triggered, then the conference office reviews those details and then in our procedure there is an escalation process, where further information can be requested, risk assessments are

¹³ 'External Speakers And Events Policy - Guidance and legal obligations relating to external speakers at Plymouth University'
<https://www.plymouth.ac.uk/uploads/production/document/path/7/7327/Plymouth_University_External_Speakers_Policy_v5.pdf> accessed 07 January 2020

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ See for example, London South Bank University's External Speaker Policy, para. 6.5
<https://www.lsbu.ac.uk/_data/assets/pdf_file/0003/80157/External-Speakers-Policy-December-2019-March-2020-v4-formatted.pdf> accessed 17 May 2021

required to be provided, links are required for the external speaker. For external speakers, you have to provide two links that give some context to who is speaking and that should be happening for all events.¹⁸

The flow chart displayed earlier in this chapter is not intended to paint the complete picture of the process, rather it outlines a summary of the general process. In practical terms, the transmission between stage two and three could be very complicated and it varies from one institution to another.¹⁹

9.3.1 TYPE OF ESCALATED EVENTS

A common argument that emerged was that the main reasons that events were escalated were that they were likely to be controversial in nature on political grounds, but not necessarily Prevent related. Some asserted that none of their events had ever had Prevent-related concerns. For example, when Participant 15 was questioned about the types of events that were escalated, they responded:

Generally, controversial issues. Some of them might be political. So, they may come to me because they were political but not Prevent. I haven't had any concerns about any of our events within the frame of reference of Prevent.²⁰

Participant 3 argued, 'we have a lot of people speaking here, not necessarily Prevent driven, but speaking on contentious subjects, such as Israel and Palestine situation is a hot topic here, in particular'. When Participant 5 was questioned about how often they had the concern that a speaker may potentially radicalise students, they responded:

I think we've only had one what I would class as a provocative speaker and we were keen to facilitate that speaker going ahead. I don't think there was ever any significant concern about a person radicalising the audience or potentially drawing anybody into being radicalised or terrorism.²¹

Participant 16 characterised the 'typical approval requests' that were escalated to them as 'not appropriate', as they 'don't fit the threshold of actually coming through as

¹⁸ P3

¹⁹ For a further analysis of the bureaucracy in the process, see Chapter Eleven and Twelve.

²⁰ P15

²¹ P5

needing to be investigated and risk assessed’, for example ‘a carol concert’. They argued that ‘controversial events were perhaps one or two a year and not Prevent related’.

The escalation of events on the grounds of Prevent-related concerns seems very rare according to the experiences of the participants in this study, which could explain their view, as mentioned in Chapter Seven, that radicalisation is not a problem at universities or that the risk is far lower than the Government claims it is.²²

9.4 STAGE THREE – SECOND RISK ASSESSMENT AND DECISION

The third stage is when an escalated event reaches the desk of the designated officer, who is also referred to as the ‘chief operating officer’ in some policies.²³ This stage involves the second risk assessment and the final decision by the designated officer. The risk assessment involves assessing the history of the speaker, as Participant 7 succinctly put it, ‘we look at their past track record’. The organisers are normally required to ‘submit a biography of the person who is coming to speak’ stated Participant 4. Some of the participants noted that speaker reputation and history is not enough, rather consideration of the topic is also important. For example, Participant 11 argued, ‘We need to look at speaker reputation as well as the topic of the talk, because someone with a reputation could come along to talk about their hobby. So, I would see if there's no relation between the topic and their reputation’. Participant 12 made a similar point using an example:

I think what I read last week, just the fact that they said that Moazzam Begg went on campus in many universities and he is reported as a supporter of al-Qaeda.

²² Interestingly, participants 5, 15 and 16 had found the Prevent definition of extremism useful, as mentioned in Chapter Eight, section 8.2.2. However, their arguments in this section seem to suggest that they may never have actually used that definition, as all three of them argued that they have not had an event with Prevent related concerns. So, there may not have been a need to use the Prevent definition of extremism, which can explain why they did not refer to the definition when they spoke critically about extremism prior to being handed the definition.

²³ The Sheffield Hallam University’s code of practice states that the ‘Chief Operating Officer is authorised to decide whether or not an event should go ahead and to decide if an event underway should be terminated’. See: Sheffield Hallam University, ‘Freedom of Speech Code of Practice’, para 20 <https://students.shu.ac.uk/regulations/conduct_discipline/FreedomOfSpeech.pdf> accessed 22 January 2020

That did not give the full story. That isn't why he attended university ...; he didn't attend that university to talk about Prevent. He didn't talk about CAGE. He wasn't there to support al-Qaeda. He was there to talk about his experience as a detainee. I think that is why sometimes the confusion sets in and people read that and some people would think 'oh my goodness, I can't believe somewhere like university ... allowed that to happen'. They haven't got the full context and I think that's what is really unhelpful.

Participant 2 noted the importance of the topic as follows:

We've had Muslim speakers here who, for example, said things about homosexuals that members of staff and students have found highly offensive. We said to them: well, the purpose of their talk is not to talk about that, this is the topic they are going to talk about and provided they stick to that topic we can't see any legal grounds, you know, we don't believe in no-platforming individuals, just because of things they may have said in the past. So, we're looking at what are they going to say on this occasion.

When considering the history of the speaker and the topic, participants highlighted a number of key questions, which formed part of the second assessment and are summarised as follows: are they known to be controversial?²⁴ Have there been any protests or disruption in meetings?²⁵ 'Is there is any suggestion that this individual might have breached the law previously?'²⁶ Is this person linked to any proscribed organisation?²⁷ Is there going to be a health and safety breach or threat?²⁸ Have they been denied a platform elsewhere? If so why?²⁹ Will they infringe the rights of others?³⁰ What is the intention of the speaker?³¹ Participants 10 and 11 expanded on what they meant by intention:

²⁴ P3; P5: P6: P13

²⁵ P1; P4

²⁶ P2

²⁷ P2: P4: P6

²⁸ P5; P14

²⁹ P12

³⁰ P12

³¹ P10; P11

The intention I think is the best thing with our students. So, are you coming along to say: we believe the Caliphate is the right thing, why? Because we want to recruit people to send them out to this particular country to a training camp to then commit acts of terrorism. OK, hey, we're probably going to have some problems with that.³²

I think theoretically, if it came down to it, you would be looking at speaker intent so what is the intention behind the talk? Is the intention specifically to radicalise or is the intention to share a personal experience and certain beliefs? That might be one way of looking at it.³³

Apart from speaker intent, the other questions are very similar to the initial risk assessment conducted by the principal organiser. It is also worth noting the minimal role of Prevent in these questions. When most participants described their risk assessment questions, they did not directly and unequivocally address the Prevent duty. Rather, they seemed more focused on aspects such as controversy, protest, health and safety, speaker reputation, breach of law, belonging to a proscribed organisation and whether or not they were denied a platform in the past. Only under speaker intent, did Participants 10 and 11 seem to address Prevent-related concerns. Assessing whether the intent of the speaker is to radicalise may seem to be in line with the spirit of the Prevent duty. However, it is not free from practical problems, as working out whether or not the intent of a speaker is to radicalise is near enough impossible. If the approach of Participant 10 is considered, then it implies that the speaker will be questioned about their intent. However, it is unlikely that a speaker would admit to such a thing, as it would be akin to confessing to a severe criminal offence. This was also a point made by Participant 9, who argued that the risk of radicalisation 'is not likely to surface through freedom of speech, because I imagine these people would go underground. They are not going to declare'.

In trying to overcome this practical problem, Participant 11 posed the question, 'how do you assess someone's intent?' and then answered as follows, 'Well, previous practice or previous behaviour or previous actions'. However, looking at previous actions or

³² P10

³³ P11

statements also poses some challenges. It is possible that the person may have changed their view, as Participant 3 observed, 'there are issues with speakers, who in the past have said some things, which most people will find not very correct and sometimes abhorrent but have publicly changed their views significantly from where they were 10 or 15 years ago. And the press will still refer to them as the person who positively spoke about FGM, anti-homosexual views or whatever else'. Furthermore, if it was proven that a person previously drew students into terrorism, the chances are that such a person would be in prison.

In any case, this section has shown the minor role Prevent plays in the second risk assessment. Prevent may just be a 'part of one in many things'³⁴ that participants look at, if and when the opportunity arises when assessing external speaker events. The opportunity to assess events under the Prevent duty, itself, seems very rare, considering that most events that are escalated are not Prevent related.

The following section will show that the second risk assessment differs from the first, in that designated officers also seek advice from internal and external bodies, as well as gathering further information from various sources regarding speakers. It will present the method of gathering information and making the decision, which is part of the third phase of the application process.

9.4.1 EVIDENCE GATHERING

This section will discuss the mechanisms that the participants relied upon to gather information concerning potential external speakers and to make a decision. The interview data will be used to show that participants relied on opinions from internal and external sources, such as the police and the regional Prevent coordinators, to make their decisions. This section will explore the following sources: (a) Google search; (b) police; (c) Prevent coordinators; (d) Prevent panel or executive board; (e) other sources, which include university lawyers, Association of University Chief Security Officers, and 'security organisations of the UK Government'.

³⁴ As noted by P3

9.4.1.1 INTERNET-BASED SEARCH

Almost all participants mentioned that they undertook a desk-based Google search as their first step in risk assessment, which was in addition to assessing the information provided by the organisers. For example, Participant 4 highlighted:

Normally the person who is submitting a request will also submit a biography of the person who is coming to speak. So, we will have that, we then will do some Google search to back up that the actual person is who they say they are and is not a proscribed person.

Participant 2 said that they would do 'some basic search using Google and other search tools to see what information we can gather about another event the individual may have spoken at. What press coverage there is?' A Google search will not only reveal coverage and reports from mainstream media, but also from social media and websites belonging to a number of external organisations, such as Spiked and the Henry Jackson Society (HJS). Having mentioned a Google search for coverage, many participants also acknowledged that reports from mainstream, social media and HJS may be biased and unreliable. For example, Participant 6 argued:

Social media! How can you trust that?! There are aspects of social media you can't trust and there's aspects of mainstream media you can't trust. Someone might be labelled an extremist by say the *Daily Mail*, but we might not find them as an extremist at a university.

Participant 8 pointed out that those who 'are labelled extremist by mainstream or social media are probably not extremist frankly'. They also added 'if you look at some of the *Daily Mail* stories, you know, [they] are horrific, but if you actually look into the proper background, you know it's taken out of context and we spent little bit longer digging than we would otherwise do'. Participant 13 succinctly argued 'newspapers come with their own agenda. But that's not our problem, our expectation, my expectation is we would wish to hear these issues debated without frightening or causing public safety issues or breaking the law'. Participant 12 also pointed to the biases of the HJS

For me I think the most pressure on all of this comes from the media, last week the Henry Jackson Society released an article where they made some quite inflammatory statements again around Moazzam Begg going on campus, they

quoted how he was a supporter of al-Qaeda, which he may well have been, but the author didn't put the balance in the article. It was about universities were failing in their Prevent obligations by allowing these people on campus.

Having identified concerns of bias in the media and online, it is not surprising that participants highlighted a number of approaches to supplement their decisions in addition to a Google search. Participants relied on evidence and advice from a number of parties and people from both within and outside their universities. This approach of gathering information from external agencies is also authorised in some of the policies from a number of different universities, such as the Plymouth University policy that states:

The Vice Chancellor may request independent evidence from other parties before making a decision.³⁵

One of the most relied upon external organisations for advice and opinion was the police, as the following section will explore.

9.4.1.2 POLICE

The police was highlighted by a number of participants.³⁶ For example, Participant 13 mentioned:

I will ask for information about that event and the risk, seeking advice from the appropriate agencies in the Government. We have a campus policeman, who is not there to enforce the law per se, but is a means of providing us with information as a liaison point between ourselves and the criminal justice system in various different regards, whether it be security or more conventional branches of law.

Participant 7 pointed out:

And we have occasional meetings with the police. I think I have only been to one. We usually send the head of security to those meetings. And they keep us alert

³⁵ External Speakers and Events Policy, University of Plymouth,

<https://www.plymouth.ac.uk/uploads/production/document/path/7/7327/Plymouth_University_External_Speakers_Policy_v5.pdf> accessed 14 January 2020

³⁶ P4; P6; P7; P8; P10; P13; P15; P16

as to whether there are any live threats or risks. So, the sorts of things they identify are white supremacists' views, Islamist related radicals and anti-vivisectionists.

Online policies and codes of various universities also highlight that advice may be sought from the police. For example, the Sheffield Hallam University code states that 'the University reserves the right to seek advice from the police about any public order aspect of a proposed event, and to make police support at an event a condition for it to be allowed to go ahead'.³⁷ The Government also advocated the role of the local police in working with universities to assess the risk of external speakers in 2011, long before Prevent became a statutory duty.

The Government will support local police forces in working with those institutions assessed to be at the greatest risk and will work with the police and other partners to ensure that student societies and university and college staff have the right information and guidance to enable them to make decisions about external speakers.³⁸

There were mixed views from participants regarding the level of advice and its influence on their decision. Participant 4 indicated that the level of advice from the police was minimal:

We have not had the police ever challenge that. In fact, they will say exactly the same thing as I am, if I phone in and said what do you think about this chap? They will say he's not on the proscribed list, end of story as far as they are concerned. That's as far as they go in saying whether someone is or isn't an acceptable person to take place in a speech or a debate.

Participant 10 seemed to argue that the police were not risk-averse:

³⁷ Sheffield Hallam University, 'Freedom of Speech Code of Practice', para 13

<https://students.shu.ac.uk/regulations/conduct_discipline/FreedomOfSpeech.pdf> accessed 22 January 2020

³⁸ HM Government, *CONTEST the United Kingdom's strategy for Countering terrorism*, (Cm 8123, 2011) section 5.66

If you are really concerned about that you can have that discussion or we can have that discussion because of our relationship with our police colleagues and say 'what's your view on that?' One of the things I found, which is maybe not a cool thing to say, but police colleagues tend to be quite sensible and level headed about this stuff. They would be a lot less kind of, you know, on high alert compared to others, because they have seen a lot more of it. And they know what the kind of high-end extremism looks like. They know what dangerous extremism looks like in a way which your general Joe Bloggs student doesn't.

It is worth noting the point made by Participant 4 that the police only confirm whether or not a speaker is on the proscribed list, combined with the comments of Participant 10 that describe the police as 'quite sensible and level headed about this stuff', seems to suggest that the advice from the police may not be risk-averse and that the police may not dictate the outcome of a speaker request. Likewise, Participant 8 also indicated that their advice would not result in cancellations.

[The police] have come back and said, 'yes, we think there is a challenge there'. We will try not to cancel it, I think. But we will try and find out what it is that they are going to talk about.

To the contrary, the following words of Participant 2 seem to suggest that the police can try to assert a greater level of influence than what has been suggested by Participant 4.

We've had, on one occasion, some push back from the police, but it was at a fairly junior level in the police. I mean, when we said to them, 'get lost!' or words to that effect, that was the last that we heard of it. So, we've never had a senior officer... ringing us and saying this person is an extremist and shouldn't be speaking or anything like that.³⁹

Participant 15 suggested that they would consult the police for some of their mitigations:

³⁹ P2

We have a very good relationship with the local police. We make sure that they were aware that the event was happening and take advice from them as to what other measures we need to put in place in terms of managing it.

A contrast between the accounts of Participant 4 and Participant 15 shows that universities received different levels of advice from the police, with Participant 4 only receiving information on whether a speaker was on the proscribed list, whereas Participant 15 got advice on mitigation measures and management of the events. It is also possible that the advice the police may provide on mitigations and management is risk averse, given that a plethora of studies have shown the police to be a risk-averse organisation. For example, Robert Heaton argues that ‘given the potential negative consequences of risk taking upon reputation, it is not surprising that the police have developed a risk-averse organizational culture, which is reflected in their processes and decisions’.⁴⁰ Furthermore, in a 12-page guide produced by counter-terrorism police to safeguard young people and adults from ideological extremism, Extinction Rebellion (XR) was placed on a ‘list of extremist ideologies’ which they claimed should be reported to the Prevent programme ‘to catch those at risk of committing atrocities’.⁴¹ The Guardian reported that when they questioned the police about the document, the police acknowledged that ‘it had been circulated to “statutory partners”’.⁴² The report stated that the police ‘now accepted that the protest group was not extremist’,⁴³ and that ‘counter-terrorism officials at a national level believe including XR in the guide was a mistake’.⁴⁴

However, a number of days later, it was reported that ‘a counter-terrorism police document distributed to medical staff and teachers as part of anti-extremism briefings included Greenpeace, PETA and other non-violent groups, as well as neo-Nazis’.⁴⁵ The

⁴⁰ Robert Heaton, ‘We Could be Criticised! Policing and Risk Aversion’, (2011) 5 *Policing: A Journal of Policy and Practice* 75, p76

⁴¹ Vikram Dodd and Jamie Grierson, ‘Terrorism police list Extinction Rebellion as extremist ideology’, *The Guardian* (10 January 2020) <<https://www.theguardian.com/uk-news/2020/jan/10/xr-extinction-rebellion-listed-extremist-ideology-police-prevent-scheme-guidance>> accessed 08 February 2020

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

executive director of Greenpeace argued ‘tarring environmental campaigners and terrorist organisations with the same brush is not going to help fight terrorism’.⁴⁶ The Guardian also reported that a teacher received this document as part of their Prevent training to help ‘identify symbols that students might draw or have about them and to enable staff to make a decision about whether it is a Prevent concern or not’.⁴⁷

Academics studying policing, such as Gilmore, have often criticised pre-emptive policing powers and their effects on protest, which is an expression on free of speech.⁴⁸ Given the historic clashes between policing and dissenting voices, it would not be surprising if the advice given by the police to universities was risk averse especially concerning dissenting and unorthodox voices. Such advice, which labels non-violent protest groups as extremists, could affect the outcome of how events are organised on campuses. However, further empirical research is required to ascertain the kind of advice the police provide to universities and the level of reliability it holds. In any case, the influence of police advice is likely to shape the outcome of the application, as noted by Participant 16:

I think that my experience is often that police recommendations can sway senior decision makers. So, if the police came out and said that event should not take place our recommendation is that there are public order risks and all this kind of thing, then that may sway people.

The words of Participant 7, mentioned earlier in this section, also suggest that universities may rely on the Police for information on ‘live risks’ of extremists, such as white supremacists or Islamists. In such circumstances, arguably universities are relying on the police to interpret who is an extremist and poses a threat. As highlighted earlier, the police may be a risk-averse organisation with a different understanding of extremism to universities and academics.

Participant 6 added that the Police may also be involved with other aspects of the university, such as research:

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Joanna Gilmore, *Lessons from Orgreaves: Police Power and the criminalisation of Protest* (2019) 46

We were discussing a potential agreement with the police, where they have approached every university I think, to say if there's someone going to be discussing or undertaking activities, research relating to terrorism, would you please agree to tell us? Because if they find out that someone's home computer has been flagged because they have downloaded magazines that are illegal to download, how to build a bomb in your kitchen, and as a university whilst we would like to protect people from having their doors kicked in at 4 in the morning, because they have downloaded that document and we haven't told the police they are studying counter-terrorism. But under GDPR we have a conflicting duty there, because we have to then get their consent, their freely given consent to tell the police. So, there's a tension there that we're going through.

In short, there were mixed views of participants regarding the level and influence of advice from the Police. On the one hand, some suggested that the advice was limited to information on who is on the proscribed list (Participant 4) and that the police 'tend to be quite sensible and level headed' (Participant 10). On the other hand, others suggested that the advice was much deeper, suggesting what mitigations ought to be used and how the event ought to be managed. Thus, further empirical research into this area is required to derive a clearer picture of the influence of the Police on university decisions, not only concerning advice on external speaker events, but also other aspects of university life, especially when other researchers have found the police to be risk averse.

9.4.1.3 PREVENT COORDINATORS

A number of participants⁴⁹ specified that they relied upon Prevent coordinators, such as Participant 7, who pointed out 'we do keep in contact with the Prevent authorities, so there is a coordinator for this area, who works for the city council'. Participants also indicated the level of advice and potential influence of Prevent coordinators on their events. For example, Participant 14 noted:

The Prevent coordinator has tended to provide us with information. So, they've said, here's some of their history, here's some of the things we think they've

⁴⁹ P1; P5; P7; P8; P14; P15

been involved in, here's what the *Guardian* says about the organisation that they are from. So, that tends to be the level of advice that we get.

Whilst Participant 14 seemed to suggest that Prevent coordinators merely provided some background information regarding speakers, in another point in the interview they suggested that Prevent coordinator's involvement could be more than just providing information.

If an external Prevent coordinator said, under no circumstances do I think you should let this person speak, I think we'd take that very seriously. I think, it would be very unlikely that we'd let that person speak. [Participant 14]

Other participants also seemed to suggest that the involvement was a little more than just providing information. For example, Participant 5 noted that Prevent coordinators assisted in providing or establishing a position around freedom of speech and British values, which is also more than just providing information about a speaker.

Obviously we would also use our partnership expertise, like the Prevent coordinator to give us a position and to assist in establishing a position around whether or not those values are being challenged. [Participant 5]

Their influence on university decisions was highlighted by the Government, which acknowledged that events have been changed or cancelled as a result of advice and training from Prevent coordinators:

Earlier this year we deployed 'Prevent' coordinators to work with those universities and colleges across England and Wales which face the greatest challenge from radicalisation. They offer training, raise awareness among staff of the warning signs of extremist behaviour and have already helped institutions review their external speaker policies. These coordinators also give universities access to the information they need to make informed decisions about who they allow to speak on campuses. This move has been welcomed by universities and *as a result events have been changed or cancelled*. [Emphasis added by author]⁵⁰

⁵⁰ HM Government, 'Tackling extremism in the UK: Report from the Prime Minister's Task Force on Tackling Radicalisation and Extremism' (December 2013) para 5.2.2

Participant 15 asserted that if they were 'advised externally not to allow an event to happen' by their local Prevent coordinator, then they would 'talk to the vice chancellor and the executive team about the issue'. This shows that the level of advice of Prevent coordinators may not be restricted to providing background information only. However, Participant 1 argued that the advice from Prevent coordinators was generally in favour of freedom of speech:

So, I've actually heard external agencies speak around the fact that one of the ways of countering extremism is open dialogue, challenge and the opportunity for debate. That's why you always think that you need to debate these sorts of things, in order to give counterviews and counter opinions. And I've actually heard Prevent coordinators speak like that, as well, because it's about challenging views and having an active debate in the open.

Although it is important to question the sources of information that Prevent coordinators use when providing information to university administration staff regarding speakers, it is beyond the scope of this study to provide any meaningful insight, as such data was not gathered and it would shift the focus of this study from universities to the work of Prevent coordinators. However, some indication from the interview data seems to suggest that anecdotal evidence or media reports may be some of their sources of information. For example, Participant 8 noted, 'I might refer it by giving a call to our Prevent coordinator in our city council, who is very pragmatic. He's also got great network. So, sometimes he'll pick up and say, 'Yeah, I've heard of this one, let me look into it', and he'll ring a couple of people he knows'. As noted earlier, Participant 14 pointed out that the Prevent coordinator also relied upon media reports, 'here's what the Guardian says about the organisation that they are from'. It is possible that some of their assessments about speakers could be based upon reports by organisations that the Government also relies upon, such as Student Rights, who have been discredited by academics for being biased, as mentioned in section 1.4.1.1 of Chapter One. Thus, further empirical study is required to paint a clearer picture of the kind of advice the Prevent coordinators provide, the sources of information that are

used by Prevent coordinators, and the level of influence the role has on university decisions.

Participants did not mention the frequency of contact or advice with the Prevent coordinators. Given that they have argued that typical escalated events were not Prevent related, it may seem that the frequency of contact may be minimal. However, equally it could also be argued that contact with Prevent coordinators does not require an event to be the impetus. Participants may be in contact on a routine bases as part of their training, job role or on other similar grounds. A routine contact was alluded to by Participant 15, who suggested that they were part of ‘a regional Prevent group of all of the higher educations that meet *periodically*’ and ‘the regional Prevent coordinator department [wa]s part of that group’. Since the data is inconclusive regarding the extent of contact and advice, further empirical research is needed.

9.4.1.4 PREVENT PANEL OR EXECUTIVE BOARD

Some participants⁵¹ asserted that they would consult with their executive group or Prevent panel for difficult decisions. For example, Participant 15 asserted that they ‘wouldn’t make the decision in isolation’, instead they would seek consensus from the executive board – ‘so, it would be an institutional decision and not a personal decision’.⁵² Likewise, Participant 9 pointed out, ‘If we have any concerns, I will refer to the executive group that’s the vice chancellors’ senior officers that meet on a weekly basis, i.e. the vice chancellor, the deputy vice chancellors and the director of finance and we will agree on what conditions the event goes ahead’. This shows that the decision is not always ‘a personal decision’ rather at times it could be a ‘collective decision’. Participant 5 added that their collective decision not only involved the senior management of the University but also student representatives.

I think, we'd take a position collectively and we have a small panel of Prevent related individuals within the institution which is representative of senior management within the University, Students Union and the student body.
[Participant 5]

⁵¹ P5; P9; P12; P15

⁵² P15

Participant 9 also emphasised that in their university ‘the stance [of the executive board] is very much in favour of freedom of speech, we don’t want to prevent an event going ahead unless there’s clear evidence that there’s a real risk that the law will be broken’. It can be argued that taking collective decisions enables administrative staff to discuss options and thus to benefit from the experiences of others, and the involvement of student representatives may even tip decisions in favour of freedom of speech, as pointed out by Participant 12:

A representative from the students union sat and still does sit on that [i.e. the internal Prevent group] and they get their say in terms of whether they think we’re going off track.

9.4.1.5 OTHER SOURCES OF INFORMATION

Three other sources were mentioned by participants: first, university lawyers;⁵³ second, the Association of University Chief Security Officers⁵⁴ (AUSCO); and third, ‘the security organisations of the United Kingdom Government’.⁵⁵

When mentioning university lawyers, Participant 13 seemed keen to stress that the decision was theirs and not that of the university lawyers, ‘I would seek legal advice from our Secretary's Office. Advice only, the responsibility rests with me’. Although the amount of weight given to this advice is unclear, Participant 13 indicated that their advice was not only concerning law and policy but also extended to identifying potential ‘risks’, the ‘circumstances’ under which the event may proceed, and the ‘protection’ and ‘supervision’ of the event. Moreover, Participant 13 seemed to suggest that the advice may also cover the outcome of the application, ‘the lawyers will read the information we have and tell me where they think it is a definitive yes or no’. Such level of advice seems to cover all aspects of the decision, from risks, conditions and mitigations to a ‘definitive yes or no’ on the outcome of the application.

⁵³ P13

⁵⁴ P16. The AUSCO is an organisation for security professionals working in higher and further education. See: <<https://www.aucso.org/>> accessed 15 May 2021

⁵⁵ P13

In contrast to the advice from lawyers, the type of advice from AUSCO could be described as probing and sharing experiences.⁵⁶ Participant 16 described the AUSCO as ‘a source where we're able to ask effectively other Prevent leads, to say we've had this application, have you any experience of this group? Have there been problems? What mitigations did you put in place? Was that effective?’

Finally, the ‘security organisations of the United Kingdom Government’ was mentioned rather vaguely as a source of information regarding whether or not a person belonged to a proscribed organisation.

How do we know that the person genuinely is from that organisation once we've identified what the organisation is? Where would we get definitive advice on these topics? Well, from the security organizations of the United Kingdom Government. [Participant 13]

Although some of the sources may be unclear, such as the ‘security services of the United Kingdom Government’, the above sections show that there are abundant avenues of information regarding external speakers and organisations. In addition to the above avenues of information, participants also highlighted that there were external groups that exert pressure on decisions.

⁵⁶ Cooperation between members of the AUSCO is encouraged in Paragraph 14 of the Prevent Duty Guidance for Higher Education, which states:

REHBs should also demonstrate that staff involved in the physical security of the institution's estate have an awareness of the Prevent duty. In many instances, this could be achieved through engagement with the Association of University Chief Security Officers (AUSCO). Where appropriate and legal to do so, an institution should also have procedures in place for the sharing of information about speakers with other institutions and partners.

See: HM Government, ‘Prevent Duty Guidance: For Higher Education Institutions in England and Wales’ (Home Office, March 2015) <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 15 May 2021

9.4.2 INFLUENCE OF PRESSURE GROUPS

Pressure groups may not be seen as sources of information; however, since a number of participants highlighted the attempts of pressure groups to shape decisions, it is worth exploring their likely influence on decisions. Participant 2, for example, suggested that ‘with some of those events, we’ve come under a lot of pressure from media and other lobby groups and we’ve generally said: well sorry, we hear what you say, but we’ve got a legal duty to uphold freedom of speech’. Participant 3 indicated possible pressure from the public, ‘increasingly you get members of the public writing in and asking why so and so is speaking at your university tomorrow?’ Participants also provided examples of external pressure, for example Participant 3 revealed:

I think we acknowledge those and we don’t let it impact on our decision making. We're quite clear that it’s our decision to make. Although it is a factor when we’re looking at it. So, using the Israeli ambassador example, there was a lot of views coming in from both sides from media, press, random members of the public and we acknowledged and dealt with those. It made us aware that there would be additional mitigation put in place to make sure it went ahead safely. [Participant 3]

Participant 9 also asserted that pressure did exist, but it did not influence their judgment:

The Islamic speakers were controversial in the sense that people have whipped up controversy about them. But they were not particularly controversial in what they said when they came here. And controlling officers attended and reported back on them. The meetings were fine and these were speakers who were being vilified by the Daily Telegraph, Daily Mail, even in one case the [a senior political figure]. So, the press would ring and say, “Why did you let this person speak on campus?” Well, we went through all our procedures and there was no reason to believe the law will be broken and the law wasn’t broken.

Participant 9 also pointed out an extreme example of pressure:

Academic friends of Israel, in particular in relation to the (.....) event, gosh, the correspondence was relentless. So, we got quoted on the Internet, and my colleague who works in the vice-chancellor’s office, his name got plastered all

over on the Internet. It wasn't great. But when they came and visited us, we had a good conversation with them and agreed to differ on the IHRA definition of anti-Semitism.

Whilst Participants 3 and 9 made it clear that the pressure did not influence their decisions, Participant 14 acknowledged that media pressure did have the potential to make universities risk averse, in order to protect their reputation:

So, I think the media does exert some pressure. I think, the Daily Mail test is an interesting test, it has some legitimacy as a test around protection of reputation. I think, it can make you very risk averse as an organisation and can make you deviate from what your values are. [Participant 14]

On the one hand, Participant 14 seemed to argue that 'the Daily Mail test' can make a university deviate from its values, making it risk averse, as the above extract shows. On the other hand, the same participant, in the following extract, also seemed to be frustrated by media pressure for labelling students and staff 'snowflakes' for banning events, which is a recognition that the pressure could be to allow certain speakers.

And of course, the hypocrisy is telling. So, simultaneously you get 'look at these snowflakes banning the speakers' and the next week you get 'why didn't you ban the speaker?', and 'universities are having hate speakers on campus' and that's frustrating. [Participant 14]

Given the earlier examples of extreme pressure from external groups by Participant 9, the somewhat unpredictable nature of the media identified by Participant 14 highlights that the context in which decisions are made regarding controversial events may be extremely difficult. It thus merits questioning how those final decisions are formed in potentially challenging contexts. Thus, the next section will assess how participants take the final decision after gathering information from the various sources mentioned above and in light of the pressures discussed.

9.4.3 'THE SNIFF TEST'⁵⁷

Paragraph 12 of HEPDG, the statutory guidance for universities and other relevant higher education bodies (RHEBs), states:

We would expect RHEBs to put in place a system for *assessing and rating risks* associated with any planned events, which provides evidence to suggest whether an event should proceed, be cancelled or whether action is required to mitigate any risk.⁵⁸ [Emphasis added by author]

This shows that the HEPDG not only requires universities to 'assess' the risk, but also to 'rate' the risk before deciding to approve, decline, or approve with mitigations.⁵⁹ However, participants did not describe how they rated the risk. On the contrary, some pointed out that it was a judgment call that may not be evidence led. For example, Participant 13 pointed out 'we do what I described, take the evidence and judge risk, then come to a judgment knowing it's a judgment call and not that the evidence automatically leads you to a particular conclusion'. Later in the interview, they added 'if it looks like a bad thing then I would stop it'. Participant 15 also argued that 'it's not an exact science'. Participant 6 described their risk assessment as follows, 'I refer to it very informally as *a sniff test*, if it smells a bit controversial, yeah, we need to mitigate it. We need to be careful about this one'. Participant 8 described their method as 'I can't say we've got a mathematical or scientific approach to it to be honest, it's quite a soft approach of does it feel right'. Thus, it seems that after gathering information and advice from various avenues, participants did not have a method of assessing and rating risk, rather, the best way of describing their approach is a 'judgment call'.⁶⁰

This shows that although universities have policies and processes that allow events to be escalated to the senior management for approval, it is unclear how the senior management assess, rate and form their decisions on events. Although the Higher

⁵⁷ P6

⁵⁸ HM Government (n56) para 12

⁵⁹ One possible method for assessing and rating the risk could be using a qualitative risk assessment approach, such as one based on probability and impact, which would allow the assessor to not only assess the risk but also rate the risk.

⁶⁰ In theory, to fulfil the risk assessment requirement of the Prevent duty, a simple qualitative risk assessment could be used to assess and rate risks and then find ways to mitigate them.

Education Funding Council for England (HEFCE) and the Office for Students (OfS) collect data on external speaker events, their reports do not clarify how senior management form their decisions. The interview data of this project fills this gap by showing that some senior management, at least, did not have a formal method of measuring or rating the level of risk, rather their assessments and decisions were gut feelings of ‘what feels right’. The findings of this chapter also support the findings of earlier studies, which were explored in section 6.1.3 of Chapter Six. Previous studies conducted on the implementation of Prevent by the NHS,⁶¹ Prevent practitioners⁶² and Prevent police officers⁶³ suggest that ‘gut feelings’ and ‘intuition’ were the foundations upon which their decisions regarding risk were made.

In addition to the finding of the previous chapter that the definition of extremism found in the HEPDG is ignored, the finding in this chapter that there is no systematic method of rating risk and forming a decision seems to suggest that the approach of universities to HEPDG may be symbolic in certain aspects. This possibility will be further probed in subsequent chapters, as the study tries to shed light on how the Prevent duty is implemented.

In order to better understand how the ‘judgment call’ is formed, it is important to analyse the views of participants regarding freedom of speech and the requirements of the Prevent duty, as it is likely that the ‘judgement call’ will be influenced by their preconceived views and opinions regarding these concepts. Thus, Chapter Eleven will analyse the views of participants regarding freedom of speech and Prevent.

⁶¹ Charlotte Heath-Kelly and Erzsebet Strausz, ‘The banality of counterterrorism “after, after 9/11”? Perspectives on the Prevent duty from the UK health care sector’, (2019) 12 Critical Studies on Terrorism 89; Charlotte Heath-Kelly and Erzsebet Strausz, ‘Counter-terrorism in the NHS Evaluating Prevent Duty Safeguarding in the NHS’ <https://warwick.ac.uk/fac/soc/pais/people/heath-kelly/project_report_60pp.pdf> accessed 19 November 2022

⁶² Tom Pettinger, ‘British terrorism preemption: Subjectivity and disjuncture in Channel “de-radicalisation” interventions’ (2020) 71 Br J Sociol. 970, p978

⁶³ Paul Dresser, ‘“Trust your instincts – act” PREVENT police officers’ perspectives of counter-radicalisation reporting thresholds’, (2019) 12 Critical Studies on Terrorism 605, p606

9.5 STAGE FOUR – THE APPEALS PROCESS

A number of online policies from various universities clearly identify an appeals process if the application is declined or if anyone feels that there has been a breach of the university policy regarding academic freedom or freedom of speech. At Plymouth University, this formal complaint is sent to the Vice Chancellor, who investigates and informs the complainant of the outcome.⁶⁴

However, it is not the case that all universities have a formal appeals process as part of their policy, for example Participant 8 acknowledged, ‘There's not a formal appeal. But, if someone came forward and said: “for these reasons, I'd like you to look at it again”, I'd look at it again’. The lack of clarity over the appeals process in some providers was also identified by OfS:

In other cases, some policies lacked clarity on their decision-making process. For example, some providers did not have a clear enough policy around how they would manage appeals to decisions on external speaker or event requests. This gave us some cause for concern as it risks undermining the procedure: decisions are more susceptible to challenge if decision-making processes are not clear to everyone, including lay users. Clear policies avoid confusion and the danger that they might be breached.⁶⁵

Since the OfS has also identified this weakness, it is likely that policies will further develop and change over time. Thus, the results of this project should be seen as a snapshot in time of the situation in universities from the introduction of Prevent as a statutory duty until the middle of 2019.

CONCLUSION

This chapter has provided key insights into the structure of the application process, which sets the groundwork for the remaining chapters and answers the following sub-

⁶⁴ External Speakers and Events Policy, University of Plymouth,

<https://www.plymouth.ac.uk/uploads/production/document/path/7/7327/Plymouth_University_External_Speakers_Policy_v5.pdf> accessed 14 January 2020

⁶⁵ OfS, ‘Prevent review meetings: Findings from the 2019 programme’, (OfS 2020.09, 6 February 2020)

p10, para 18 <[https://www.officeforstudents.org.uk/media/dab85cfd-3648-4ca7-a21d-](https://www.officeforstudents.org.uk/media/dab85cfd-3648-4ca7-a21d-61ac4bb2699a/prevent-review-meetings_findings-from-2019-programme.pdf)

[61ac4bb2699a/prevent-review-meetings_findings-from-2019-programme.pdf](https://www.officeforstudents.org.uk/media/dab85cfd-3648-4ca7-a21d-61ac4bb2699a/prevent-review-meetings_findings-from-2019-programme.pdf)> accessed 09 April 2023

question:

What are the approval processes for external speaker events and how are risk assessments carried out and decisions made?

By analysing the approval processes, it has highlighted the significance of the 'designated officers', who were university management, as the participant group in this study, by showing that all controversial and difficult events, from both the student union and the academic staff channels, are escalated to them for a decision.

It has shown that participants sought advice from a number of internal and external groups, some of which have a reputation for being risk averse, such as the police. Thus, this chapter highlighted the need for further empirical research into the kind of advice external agencies provide to universities, as well as their sources of information, in order to ascertain whether or not the advice is reliable and credible. It has shown that at times the advice may exceed just passing on information, extending to making recommendations or dictating the outcome of speaker requests. Although this chapter did not have the data to conclude that the advice from some sources, like the police and Prevent coordinators, was risk-averse, it nonetheless did show that the possibility of risk-aversion did exist. Additionally, it highlighted that media and pressure groups can exert great amounts of pressure, which has the potential to cause risk aversion, as identified by participants. However, participants seemed adamant that the pressure had little or no effect on the outcomes of applications at their institutions.

Moreover, although the first risk assessment had a very basic method of categorising the risk as 'low', 'medium' or 'high', the second risk assessment in stage three did not have a structure or a systematic manner of rating the risk. Rather the process is better described as information gathering and making a 'judgment', which is 'not necessarily driven by evidence', as described by participants. Thus, it lacks a crucial aspect of risk assessment, which is rating the level of risk in order to determine whether or not the risk is at a level that exceeds what is negligible and requires either mitigations or cancellation. The absence of risk rating makes it difficult to determine whether or not the mitigations are appropriate or effective in reducing the level of risk.

Since this chapter has highlighted that some of the advice universities may be receiving has the possibility of being risk averse, the next chapter will analyse risk aversion in light of the interview data, with greater depth.

Chapter Ten

PROBING THE POSSIBILITY OF RISK AVERSION

This chapter will assess the potential for risk aversion that may cause the curbing of free speech. It will first assess the possibility of risk aversion that may stem from the Prevent monitoring system and then it will assess the possibility of risk aversion that may stem from the Prevent duty guidance for higher education providers. Hence, it will attempt to answer the following sub-question:

How do university management (UM) understand and implement paragraph 11 of the Prevent Duty Guidance for Higher Education (HEPDG) and is there evidence of risk aversion or symbolic compliance in the implementation of the guidance?

10.1 RISK AVERSION FROM PREVENT MONITORING

This section will demonstrate that there are two possible opposite outcomes of the Prevent monitoring system. On the one hand, there are reasons to argue that it may cause universities to become risk averse, which is likely to lead to freedom of speech being curbed.¹ On the other hand, there are arguments that suggest universities are likely to merely show symbolic compliance with the monitoring system, which means that freedom of speech is not likely to be directly impacted.² This section will conclude that although both are possible outcomes, a better way to determine which outcome is more likely is to assess what participants are doing in practice.

10.1.1 RISK AVERSION

Four participants³ raised concerns that universities were risk averse. Participant 16, for example, argued, 'in nature, the university hierarchy tends to be risk averse, in common with every other university very cautious and concerned about reputation, image and all of those sorts of things'. For Participant 15, risk aversion was caused by the monitoring of Prevent by the Office for Students (OfS):

¹ See section 5.3.1 in Chapter Five for a fuller discussion on the impact of Prevent on free speech.

² See sections 6.4, 6.4.1 and 6.4.2 in Chapter Six for a fuller discussion on the concern of symbolic compliance

³ P10; P14; P15; P16

The duty does exist and our compliance with the duty is monitored and it's because it's quite a subjective thing, there is a tendency for people to be risk averse around something where it's externally monitored. When it's externally monitored by a regulator, it pushes you to be conservative in the way you look at these things.⁴

In order to critically evaluate this concern in light of the views expressed by participants, it is important to first outline the context within which participants work and the monitoring mechanisms to which they are subject.

10.1.1.1 THE MONITORING CONTEXT

Compliance with the Prevent duty requires universities to have relevant policies in place and then to properly apply those policies:

Compliance with the Prevent duty requires that properly thought through procedures and policies are in place. Having procedures and policies in place which match the general expectations set out in this guidance will mean that institutions are well placed to comply with the Prevent duty. Compliance will only be achieved if these procedures and policies are properly followed and applied.⁵

According to the Higher Education Funding Council for England (HEFCE), which was the monitoring body of Prevent in universities prior to the Office for Students (OfS), all relevant higher education bodies (RHEBs) had to submit annual reports, 'summarising any relevant evidence which demonstrates their continuing active and effective implementation of the Prevent duty'. In addition, if HEFCE had any concerns with a

⁴ P15

⁵ HM Government, 'Prevent Duty Guidance for Higher Education Institutions in England and Wales', (updated 10 April 2019) para 5 <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 22 June 2020; also see: Higher Education Funding Council for England, 'Framework for the monitoring of the Prevent duty in higher education in England' (HEFCE 2017/10, August 2017) para 10 <https://www.officeforstudents.org.uk/media/1079/prevent_duty_monitoring_framework_2017_onwards.pdf> accessed 02 December 2020

provider of higher education, they could ‘carry out face-to-face “Prevent reviews” on the basis of risk’.⁶ The OfS succeeded HEFCE and its reformed framework for monitoring began from September 2018. OfS describes the new monitoring framework as a ‘strengthened, more evidence-based and risk-based approach’⁷ compared to the HEFCE framework. Under the OfS framework, universities are classed as at high or low risk of not demonstrating ‘due regard’ to the Prevent duty. High-risk universities are ‘subject to heightened engagement’ from the OfS and are ‘assigned a named single point of contact in the OfS Prevent team’.⁸ They are given limited notice of a ‘Prevent Review Meeting’ (PRM) with OfS and may have to provide information and certain documents in advance of the meeting, such as Prevent risk assessments and action plans, self-assessment exercises, key Prevent-related policies, other documents and minutes from working groups.⁹ OfS then makes ‘a judgement on the provider’s compliance with the duty following the meeting’.¹⁰ The next section will analyse the effects of the above monitoring system.

10.1.1.2 THE EFFECTS OF MONITORING

This section will explore whether the above monitoring system ensures compliance or whether it has the potential to extend beyond mere compliance to risk aversion. It is divided into two parts: the first will analyse theories that suggest Prevent monitoring will lead to compliance. The second will analyse, in light of relevant theories, whether Prevent monitoring can lead to risk aversion.

10.1.1.2.1 COMPLIANCE

The statement of Participant 15 raises the important question of what effect this monitoring has on how Prevent is implemented. The monitoring scheme does increase

⁶ Ibid, para 7 and 8

⁷ Office for Students, ‘Prevent duty: Framework for monitoring in higher education in England 2018-19 onwards’ (OfS 2018.35, 12 September 2018) <<https://www.officeforstudents.org.uk/media/3e9aa5d3-21de-4b24-ac21-18de19b041dc/prevent-duty-framework-for-monitoring-in-higher-education-in-england-2018-19-onwards-updated-22-january-2019.pdf>> accessed 04 August 2019

⁸ Ibid, para 6

⁹ Ibid, para 56

¹⁰ Ibid, para 60

bureaucracy, which, according to Max Weber's understanding, should guarantee that work inside an organisation will be conducted according to the rules. Weber argues that 'the individual bureaucrat cannot squirm out of the apparatus into which he has been harnessed'.¹¹ He further suggests that, 'the professional bureaucrat is chained to his activity in his entire economic and ideological existence. In the great majority of cases he is only a small cog in a ceaselessly moving mechanism which prescribes to him an essentially fixed route of march'.¹² From such a perspective, the increase of bureaucracy is seen to ensure compliance to rules and is based upon the assumption that organisations function according to their formal blueprints, that coordination is routine, and that rules and procedures are followed.

Thus, the added bureaucracy required by the statutory Prevent duty and the monitoring of Prevent by the OfS can be understood as an attempt to ensure compliance. There are a number of studies that demonstrate that monitoring increases compliance of standard processes in organisations. Bradley Staats *et al.*, for example, investigated the effectiveness of electronic monitoring in overcoming the challenge of hand-hygiene noncompliance by caregivers in healthcare. They found that caregivers 'exhibit a large and significant increase in hand compliance after individual electronic monitoring was activated'.¹³ However, it must also be considered whether the external monitoring of Prevent can have the effect of increasing risk aversion – an effect which goes beyond simply ensuring Weberian compliance, and extends to overzealous implementation, as suggested by Participant 15.

10.1.1.2.2 BEYOND COMPLIANCE

This section will explore whether the Prevent monitoring system has the potential to cause risk aversion. The interview with Participant 15 was conducted after OfS had

¹¹ Max Weber, 'Bureaucracy', in Max Weber, Guenther Roth and Claus Wittich, *Economy and Sociology*, (University of California Press 1978) p987

¹² *Ibid*, p988

¹³ Bradley R. Staats, Hengchen Dai, David Hofmann, Katherine L. Milkman, 'Motivating Process Compliance Through Individual Electronic Monitoring: An Empirical Examination of Hand Hygiene in Healthcare', (2017) 63 *Management Science* 1563, p1564

released their 'strengthened, more evidence based and risk-based' framework.¹⁴ It can be reasoned that the context they were referring to when they noted the possibility of increased risk-aversion was the OfS monitoring approach highlighted above. The view of Participant 15 can be understood using the 'rational-cheater model',¹⁵ which postulates that monitoring motivates workers.¹⁶ According to this model, workers – in this context the individuals responsible for approving events in universities – are seen as rational cheaters, who 'provide less than the optimal level of effort when the marginal benefit of doing so exceeds its cost'.¹⁷ As a result, Seeun Jung and Kenneth Hounbedji argue that 'monitoring motivates the agents to raise their effort level in order to reduce the risk of a penalty if they get caught shirking'.¹⁸ Applying this theory to the present context, it is possible that in order to avoid the heightened engagement from OfS, including PRMs, all of which may be seen as extra workload or punishment, universities may exert more effort to demonstrate compliance. From this perspective, risk aversion is reflected in the overzealous application of the Prevent duty, in order to be categorised as low-risk rather than high-risk. This is a particular concern in relation to paragraph 11 of the HEPDG, which, as identified in Chapter Four, is one of the most contentious aspects of the Prevent guidance. Paragraph 11 states:

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

¹⁴ OfS (n7)

¹⁵ The rational cheater model is also referred to as the principal-agency theory. See Chapter six, section 6.4.3 for a fuller exploration of the theory.

¹⁶ Seeun Jung, Kenneth Hounbedji, 'Shirking, Monitoring, and Risk Aversion' 2014 halshs-00965532, <<https://shs.hal.science/halshs-00965532>> accessed 05 September 2019

¹⁷ Ibid, p2

¹⁸ Ibid, p2

the risk cannot be fully mitigated they should exercise caution and not allow the event to proceed'.¹⁹ [Emphasis added by author]

If applied literally, Paragraph 11 poses a significant threat to free speech: being 'entirely convinced' that the risk is 'fully mitigated' is arguably an impossible test, requiring universities to ban almost all controversial events.²⁰

Compliance is not just based on reports from universities. Rather, the framework states that 'we may also be notified of concerns from third parties that a RHEB is not fulfilling its Prevent duty in some way. This could be from individuals, media reports or other organisations involved in the delivery of Prevent'.²¹ It is possible that allowing media reports and information from individuals and organisations to determine compliance may influence how universities approach Prevent and contribute to risk aversion. In order to avoid reputational damage or media pressure, UM may adopt stricter policies and practices, even if they disagree with them. As Participant 14 argued, media pressure 'can make you very risk averse as an organisation and can make you deviate from what your values are'. Participant 10 also highlighted that some of the negative perceptions around Prevent were a result of UM being risk averse due to media pressure:

You have some examples of people who ... because of "I don't want my organisation to be the organisation that's on the front cover of the Daily Mail", implemented Prevent in a really inappropriate and an unacceptable manner, and Prevent has never recovered from that.²²

Reports from external organisations can have similar effects: these organisations do not hold the same responsibilities and duties as universities, and are likely to have differing interests. Thus, using reports from external organisations to determine compliance comes with the risk of causing universities to deviate from their values. For example, Student Rights is one such external organisation, which claims to monitor the events

¹⁹ HM Government (n5) para 11

²⁰ Ian Cram and Helen Fenwick, 'Protecting Free Speech and Academic Freedom in Universities', (2018) 81 (5) MLR 825

²¹ Office for Students (n7) para 67

²² P10

that take place in universities, and it has been very critical of universities.²³ However, participants were explicit that their views differed from those of Student Rights. As Participant 9 pointed out:

The Islamic Society was receiving requests from all sorts of speakers often associated with IERA.²⁴ They had a bit of a reputation, whether it was justified or not, I don't know. But there was a website, 'Student Rights', which suggested they were radical, extremists, violent. Well we've certainly seen some that weren't. So, you don't know what you're reading on there or where they are coming from.

Participant 9 also asserted, 'I don't take them quite so seriously. I think, Student Rights is one that I will look at when looking at the background of a speaker, but I wouldn't take it on its own, just as Andrew Gilligan in the *Telegraph* has written on Islamic extremism, but I wouldn't take his comments in isolation'. The difference in perception over how to implement the duty in light of information from organisations such as Student Rights was also mentioned by Participant 10, who pointed out that 'it is something that differs with Student Rights around what is Islamist or what is unacceptable speech if it is not outside the bounds of the law'.

Thus, it can be argued that the approach of OfS, in gathering data from external organisations and media, does have the potential to make universities adopt the views of those external organisations in order to avoid heightened monitoring. Although Participant 9 has argued that they do not take Student Rights 'seriously'; they do consider the views of Student Rights and as argued by Participants 14 and 10, universities can take a risk-based approach to avoid bad publicity or damage to reputation. In summary, according to the rational-cheaters model, the strict OfS monitoring schemes that are in place to ensure compliance with the duty will lead to greater efforts by universities not to be labelled as 'at high risk of noncompliance', which has the potential to increase risk aversion with respect to individual decisions.

²³ See Chapter One for a critique of Student Rights

²⁴ The Islamic Education and Research Academy (IERA) is a registered charity that was founded in 2010 and describes its mission as 'to convey the Prophetic Mission, compassionately and intelligently sharing Islam with the entire world'. See: <<https://iera.org/about/>> accessed 16 June 2021

However, this project argues that whilst the above analysis of data and literature has shown that monitoring can cause risk aversion, the next section will demonstrate that there are, conversely, indicators that the extra monitoring and bureaucracy may not be causing risk aversion. In fact, it could cause universities to show merely symbolic compliance to the Prevent duty in order to fulfil the requirements of the monitoring system.

10.1.2 SYMBOLIC COMPLIANCE

The above section identified risk aversion as one of the possible outcomes of bureaucratic processes. This section will argue that bureaucracy may also have the opposite effect, which is to reduce the motivation to comply with policies that demand high levels of time and effort, especially if the application of the process leads to extra work that is deemed to be inappropriate. For example, Participant 16 argued:

I'm too busy to be interested in any of those things. I also think it might be worth just recognising that I am absolutely overwhelmed with work. So, I am really keen that our process becomes as efficient and slick as possible, and it's quite difficult to actually get that in an organization like a university, which doesn't like to properly devolve responsibility and everyone wants to know everything.

When speaking about the effects of their bureaucratic process, Participant 16 asserted, 'the typical types of speaker approval request that comes through to me aren't appropriate' and gave the example of a 'carol concert'. They further argued that 'within the written procedure that we've got here, technically speaking, if somebody submits a form, then as the designated person and the head of security here, I'm duty bound to then investigate it. But I don't'.

It is, therefore, reasonable to assume that certain universities, due to their large size and number of external speaker events each year, will struggle to maintain the compliance level required by OfS, which could lead them to implement the Prevent duty as a 'box ticking' exercise. In the above example, the participant acknowledged that their policy required them to assess the risk of all events that are escalated to them, but in practice they did not.

Hence, those who see their policies or the duty as problematic and difficult are likely to show symbolic compliance²⁵ without necessarily creating significant change in behaviour. As Meyer and Rowan argue, institutionalised services, techniques, policies and programs 'function as powerful myths, and many organizations adopt them ceremonially'.²⁶ Conformity to rules, they argue, 'often conflicts sharply with efficiency criteria and, conversely, to coordinate and control activity in order to promote efficiency undermines an organization's ceremonial conformity and sacrifices its support and legitimacy'.²⁷ Therefore, in order to maintain ceremonial conformity and efficiency, 'organizations that reflect institutional rules tend to buffer their formal structures from the uncertainties of technical activities by becoming loosely coupled, building gaps between their formal structures and actual work activities'.²⁸ It is argued that conformity to the Prevent policy can conflict with efficiency of approving external speaker events, due to the added bureaucracy. In such cases, it is likely that designated officers may adopt ceremonial conformity and buffer their formal structures.

Andrew Martin *et al.* argue that 'violations of formal rules are often not unusual departures from bureaucratic routine but, instead, constitute the essence of bureaucratic routine'.²⁹ Meyer and Rowan argue that much of the empirical research on organisations suggests that there is a great gap between the formal and the informal organisation and that rules are often violated, decisions are often unimplemented and evaluation and inspection systems are subverted or rendered vague.³⁰ However, since the above participant responses have demonstrated two possible outcomes of the Prevent monitoring system – risk aversion and symbolic compliance – it is necessary to consider what universities do in practice. Thus, the next section will assess how

²⁵ The concept of symbolic compliance has been explored in Chapter Six, section 6.4.2.

²⁶ John W. Meyer and Brian Rowan, 'Institutionalized Organizations: Formal Structure as Myth and Ceremony' (1977) 83 *American Journal of Sociology* 340, p340

²⁷ *Ibid*, pp340 - 341

²⁸ *Ibid*, p341

²⁹ Andrew W. Martin, Steven H. Lopez, Vincent J. Roscigno and Randy Hodson, 'Against the Rules: Synthesizing Types and Processes of Bureaucratic Rule-breaking' (2013) 38 *The Academy of Management Review* 550, p551

³⁰ John W. Meyer and Brian Rowan (n26) p343

universities are complying with the HEPDG, which universities are required to ‘have regard to’ under section 29 (2) of the Counter Terrorism and Security Act 2015 (CTSA).³¹

10.2 PREVENT IN PRACTICE: RISK AVERSION OR SYMBOLIC COMPLIANCE?

This section will explore the approach of participants to paragraph 11 of the HEPDG – which, as noted above, has the potential to curb free speech.³² The section will be structured as follows. First, it will present a summary of the concerns regarding the impact of paragraph 11 of the HEPDG. Second, it will assess how participants in this study understood and implemented the HEPDG. In doing so, it will present a key finding that although most participants did not use the HEPDG threshold test, a variety of other grounds were used to stop events, most of which pre-date the statutory Prevent duty. Finally, it will assess whether the findings suggest participant universities are risk averse or are showing symbolic compliance to the HEPDG.

10.2.1 PARAGRAPH 11 OF THE HEPDG: POTENTIAL CONCERNS

Chapter Four noted that concerns about the impact of paragraph 11 of the HEPDG on freedom of speech were considered in the High Court and the Court of Appeal in the *Butt* case. The two courts differed in their interpretation of this paragraph. The High Court accepted that this paragraph should have a non-literal and nuanced reading, where ‘fully mitigated’ meant ‘as far as reasonably practicable or mitigation so that there was no significant risk’.³³ It also established that universities could say: ‘having had regard to the application of the HEPDG, that the freedom of speech duties and the academic freedom duties to which they have to pay particular regard, are more

³¹ Section 29 (1) and (2) states: ‘(1) The Secretary of State may issue guidance to specified authorities about the exercise of their duty under section 26 (1). (2) A specified authority *must have regard* to any such guidance in carrying out that duty’.

³² The paragraph states: ‘the event should not be allowed to proceed except where RHEBs are entirely convinced that such risk can be fully mitigated without cancellation of the event ... Where RHEBs are in any doubt that the risk cannot be fully mitigated they should exercise caution and not allow the event to proceed’.

³³ *Salman Butt v. Secretary of State for the Home Department* [2017] EWHC 1930 (Admin), [2017] 4 W.L.R. 154, [55], [58] and [61]

important'.³⁴ Thus, if events were permitted to continue after having considered the degree to which the risk can be mitigated and the degree to which it cannot, universities would not be in breach of all three duties, namely: (i) the duty to have particular regard to freedom of speech;³⁵ (ii) the duty to have due regard to preventing people from being drawn into terrorism;³⁶ and (iii) the duty to have regard to the HEPDG.³⁷ The High Court argued that since the HEPDG was 'guidance and not direction', universities would not be in breach of their duties even if their actions did not comply with this paragraph, as 'the HEPDG is not law'.³⁸ Thus, it has been argued that 'parts of the Guidance may be disapplied on the basis that they do not conform to the law'.³⁹

The Court of Appeal took a different view, arguing that the wording of the HEPDG and in particular paragraph 11 was 'expressed in trenchant terms', which is likely to frame the decision of universities.⁴⁰ The Court argued that readers are likely to regard it as 'the most specific and pointed guidance that exists', and even the 'well-educated reader' is likely to assume that the HEPDG 'already represents a balance of the relevant statutory duties affecting the RHEB decision-maker'.⁴¹

This next section will explore the views of the participants regarding this paragraph by analysing whether they take a non-literal and nuanced understanding or a literal understanding. It will then explore whether they regard paragraph 11 as mere guidance that can be disapplied (the High Court's interpretation) or whether they see it as the most specific and pointed guidance that exists, which already contains a balance of all duties (the Court of Appeal's interpretation). The aim of this section is to assess whether

³⁴ Ibid, para 61

³⁵ Established by the CTSA 2015, Section 31

³⁶ Established by the CTSA 2015, Section 26

³⁷ Established by the CTSA 2015, Section 29

³⁸ *Butt* case (n33) para 61

³⁹ Ian Cram and Helen Fenwick, 'Protecting Free Speech and Academic Freedom in Universities', (2018) 81 (5) MLR 825, p857

⁴⁰ *Regina (Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256, [2019] 1 W.L.R. 3873 [176]

⁴¹ Ibid

their approach to implementing the guidance in the HEPDG is likely to make them risk averse.

10.2.2 LITERAL OR NON-LITERAL INTERPRETATION OF PARAGRAPH 11

This section will show that, with the exception of Participants 4 and 12, most participants took a literal approach to paragraph 11. It will first present this majority view, before considering the non-literal understandings of Participants 4 and 12.

10.2.2.1 LITERAL INTERPRETATION

Despite the High Court making it clear that paragraph 11 is not meant to be understood literally, with the exception of Participants 4 and 12, who provided an alternative interpretation, most participants interpreted paragraph 11 literally and argued that it would be problematic if implemented. A reoccurring argument was that the threshold cited in the paragraph was so high that it would necessitate the banning of all events, which participants strongly opposed:

The only way you can fully mitigate something is to not do it. [Participant 10]

What does fully mitigated mean? If you were to say that in order for an event to go ahead, you have to be 100% certain that there isn't going to be anything said that you rather hadn't been said, well you probably will never go ahead with any event ever. [Participant 2]

We got the duty from the Counter-Terrorism Act and then we got ridiculous things issued by the government, about if you cannot fully mitigate an event, it can't take place. Well that means no event can take place, because how can you fully mitigate anything? You can't. That legal test is ludicrous. [Participant 6]

Other participants were equally dismissive, variously describing the test in the paragraph as 'unhelpful' and 'grey',⁴² and the 'fully mitigated' requirement as a 'nonsensical phrase'.⁴³ Participant 7 put it in the following terms:

⁴² P2

⁴³ P3

[Someone] could suddenly shout out some slogans, and they've said it? You might rugby tackle them then, but it's going to be too late. So, I think that would be an extremely difficult thing to achieve. [Participant 7]

However, since not all participants understood paragraph 11 literally, the next section will explore the views of those who took a non-literal approach, namely Participants 4 and 12.

10.2.2.2 NON-LITERAL INTERPRETATION

An alternative interpretation was offered by Participant 12, who argued that the test was never intended to be applied literally: 'I don't think the intent ever was you could mitigate all risk. I think with anything in life you cannot mitigate all risk entirely'. Participant 12 went on to state that that the advice they had received from Prevent workshops, members of the Home Office, HEFCE and the OfS Prevent advisor was that: 'it's about balance, it's about good risk assessment and being sensible. They accept that we can't mitigate all risk'. Participant 12, however, showed dissatisfaction over the wording of the paragraph:

I would like to hope that if we do get a revised version of the duty that line in particular would be amended. [Participant 12]

Participant 4 understood the test as being related to health and safety rather than extremism: 'I think what that is talking about is, if someone is coming to talk and we cannot guarantee the safety of all of the people attending the event, that then causes you to potentially think about whether the event can go ahead'.

It is clear that the majority of participant responses did not reflect the nuanced interpretation provided by the High Court. Rather, these participants understood paragraph 11 literally, and were highly critical of it as a result. This seems to support the argument of the Court of Appeal that the wording of the HEPDG was 'trenchant'. Thus, it is crucial to consider whether the 'trenchant' wording in HEPDG also 'framed their decisions', which was the concern raised by the Court of Appeal, or whether they chose

not to comply with the guidance, which the High Court argued would not be a breach of their duties, as the HEPDG was not law.

10.2.3 'THAT'S NOT WHAT OUR POLICY STATES'⁴⁴

Just two of the participants – Participants 5 and 8 – cited a threshold for banning events that can be described as being similar to the test in paragraph 11. Other participants instead provided a number of alternative considerations that were used in deciding whether events could go ahead. These can be summarised as shown in Table 10.1 under two headings – Legal and Non-legal – as follows⁴⁵:

	Threshold for stopping an event	Participants
	LEGAL	
A	Breaking the Law	P1; P5; P10; P11; P12; P13
B	Belonging to a proscribed organisation	P1; P2; P3; P4; P5; P6; P7; P8; P9; P13; P14; P16
C	Recruitment for terrorism or promotion of terrorism	P1; P7; P10; P15;
D	Violence	
	(i) Violence and disorder	P1; P4; P8; P9; P14; P16
	(ii) Extremism combined with violence	P14; P15
	(iii) Violence and no academic purpose	P15
E	Hate speech or hate crime	P8; P9; P10; P14
F	Health and safety	P1; P4; P6;

⁴⁴ Participant 14, when referring to paragraph 11

⁴⁵ There is considerable overlap between the thresholds, as the examples of hate crime that were described by Participant eight and nine involved incitement of violence, and thus could also fall under the category of violence. Likewise, most sub-categories from B to F can fall under 'breaking the law'; however, they have been mentioned as separate sub-categories, in an attempt to portray exactly what the participants have said. Moreover, the separate sub-categories are not synonymous to each other, as hate crime is a much broader category than may or may not involve violence. Likewise, 'violence', it self, can fall under 'Breaking the law'; however, 'Breaking the law' is a much wider threshold, which covers more than just violence. Thus, it seems appropriate to keep them as separate sub-categories.

	NON-LEGAL	
G	Damage to the reputation of the University	P11
H	Inappropriate or extremist terminology which is 'likely to inflame or upset people'	P5
I	Refusing a dialogue	P8

Table 10.1: A summary of the thresholds used by participants to stop events or speakers

10.2.3.1 LEGAL GROUNDS

(A) BREAKING THE LAW

A number of participants⁴⁶ pointed out that it is 'law', rather than the paragraph 11 test, which guides their decision making in this area. In other words, if participants felt that the event would lead to the law being broken, then they would ban or stop the event. Participant 11 put it in the following terms: 'We are bound by the law. It's free speech within the law'. Similarly, for participants 9 and 10:

We stick very much to the law and in our code of practice we do refer to number of statutes which outline where freedom of speech might be restricted.
[Participant 9]

My take is that we refer to law, our view is to refer to law; what's written in law about hate speech and around our duties under law to allow freedom of expression and freedom of speech on the campus. If there is clear evidence that somebody will come onto the campus and break the law, then naturally it wouldn't be allowed. [Participant 10]

This alternative 'legal threshold' involved consulting with a number of external agencies, including the police, in order to determine legality. Participant 10, for example, would ask the police to advise whether an event would be likely to lead to a criminal prosecution:

⁴⁶ P1; P5; P10; P11; P12; P13

The likelihood of prosecution is a good indicator. How likely is it that someone is going to break the law? And how likely is it that somebody is going to be prosecuted? If you are really concerned about that, you can have that discussion or we can have that discussion because of our relationship with our police colleagues and say: What's your view on that? [Participant 10]

Whilst some participants⁴⁷ indicated in general terms that their threshold was law, others gave more specific examples of where they would ban or stop an event.

(B) BELONGING TO A PROSCRIBED ORGANISATION

Allowing a person from a proscribed organisation to speak on campus is illegal under section 12 (2) of the Terrorism Act 2000.⁴⁸ Although participants did not make reference to specific legislation, being part of a proscribed organisation was a recurrent threshold to refuse or ban an event.⁴⁹ Although most participants seemed to suggest that being proscribed was not the only threshold that they applied, some participants went as far as to suggest that being a member of a proscribed organisation was the only threshold to stop or ban an event:

The assumption always is that the event will take place and the only reason any institution will stop a speaker speaking is if they are a proscribed speaker. So, effectively it was illegal to let them speak at the institution. [Participant 3]

Participant 4 insisted that 'our view is that unless they are a proscribed organisation, there's no reason they shouldn't be permitted to come and speak here, with the right controls in place'. Participant 4 also gave the impression that even according to HEFCE, their local Prevent officer and the police, the only threshold to stop a speaker was if they were part of a proscribed organisation:

⁴⁷ P1; P5; P10; P11; P12; P13

⁴⁸ section 12 (2) states, 'A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is— (a) to support a proscribed organisation, (b) to further the activities of a proscribed organisation, or (c) to be addressed by a person who belongs or professes to belong to a proscribed organisation'. See: section 12 (2) of the Terrorism Act 2000.

⁴⁹ P1; P2; P3; P4; P5; P6; P7; P8; P9; P13; P14; P16

We believe we have found a balance that works for us. We have not had HEFCE challenge that, we have not had our local Prevent officer challenge that. We have not had the police ever challenge that. In fact, they will say exactly the same thing as I am, if I phone in and said what do you think about this chap? They will say he's not on the proscribed list. End of story as far as they are concerned. That's as far as they go in saying whether someone is or isn't an acceptable person to take part in a speech or a debate. [Participant 4]

(C) RECRUITMENT/PROMOTION OF TERRORISM

Another justification given by participants to ban an event was if the university campus was being used as a platform to recruit students for terrorism⁵⁰ or to promote terrorism,⁵¹ which would constitute a criminal offence under law.⁵²

If they say "I want to encourage people to join ISIS", then before you'd ban them you would be talking to the police and saying this is causing us some serious concern, what do you recommend we do? So, you would probably consult the police authorities. But it would take something like that before you ban somebody. [Participant 7]

[S]o, are you coming along to say: we believe the Caliphate is the right thing? Why? Because we want to recruit people to send them out to this particular country to a training camp to then commit acts of terrorism. OK, hey, we're probably going to have some problems with that. [Participant 10]

⁵⁰ P1; P7; P10; P15

⁵¹ P7

⁵² According to section 1 (2) of the Terrorism Act 2006, it would be an offence to permit a speaker to promote or recruit for terrorism, as it would be 'causing another to publish a statement' that promotes terrorism and it can also be seen as being 'reckless as to whether members of the public will be directly or indirectly encouraged'. It can also be an offence under Section 12 (1) of the Terrorism Act 2000, as it 'invites support for a proscribed organisation'. Thus, participants would be using the Terrorism Act 2000 and 2006 as their grounds for banning a speaker or an event, if there were concerns of recruitment or promotion of terrorism.

(D) VIOLENCE

Violence was a common threshold used by participants to determine the legality,⁵³ and therefore permissibility, of a particular event. However, there was a lot of diversity expressed in terms of how this would apply in practice. For some participants,⁵⁴ ‘incitement to violence’ was their threshold; Participant 4, for example, argued that, ‘if they’re expressing views that are incitement of violence, then that goes beyond what’s acceptable, that’s the way we tend to look at it’.

For others,⁵⁵ it was extremism combined with incitement to violence, implying that non-violent extremism did not form part of their risk assessment:

So, it's two things together, so you could be an extremist without being violent and you can start violence without being extremist. So, I think the test we are looking for is when you put the two things together and ask: is there extremism and is violence going to be incited as a consequence? And have we got reasonable grounds to believe that that would be the case? [Participant 14]

More common among the participants⁵⁶ was a concern with ‘violence and disorder’. For example, Participant 16 pointed out, ‘So, the sort of risk that I would be concerned about would be about violence and disorder. If we are not in a position to safely hold an event then clearly that would be justification to not hold it’.

⁵³ Violence is illegal under various pieces of legislation, such as section 2 of the Public Order Act. Moreover, restricting speech due to incitement of violence is well established in law, for example in *Surek and Ozdemir v Turkey* it was ruled:

... where such remarks incite to violence against an individual or a public official or a sector of the population, the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of expression.

See: *Surek and Ozdemir v Turkey* App nos. 23927/94 and 24277/94 (ECtHR 1999) para 60

⁵⁴ P4; P8; P9; P14

⁵⁵ P14; P15

⁵⁶ P1; P4; P8; P9; P14; P16

Participant 15 alternatively described their threshold as incitement of violence combined with no academic purpose:

If a very extreme speaker that was known to be coming to put on an event to incite violence of some nature and that there was no good reason from an academic perspective for that event to take place.

(E) HATE SPEECH AND HATE CRIMES

A further justification offered by participants⁵⁷ to stop or ban a speaker or event was ‘hate speech’ or ‘hate crime’.⁵⁸ For example, Participants 8 and 9 gave the following examples that can be classified as hate crime:

⁵⁷ P8; P9; P10; P14

⁵⁸ Although the term ‘hate speech’ is widely used, Equality and Human Rights Commission has argued that it does not have any legal meaning; rather, ‘[g]enerally, it describes forms of expression that incite violence, hatred or discrimination against other people and groups’. See: Equality and Human Rights Commission, ‘Freedom of Expression: a guide for higher education providers and students’ unions in England and Wales’, (2019) <<https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-england-and-wales.pdf>> accessed 18 February 2021. The Equality Act 2010 also covers hate speech. Section 91 of the Equality Act 2010 also requires that further and higher education providers do not subject students to any other detriment’, which, according to the Equality and Human Rights Commission, can be anything that a person ‘concerned might reasonably consider changed their position for the worse or put them at a disadvantage’. See: Equality and Human Rights Commission, ‘Equality Act 2010 Technical Guidance on Further and Higher Education’ (2014) para 9.6 <<https://www.equalityhumanrights.com/sites/default/files/equalityact2010-technicalguidance-feandhe-2015.pdf>> accessed 13 February 2021. Thus, when universities organise or facilitate events, they have a duty to protect their students from unlawful discrimination, harassment, victimisation or unlawful hate speech and hate crime.

Hate speech may also constitute hate crime, which has been described by the Law Commission as ‘committing a crime and in the course of doing so demonstrating or being motivated by hostility towards someone on the basis of their characteristics’. See: The Law Commission, ‘Hate Crime: Background to Our Review’, p3 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2019/07/6.5286-LC_Hate-Crime_Information-Paper_A4_FINAL_030719_WEB.pdf> accessed 18 February 2021

If someone presents a very homophobic argument, well I wouldn't, in and of itself, want to stop them having it. I might not agree with it, but I wouldn't want to stop them having their right to speak. If they then turn and say, 'and therefore I want you to attack anyone you see in the street who you perceive to be LGBT'. Well OK, you've just gone from expressing a view to asking/enticing others to do something about your view ... Then you're not coming. [Participant 8]

There is one that came up quite regular which was that homosexuals should have their arms chopped off or something like that, but that's a bit beyond the law... If anyone is preaching harm, extermination, gassing, amputation, violence, I think we would put a stop to that. And I think that person who I mentioned earlier who is the one we postponed; I think there was some of that in his speeches as well. [Participant 9]

Both of the above are examples of hostility towards a group of people on the grounds of sexual orientation, and stirring up hatred on racial, religious or sexual orientation grounds is a crime.⁵⁹ Therefore, the approach of the above participants to ban speakers or events on the grounds of hate speech or hate crime can be seen as fulfilling a legal duty under the Equality legislation.

(F) HEALTH AND SAFETY

Some participants⁶⁰ noted that their decisions were shaped by health and safety concerns, which is a legal duty under health and safety legislation.⁶¹ For example,

⁵⁹ Hate crimes are based on five 'protected characteristics', namely race, religion, sexual orientation, transgender identity and disability, and are dealt under three main pieces of legislation: the Crime and Disorder Act 1998, which covers offences that are racially and religiously aggravated; the Public Order 1986, which covers stirring up hatred offences on the grounds of race, religion and sexual orientation; the Criminal Justice Act 2003, which covers increased sentences for offences where there is evidence of aggravation related to race, religion, disability, sexual orientation and transgender identity. The Law Commission is currently undertaking a review of hate crime legislation.

⁶⁰ P1; P4; P6

⁶¹ Section 2 (1) of the Health and safety at Work etc. Act 1974 establishes a legal duty towards all staff. It states, 'It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees'. Section 3 (1) establishes a legal obligation towards

Participant 1 asserted, 'the general principle that I have worked to is that you put all of the mitigations in place and if you get to the end of that and you think that I have got an event here that I think is just too risky, because it's not going to be safe for people or there is a significant issue, then ... (the participant used a hand gesture to indicate that the event would be stopped)'. For Participant 4, 'if someone is coming to talk and we cannot guarantee the safety of all of the people attending the event, that then causes you to potentially think about whether the event can go ahead'. Similarly, Participant 6 said 'the only other event that we turned down, because we felt we couldn't have sufficient mitigations for it to take place safely, was one about fracking'.

It may seem that health and safety concerns were only explicitly mentioned by three participants as a threshold to ban events or speakers. However, some of the other sub-categories, such as violence, proscribed organisations, recruitment for terrorism and hate speech, are connected with health and safety, as it is a legal duty upon universities to protect their staff, students and visitors from such harm. For example, Universities UK has argued that the awareness of hate crime and its 'potential impact on the student body is [...] important for universities if they are to fulfil their responsibilities for student safety and welfare'.⁶² Thus, health and safety, explicitly or implicitly, is likely to be a key concern in the decisions of most participants.

The above was a presentation of the legal basis to ban speakers or events that were cited by participants. This chapter will now explore three additional grounds for stopping an event that were not related to law, namely: damage to reputation, inappropriate terminology, and speakers refusing a dialogue.

students and other non-employees, including visiting speakers, which states, 'It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety'.

⁶² Universities UK, 'CHANGING THE CULTURE- Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students', (2016) p16 <<https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2016/changing-the-culture.pdf>> accessed 20 February 2021

10.2.3.2 NON-LEGAL GROUNDS

(G) DAMAGE TO REPUTATION

Damage to the reputation of the university was a key concern expressed by Participant 11:

Also, the university's reputation is important. So, we need to assess any damage that might be done to University's reputation by permitting an event to go on. But again, that would probably be a decision for the hierarchy higher up.

Participant 12 argued that the consideration of reputation did not necessitate a ban, rather it meant having a response ready for the media and 'damage control'.

So, it might not be them (the PR team) saying, 'good grief, you can't let this go ahead, this is going to damage the reputation'. It might be, 'well there will be some damage if we allow this person; however, this is what we can do to try and minimise that damage'. Then they can be armed in the event that the Daily Mail run one of their lovely headlines with what we've been up to. We would be armed with the University's response to that.

Participant 12 also added:

So, it wouldn't just necessarily be if it's going to damage the reputation of the university, let's not let it happen. It would be what damage limitation can we do, if we allow this controversial person to come and speak?

(H) INAPPROPRIATE TERMINOLOGY

Rather vaguely, 'inappropriate terminology' was also mentioned as a threshold to ban events. Participant 5 described their threshold as 'if you're going to be using inappropriate language or using terminology that is likely to inflame or upset people or you get to the point you're using terminology that is being deemed to be extremist or illegal. At that point we'd close you down. So, we will facilitate and accommodate people where we can'. Illegal speech, by definition, is outside of the scope of the duty upon a university to ensure free speech within law; however, in addition to the term 'extreme', it is not clear what is 'inappropriate' and what is likely to 'upset people', which arguably

has a very broad reach and can restrict speech that is within law. Participant 5 did not describe their approach using the precise wording of paragraph 11 of the HEPDG, but it does resonate with it, as it entails 'closing down' events if they entail 'extremist' speech. It is not clear whether Participant 5 intended 'extremist' to include non-violent extremism; however, words like 'inappropriate' and 'likely to upset people' seem to imply that not only non-violent extremism but also non-extremist speech may be included.

(I) REFUSING A DIALOGUE

In the context of speakers who are likely 'to present views that are sufficiently away from sort of mainstream thought',⁶³ Participant 8 argued that they would ban a speaker if they refused a dialogue or did not allow a challenge to their views.

And if you're not going to enter into a dialogue with, well my view is this and your view is this etcetera. Then you're not coming, because you're not allowing freedom of speech. So, I think for me it's when you got that difference between monologue and dialogue. If you've got a dialogue, I'm fine with it. If you've got a monologue that you're only going to present one view, and you're not going to allow anyone to question you, then that's when I'm going to start being a bit concerned. [Participant 8]

Although the phrase 'views that are sufficiently away from sort of mainstream thought' is very vague and such views do not necessarily need to be extreme, this approach of cancelling an event if such views cannot be challenged does bear resemblance to the literal interpretation of the HEPDG, which states:

This includes ensuring that, where any event is being allowed to proceed, *speakers with extremist views that could draw people into terrorism are challenged with opposing views as part of that same event*, rather than in a separate forum. Where RHEBs are in any doubt that the risk cannot be fully

⁶³ This was the phrase used by Participant 8.

mitigated they should exercise caution and *not allow the event to proceed*.⁶⁴
[Emphasis added by author]

Although the terminology used by the participant was ‘views that are sufficiently away from sort of mainstream thought’, which is different to ‘extremist views that could draw people into terrorism’ that is cited in the HEPDG, the cancellation of events due to the lack of challenge with opposing views is a salient resemblance. Arguably, the approach as expressed by the participant seems more restrictive than the HEPDG.⁶⁵

The sub-question that this chapter set out to answer has two parts: (a) ‘How do UM understand and implement paragraph 11 of the HEPDG and (b) is there evidence of risk aversion or symbolic compliance in the implementation of the guidance? The data presented thus far in this chapter answers the first part of this question. To summarise the above sub-sections, it is clear that although most participants understood paragraph 11 literally, it did not frame their decisions, as the Court of Appeal feared, because they predominantly used a legal threshold.⁶⁶ It shows that most universities are not applying the test provided under paragraph 11, which, according to the High Court, was a legitimate response. The next section will attempt to answer the second part of the sub-question: ‘in practice, are universities risk averse or could there be an element of symbolic compliance?’

10.2.4 DOES THE APPROACH OF PARTICIPANTS SHOW RISK AVERSION?

This section will analyse the above findings to assess the possibility of risk aversion and potential impact on free speech. It will first present factors that suggest that there is a possibility of risk aversion, before going on to demonstrate that most universities are unlikely to be risk averse.

⁶⁴ HM Government (n5) para 11

⁶⁵ The next section will explain why Participant 8 thought freedom of speech was not being eroded, even when they described their threshold with such restrictive phraseology.

⁶⁶ *Regina (Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256, [2019] 1 W.L.R. 3873 [176]

10.2.4.1 FACTORS THAT SUGGEST RISK AVERSION

It may seem that the predominant use of 'law' as the grounds to ban events or speakers is not likely to curb free speech 'within law', as any speech restricted using law is not likely to be free speech within law. Whilst that may be the case for the majority of the participants, it is not reflective of all participants, as some also utilised non-legal grounds. Damage to reputation, inappropriate language and refusing a dialogue, are grounds that they deemed might restrict free speech even if it falls within law.

Banning speakers due to speech that is 'inappropriate', 'extreme' or 'likely to upset people', as cited by Participant 5, seems to be a threshold, which due to the breadth and lack of clarity of meaning, may encompass speech that is within law. Moreover, it seems to contradict the European Court of Human Rights' (ECtHR) argument that freedom of expression 'is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population'.⁶⁷ Even though the test of 'likely to upset people' and 'inappropriate' language is not based upon paragraph 11, it is still likely to curb free speech within law. This shows that there are factors that may lead to the curbing of free speech.

The approach of Participant 8 of banning speakers that refused a dialogue or debate seemed to be an attempt to ensure free speech is upheld, as they argued, 'if you're not going to enter into a dialogue with, well my view is this and your view is this etcetera, then you're not coming, because you're not allowing freedom of speech'. However, it can be argued that banning a speaker on the grounds of refusal of a dialogue can also be seen as a restriction. Arguably, both the speaker refusing a dialogue, and the university refusing a speaker, curb free speech. However, since this approach seems to resonate with the requirements of the HEPDG, which suggests that extremist views need to be 'challenged with opposing views as part of that same event' or the event needs to be cancelled,⁶⁸ it could be argued that this curbing of speech could be a result of the HEPDG.

⁶⁷ *Handyside v. The United Kingdom* App no. 5493/72 (ECtHR, 7 December 1976) para 49

⁶⁸ HM Government (n5) para. 11

Similarly, banning a speaker or event on the grounds of damage to reputation, as suggested by Participant 11, also has the potential to curb free speech within law. Participant 12, who was from the same university as Participant 11, argued that although reputation was considered in decisions, it was not likely to cause an event or speaker cancellation. Thus, it is unclear whether, in practice, events would be cancelled at their university on the grounds of reputation, as both participants also stated that they had not yet cancelled an event or speaker.

Nevertheless, reputation is an important aspect of any organisation and is likely to play a key role in how an organisation is run. A survey conducted by Richard Hall with 95 UK chief executives from various sectors found that all CEOs rated company and product reputation as 'the most important contributors to overall success' along with 'employee know-how'.⁶⁹ Reputation was identified as that resource which would take the longest to replace from scratch.⁷⁰ Hall argues that reputation is 'a fragile resource', which 'takes time to create', 'cannot be bought, and it can be damaged easily'.⁷¹ Reputation is seen to be intangible resource that leads to sustained competitive advantages, as it can be a signal of attractiveness to the stakeholders.⁷² In the context of universities, stakeholders are a wide range of groups that have various interests in any given university, such as the Government, academic and administrative staff, current and prospective students, parents and taxpayers.⁷³ Luminita Moraru argues that the reputation of the university among stakeholders is very important, as prospective students and parents 'usually take the recommendation from information channels closely related to the academic environment such as teachers, registration guides, media advertising and so on'.⁷⁴ As such, it is not surprising that consideration of reputation is found to play a role in

⁶⁹ Richard Hall, 'The Strategic Analysis of Intangible Resources' (1992) 13 *Strategic management journal* 135, p141

⁷⁰ *Ibid*, p143

⁷¹ *Ibid*, p143

⁷² David L. Deephouse, 'Media reputation as a strategic resource: an integration of mass communication and resource-based theories', (2000) 26 *Journal of Management* 1091

⁷³ Luminita Moraru, 'Academic Internal Stakeholder Condition: a comparative approach', (2012) 69 *Procedia - Social and Behavioral Sciences* 54

⁷⁴ *Ibid*, p55

assessing whether to allow an event or speaker. Hence, Participant 10 also spoke about how reputation in media had influenced certain universities to apply the Prevent duty in a manner that actually damaged the reputation of Prevent and made it into a 'toxic brand'.⁷⁵

Media is not the only place where reputation is important; Government press releases, reports from monitoring bodies, and organisations such as Universities UK can also be of great importance to the reputation of universities. In 2015, it was reported in the news that a senior political leader had identified a number of universities as allowing the most events with extremist speakers.⁷⁶ It would not be surprising if such naming and shaming did drive universities to consider their reputation when approving events. In any case, since Participants 5, 8 and 11 stated that they had never stopped an event or speaker, the most that can be argued is that their respective approaches do have the potential, if applied, to curb free speech. The next section, by summarising the above findings, will argue that most participant universities are not risk averse.

10.2.4.2 PARTICIPANT UNIVERSITIES ARE NOT RISK AVERSE

To summarise the analysis regarding paragraph 11, not only were participants highly critical of paragraph 11, but also most did not use what is understood as the literal meaning of paragraph 11 as their threshold to stop events or speakers. Instead, their threshold can be termed as a legal threshold. This finding suggests that most participant universities are treating the HEPDG as 'guidance' and not 'direction', as argued by the High Court.⁷⁷ It shows that their approach is consistent with the High Court's finding that 'institutions are ... entitled to say, having had regard to the application of the HEPDG,

⁷⁵ Participant 10 argued: 'You have some examples of people who, because of their fears that ... I don't want my organization to be the organization that's on the front cover of the Daily Mail, implemented Prevent in a really inappropriate and an unacceptable manner, and Prevent has never recovered from that'.

⁷⁶ David Matthews, 'Government names universities hosting 'extremist' speakers', in Times Higher Education, (September 17, 2015) <<https://www.timeshighereducation.com/news/government-names-universities-hosting-extremist-speakers>> accessed 30 March 2023

⁷⁷ *Salman Butt v. Secretary of State for the Home Department* [2017] EWHC 1930 (Admin), [2017] 4 W.L.R. 154 [61]

that the freedom of speech duties and academic freedom duties to which they have to pay particular regard, are more important'.⁷⁸ Moreover, so long as they can show they have mitigated risks 'as realistically' as they can, they are not in breach of their Prevent duty or freedom of speech duty, even if their actions do not comply with the guidance.⁷⁹ Although the approach of most participants was largely consistent with the High Court's interpretation, their highly critical views concerning paragraph 11 did seem to resonate with the argument of the Court of Appeal that the wording of the paragraph was 'trenchant'. However, most participants did not seem to use the HEPDG as 'the most specific and pointed guidance that exists' in the belief that it 'already represents a balance of the relevant statutory duties affecting the RHEB decision-maker', as the Court of Appeal feared they might,⁸⁰ even though they seemed to understand it literally. Thus, it seems that the HEPDG is not likely to curb freedom of speech, as it does not seem to be implemented literally. That said, damage to reputation, inappropriate language and refusing a dialogue, which were cited by three participants, are grounds that may restrict legal free speech. Thus, the potential of risk aversion cannot be fully excluded, although the following chapter will show that there are strong indicators that participants were not risk averse.

As the above sections have suggested that risk aversion is unlikely, it is necessary to consider whether the approach of participants to the HEPDG and the Prevent duty in general can be regarded as merely 'symbolic'.

10.2.5 THE POSSIBILITY OF SYMBOLIC COMPLIANCE

A number of participant responses could be described as indicators of symbolic compliance to the Prevent duty. This section will explore each of these indicators in turn.

⁷⁸ Ibid, para 61

⁷⁹ Ibid, para 61.

⁸⁰ *Regina (Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256, [2019] 1 W.L.R. 3873 [176]

10.2.5.1 'WE DON'T NEED TO FOCUS ON PREVENT'⁸¹

Since pre-existing legislation was predominantly used when assessing external speaker events and not paragraph 11 of the HEPDG, it was unsurprising that some participants argued that the Prevent duty, in general, was unnecessary.⁸² Participant 9 posited:

There are already Terrorism Acts on the statute book. We didn't really need another one, in my view. It's just a political thing, trying to get votes I suppose. The Government wants to be seen to be doing something. It's got plenty tools at its disposal anyway. And actually, creating more laws has a risk of creating confusion.

This view suggests that the statutory Prevent duty in general, and not just the HEPDG, is a reaction by the Government that was not necessary. This view is supported by the arguments made in Chapter One, which highlights that most counter-terrorism legislation has been rushed through Parliament as a reaction to a terror incident or attack. Martin *et al.* argue that 'there is significant anecdotal evidence that when an unintended event emerges, the enforcement of rules increases dramatically'.⁸³ Thus, it is possible to make an argument that the terrorist attacks in the UK by young people who had attended university at some point in their life, coupled with reports from external organisations such as Student Rights and Quilliam, were the events which led to universities being subjected to heavy criticism and eventually forced to comply with the Prevent duty through the CTSA 2015.

The argument that the statutory Prevent duty is unnecessary was also presented by Baroness Brinton in the House of Lords leading up to the CTSA 2015:

⁸¹ P16

⁸² P9; P14; P16

⁸³ Andrew W. Martin, Steven H. Lopez, Vincent J. Roscigno and Randy Hodson, 'Against the Rules: Synthesizing Types and Processes of Bureaucratic Rule-breaking', (2013) 38 *The Academy of Management Review* 550, p567. They argue that, for example, 'the growing narrative that the American public school system is broken has led to new educational standards tightly linked to classroom practices, leading to new insights into the process of recoupling' p567

[A] number of our universities and students' unions across the UK had banned the song "Blurred Lines", a song that is degrading to women and which encourages rape. That demonstrates that the current boundaries for freedom of speech are well understood in our universities and are applied by them and by the student bodies. I come back to this. I do not understand why we need a duty when it is absolutely evident that this is already working in practice.⁸⁴

The view that Prevent was unnecessary was also shared by Participant 16, who asserted, 'Most aspects of the Prevent duty take care of themselves and that's my view. We don't need to focus on Prevent, we need to focus on safeguarding predominantly'. The participant seems to be arguing that if other policies, such as safeguarding, are implemented, the requirements of the Prevent duty are fulfilled. Likewise, Participant 14 very candidly argued, 'our presumption is that we would have speakers nevertheless, and that policy is there partly because we've got to have one'. This statement could be understood to suggest that their Prevent policy is in place to show compliance to the Prevent duty.

Other participants also pointed out that they were inclined to using pre-existing policies instead of Prevent to assess events, which indicates that the Prevent duty may not be needed, as its requirements can be fulfilled using pre-existing policies. For example, Participant 12 argued:

I think we also look at other university policies as well, because if we thought that someone was going to not respect the student community or wouldn't be tolerant of the different faiths and beliefs that we've got on campus, it's not just the Prevent duty, it also breaches other university specific policy. So, we've got the equality, dignity and inclusivity. So, if we had someone that we thought was going to breach that, it wouldn't just be well let's review it under the Prevent duty. It would be, well let's review it under the health and safety policy and also the equality, dignity and inclusivity policy, because if you've got someone coming onto campus to say all Catholics should be burned at the stake, then that's clearly not tolerant and isn't going to bring on campus mutual respect. It would also

⁸⁴ Baroness Brinton, HL Deb 28 Jan 2015, vol 759, cols 236 - 237

probably create disruption on campus which would then bring into it health and safety concerns. [Participant 12]

Participant 7 argued that compared to the Prevent policy, 'it's much more likely that you will be concerned that they'll express views that will breach equality legislation'. The participant further added, 'I've never really come to assess anyone under Prevent, it's more to do with equality legislation. So, I don't know if I've had to apply that sort of test', indicating the test mentioned in paragraph 11 of the HEPDG. For Participant 14, the threshold of restricting a speaker had three parts and Prevent was the third. However, Participant 14 acknowledged that they were more likely to ban a speaker on the other two grounds:

There are three criteria for restricting a speaker. The third one which is the statutory duty, effectively the Prevent duty, I think, would be the least likely we would use, because of the nature of how do you define extremism.... So, I suspect the one we've deployed the most has been around are you likely to breach protected characteristic or encourage hate speech around a protected characteristic? That tends to be the easy one for us to point a finger to when we've had concerns. For example, when we had an issue with effectively a North American weird Christian church that was vehemently homophobic and that was the basis on which we intervened on that case.

Moreover, some of the examples provided by other participants also indicate that they may be keener on applying other policies, such as health and safety, rather than their Prevent policy. For example, when speaking about paragraph 11 of the HEPDG, Participant 4 seemed to suggest it was related to health and safety rather than the risk of people being drawn into terrorism. They argued that 'I think what that is talking about is, if someone is coming to talk and we cannot guarantee the safety of all of the people attending the event, that then causes you to potentially think about whether the event can go ahead'. It can be argued that this approach of Participant 4 seemed to employ the health and safety policy to fulfil the requirements of paragraph 11 of the HEPDG.

The next section will show that a number of participants acknowledged that the introduction of the statutory Prevent duty had little to no effect on their pre-existing policies relating to events and speakers.

10.2.5.2 'THE POLICIES THAT WE HAVE BARELY CHANGED'⁸⁵

Apart from Participants 8 and 13, all of the participants asserted that they already had policies and processes to assess external speaker events prior to the introduction of the Prevent duty, which they argued had not significantly changed, as Participant 5 stressed, 'It's not had a significant impact on what we do. In fact, we were doing this before'. Participant 6 pointed out 'we were fortunate that we had policies in place that we barely tweaked and our approach to Prevent was very soft and very light touch... the policies that we have barely changed'. Participant 2 asserted:

As a matter of fact, we are just reviewing the code of practice on freedom of speech. That kind of illustrates the point I made earlier about the process. The last time we reviewed it was in 2010. So, we didn't change it after the Prevent duty, largely because we felt we didn't need to.

The interview with Participant 2 was conducted in 2018, and the statutory Prevent duty was established in 2015 by the CTSA. The decision not to change pre-existing policies after the introduction of the statutory Prevent duty appears to support the earlier argument of Participants 9, 14 and 16 that the Prevent duty was unnecessary.

Only two out of 16 participants indicated that they did not have a system in place to assess external speaker events prior to the CTSA 2015.

We didn't do it before. We had no expectation to sign off beforehand ... we didn't have a formal process until 2015, it came in as part of the Prevent duty.
[Participant 8]

But I am not aware that we had a formal process that defined the route of escalation when there were concerns. [Participant 13]

⁸⁵ P6

When Participant 13 was questioned about any issues or problems they faced prior to the duty, they responded 'I'm not aware of any such difficulties having come about'. Whilst this demonstrates that the Prevent duty has created change at the participant's university, as they now have a system of assessing events, the absence of difficulties and problems suggests that this was perhaps unnecessary. Furthermore, a reoccurring categorisation of how Prevent was implemented was 'soft' or 'light touch'. Participant 7 argued, '[Prevent] is not a heavy-duty thing here and the meetings are fairly benign', and Participant 5 asserted:

So far, we have taken a relatively soft approach and that seems to be working and sits within the values of the institution and the local community outside of the institute.

In summary, the above two sections illustrate that in the view of the vast majority of designated officers that were interviewed, the Prevent duty has had little or no effect on their event approval system and they continued to implement their previous processes with minimum adjustments. It appears that universities were already assessing external speaker events prior to the CTSA, which did not alter after the statutory Prevent duty was introduced.

10.2.5.3 CHANGE OF STIMULUS AND CROWDING OUT

Although most participant universities already assessed external speaker events, and this process does not appear to have changed significantly since the introduction of the statutory Prevent duty, it can be argued that the stimulus has changed. The stimulus now is the external monitoring of OfS and previously HEFCE, whereas prior to the statutory duty, it seems that universities were self-driven and the stimulus was internal. There are a number of studies that argue switching the stimulus can reduce compliance. Staats *et al.* argue that in their investigation of monitoring hand hygiene in healthcare they found that the benefit of monitoring initially increased compliance, but eventually it started to degrade after two years.⁸⁶ This makes monitoring seem more like a short-term fix rather than a long-term solution. Furthermore, they found that once monitoring was removed, compliance levels dropped 'lower than compliance before monitoring

⁸⁶ Bradley R. Staats, Hengchen Dai, David Hofmann, Katherine L. Milkman (n13)

was introduced'⁸⁷ and monitoring 'did not produce a habit that was sufficiently strong to withstand its removal'.⁸⁸ This indicates the potential harm to motivation that can result from enforcing and monitoring compliance.

According to the crowding-out theory,⁸⁹ monitoring decreases the efforts of workers.⁹⁰ David Dickinson *et al.* found that although results from controlled laboratory experiments show that monitoring does increase worker effort, there is also evidence that '*effort is crowded out* when monitoring is above a certain threshold' [Emphasis added].⁹¹ Staats *et al.* argue that their results were consistent with the 'crowding-out hypothesis' as 'individuals who were previously complying because of internal motivation may have shifted their motivation to an external focus', which when also removed led to a decline in behaviour.⁹² It is argued that since many universities already had policies and systems in place to assess external speaker events, they already had internal motivation to risk assess and monitor events on their campus. This was replaced by HEFCE and then OfS monitoring, which provided an external motivation to assess events. According to the crowding-out theory, this will have a negative impact on their internal motivation, and may decrease compliance, which may explain some of the categorisations of Prevent implementation by participants, such as 'soft', 'not heavy-duty', 'fairly benign', 'unnecessary', 'most aspects of Prevent take care of themselves', and 'that policy is there partly because we've got to have one'.

If the above categorisation of Prevent is considered a result of reduced motivation to comply with the Prevent duty, this could also explain the earlier findings of this project that suggest symbolic compliance to the HEPDG: that the Prevent definition of extremism found in the HEPDG is not used by participants, that the paragraph 11 test found in the HEPDG is used by hardly any participants, and that none of the participants

⁸⁷ *Ibid*, p1564

⁸⁸ *Ibid*, p1580

⁸⁹ The crowding out theory has been explored in Chapter six, section 6.4.3.

⁹⁰ Seeun Jung, Kenneth Hounbedji (n16)

⁹¹ Dickinson and Villeval, 'Does Monitoring Decrease Work Effort? The Complementarity Between Agency and Crowding out Theories', (2008) 63 *Science Direct Games and Economic Behavior* 56, p56

⁹² Bradley R. Staats, Hengchen Dai, David Hofmann, Katherine L. Milkman (n13), p1580

have a method of rating risk, as required by the HEPDG. This suggests that there is gap between how the Government had envisaged the Prevent duty to be implemented and how it is in practice implemented by UM.

10.2.5.4 REACTANCE THEORY

The seeming lack of compliance with the HEPDG or the Prevent duty in general can also be explained by the reduction in autonomy, as experiments conducted by Sarunyu Jitsophon and Tomoharu Mori show that control leads to an overall decrease in productivity.⁹³ According to the reactance theory,⁹⁴ if UM feel that the autonomy of the university is being undermined, it could become a stimulus to resist the monitoring mechanism. Reajmin Sultana and Arifa-Tun-Naim argue that ‘many people want to do their work by their own will and not by any threat. Some agents may perceive control as a signal of distrust in their intrinsic motivation’.⁹⁵ They also conclude in their study that ‘people who feel that their sense of freedom is being threatened will often try to reassert some control over their environment’.⁹⁶ Therefore, it is argued that OfS having more control over university decisions translates into a reduction in university autonomy, which has the potential to cause UM, students or teaching staff to reassert some control over the process. For example, the National Union of Students’ (NUS) policy of Boycott Prevent⁹⁷ can be understood as an attempt to reassert some control. Thus, this section argues that there is the possibility that some universities could resist external control and this could undermine monitoring. Participant 3, for example, alluded to the fact that HEFCE, when responsible for monitoring, was not satisfied with their stance on how Prevent was implemented and as a result the university faced extra

⁹³ Sarunyu Jitsophon and Tomoharu Mori, ‘The Hidden Costs of Control in the Field’, (2013) Osaka University Working Paper (Preliminary)

<http://www.apeaweb.org/confer/osaka13/papers/Mori_Tomoharu.pdf> accessed 29/09/2021

⁹⁴ According to this theory, when a person’s freedom is threatened, they experience a motivational arousal to restore that freedom. For a fuller discussion of the theory, see Chapter six, section 6.4.3.

⁹⁵ Reajmin Sultana and Arifa-Tun-Naim, ‘Hidden Costs of Control: Consequences of Over Application of Rigid Control’, (2016) 7 Research Journal of Finance and Accounting 77, p78

⁹⁶ Ibid, p79

⁹⁷ National Union of Students, ‘Model Motion - Boycott Prevent, A model motion for students’ unions to campaign against Prevent’ (05 September 2015) <<https://www.nusconnect.org.uk/resources/model-motion-boycott-prevent>> accessed 07 November 2020

scrutiny and oversight. They argued, ‘because we have taken such a positive stance on freedom of speech and that has presented us with additional oversight and scrutiny. It has taken us a lot longer to get HEFCE happy with our compliance with the Prevent duty’. Arguably, the stance of Participant 3 can be seen as resistance to scrutiny and assertion of control over their own policies and implementation.

The reduction in autonomy is apparent in the OfS framework, which highlights that if there is a potential serious incident, ‘we will work with partners to better understand the incident and the appropriateness of the provider’s response. We will then agree next steps with the provider on a case-by-case basis, which may include a Prevent review meeting and any other formal reporting requirements’.⁹⁸ It can be argued that as a result, universities will be less autonomous in how they choose to deal with incidents. According to the crowding-out theory, this loss of control will result in loss of motivation to apply the Prevent duty. Furthermore, the OfS may choose to ‘report the outcome of serious incident reports to the government’.⁹⁹ Therefore, there is the potential that the executive may have influence over what happens at universities. It was precisely this point that was argued by former Director of Public Prosecutions, Lord Macdonald:

The question is rather whether we have really reached a state of affairs in this country in which it is now necessary for a senior politician, even a politician as senior as the Home Secretary, to be granted the power to influence, by power of direction if necessary, what can and what cannot be said in a university in the absence of any crime being committed.¹⁰⁰

The Higher Education and Research Act 2017, Section 2(1), which established the OfS, seems to protect the autonomy of universities, when it states:

In performing its functions, the OfS must have regard to—
(a) the need to protect the institutional autonomy of English higher education providers”

⁹⁸ Office for Students (n7) para 70

⁹⁹ Ibid, para 73

¹⁰⁰ Lord Macdonald, HL Deb 28 Jan 2015, vol 759, col 235

Section 2 of the Act also lays the boundaries for the guidance from the Secretary of State:

(3) In performing its functions, including its duties under subsection (1), the OfS must have regard to guidance given to it by the Secretary of State.

(4) In giving such guidance, the Secretary of State must have regard to the need to protect the institutional autonomy of English higher education providers.

Although on paper this reads as protection of autonomy, the influence and pressure of OfS and the Secretary of State cannot be overlooked and it certainly has reduced autonomy in real terms. Being labelled as at high-risk or low-risk of compliance is likely to be seen as reward or punishment. If the OfS decides that a university is not compliant and as a result sends a report to the Government or the Department for Education, it is very likely that UM will feel that to be a form of punishment. Edward Deci *et al.* argue that:

[T]he primary negative effect of rewards is that they tend to forestall self-regulation. In other words, reward contingencies undermine people's taking responsibility for motivating or regulating themselves. When institutions—families, schools, businesses, and athletic teams, for example—focus on the short term and opt for controlling people's behavior, they may be having a substantially negative long-term effect.¹⁰¹

10.3 ARE UNIVERSITIES FAILING?

If universities are showing symbolic compliance to the HEPDG by applying pre-existing policies and legislation without making significant changes to their behaviour, it is necessary to consider whether universities are failing in their legal obligations under the CTSA. This thesis maintains that there is evidence to suggest that universities are not failing to implement the statutory Prevent duty. For example, the High Court ruling in the *Butt* case clarified that if universities can show that they have given the HEPDG

¹⁰¹ Edward L Deci , Richard M Ryan and Richard Koestner, 'A Meta-Analytic Review of Experiments Examining the Effects of Extrinsic Rewards on Intrinsic Motivation', (1999) 125 *Psychological Bulletin* 627, p659

‘regard’ but find that freedom of speech is more important as it is a ‘particular regard’ duty, then they can choose not to comply with the HEPDG as it is guidance and not direction. The findings of this project suggest that participants have given the HEPDG ‘regard’ as they were very critical of paragraph 11 and they acknowledged that it is an impossible test to apply.¹⁰²

Likewise, the approach of participants to using pre-existing legislation and pre-existing policies may be compatible with paragraph 12 of the Prevent Duty Guidance, which states that applying the Prevent duty ‘is likely to be relevant to fulfilling other responsibilities such as the duty arising from section 149 of the Equality Act 2010’.¹⁰³ Thus, there is scope for overlap, in which case an event or speaker may be assessed under multiple policies and, at times, it is likely to lead to compliance with Prevent duty, irrespective of which policy is deployed. For example, banning a speaker on the grounds of them being part of a proscribed organisation, or due to concerns over recruitment and promotion of terrorism are all based upon pre-existing legislation established prior to the statutory Prevent duty. Banning speakers or events on such grounds would also entail eliminating the risk of radicalisation, and thus it aligns with the aims of the Prevent duty and could tick the boxes that are required under the Prevent duty.

Likewise, homophobic views are extreme views according to the Prevent definition of extremism, because they lack tolerance and mutual respect of others.¹⁰⁴ However, since the expression of such views may also give rise to various other concerns under other policies, such as equality and diversity; student welfare and safeguarding; and health and safety, it can provide universities the flexibility to deal with the situation under any of those policies. If, for example, universities then decide to employ the equality or the

¹⁰² For example, Participant 6 argued:

‘We got the duty from the Counter-Terrorism Act and then we got ridiculous things issued by the government, about if you cannot fully mitigate an event, it can’t take place. Well that means no event can take place, because how can you fully mitigate anything? You can’t. That legal test is ludicrous’.

¹⁰³ HM Government, ‘Revised Prevent duty guidance: for England and Wales’ (Updated 10 April 2019) para. 12, <<https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales>> accessed 10 February 2021

¹⁰⁴ The definition of extremism was explored in Chapter Three.

health and safety policy to ban a speaker or place certain restrictions on the event, then it could also be seen as fulfilling the requirements of the Prevent duty, as it would be limiting or banning a speaker from espousing extreme views. This approach seems acceptable in light of paragraph 12 of the HEPDG. Likewise, right-wing groups could be barred without using the Prevent policy; for example, if it is feared that it has the potential of stirring up hatred on the grounds of religion or race, or that the cost of organising such an event would be very high due to the counter demonstrations and protests.¹⁰⁵

Although the findings of this chapter suggest symbolic compliance to the HEPDG, there is little case to argue that universities are failing in their duties, in light of the High Court judgment and paragraph 12 of the Prevent duty guidance.

CONCLUSION

The findings of this chapter have shed valuable light on the following sub-question:

How do UM understand and implement paragraph 11 of the HEPDG and is there evidence of risk aversion or symbolic compliance in the implementation of the guidance?

Although concerns were raised by some participants regarding the possibility of risk aversion and the curbing of free speech from the monitoring system and reputation, the findings have demonstrated that Prevent policies are overlooked and relevant pre-existing policies have not been updated. Similar concerns of risk aversion were also raised by the Court of Appeal due to the ‘trenchant’ wording of paragraph 11, but the findings have shown that the paragraph is disregarded by participants. Thus, it seems reasonable to argue that although the possibility of risk aversion does exist, the findings suggest that this is not reflected in the implementation of the Prevent duty. The findings

¹⁰⁵ See, for example, when Tommy Robinson talk was cancelled from the Oxford Union in 2013, Kevin Rawlinson, ‘EDL leader’s Oxford Union appearance cancelled’, (BBC 10 September 2013)

<<https://www.bbc.co.uk/news/uk-24037103>> accessed 28 February 2021

do, however, reveal indicators of symbolic compliance with the Prevent duty, however, the picture may vary from university to university.

In summary, the terms that participants used to describe their approach, such as 'soft', 'not heavy-duty', 'benign', 'it's not had a significant impact on what we do', 'we barely tweaked our approach' and 'we didn't change it after the Prevent duty', cannot be understood using the 'rational cheater model'. It is proposed that participants seem to be exercising limited or 'symbolic compliance', by following pre-existing legislation and procedures to satisfy the Prevent duty requirements. This approach to compliance may not be the way the Government intended the duty function; however, participants seem to view their approach to be satisfactory in fulfilling the requirements of the duty.

It is possible to view some of the responses, such as 'we don't need to focus on Prevent' and 'that policy is there partly because we've got to have one', through the lens of the crowding-out theory, which states that when workers feel that they are controlled, or not trusted, they lose their motivation.¹⁰⁶ According to the crowding-out theory, the increased monitoring by OfS and the raising of the threshold to demonstrate compliance has the potential to reduce efficiency and motivation in certain universities, rather than increase the levels of compliance, as the 'rational cheater model' suggests. The latter eight interviews were conducted when the OfS monitoring framework was in force, yet their views did not differ from those of earlier participants, who were interviewed when HEFCE's monitoring framework was still used. Thus, this study demonstrates that the extra monitoring has not resulted in increased levels of compliance in the participant universities. However, this may not be the case in every university, as it is not possible to make such generalisations from the sample size in this study.

¹⁰⁶ Seeun Jung, Kenneth Hounghbedji (n16)

Chapter Eleven

FREEDOM OF SPEECH AND PREVENT

The previous chapter has shown that participant universities are not applying certain aspects of the HEPDG that may cause risk aversion. This chapter will build on that by exploring the views of participants regarding whether or not freedom of speech has been impacted by the implementation of the Prevent duty. According to the Department of Education (DoE):

The Prevent Duty should not be used to shut down or discourage lawful speech, either directly or by the creation of unnecessarily bureaucratic processes that go beyond what is required by the Duty.¹

This statement by the DoE usefully divides the potential impact of Prevent on free speech into: (i) 'direct' impact, which would entail banning of events and speakers; and (ii) 'indirect' impact, through the creation of increased levels of bureaucracy. Whereas the former is a 'measurable' impact, the latter, often termed 'the chilling effect', is more difficult to quantify.² This chapter will explore the views of participants on the 'direct' impact of Prevent in the context of external speaker events. The 'indirect' impact of Prevent will be analysed in the following chapter. Thus, both chapters will attempt to answer the following sub-question:

¹ Department of Education, 'Higher education: free speech and academic freedom', (CP 394, 2021) para 36,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961537/Higher_education_free_speech_and_academic_freedom_web_version_.pdf accessed 01 March 2021

² The Joint Committee on Human Rights report in 2018 stated that '[t]he fear of being reported for organising or attending an event, combined with the increased levels of bureaucracy following the introduction of the Prevent duty, is reported to be having a "chilling effect" on freedom of speech'.

See: Joint Committee on Human Rights, Freedom of Speech in Universities, Fourth Report (2017–19, HL PAPER 111, HC 589), <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/589.pdf> > 01 March 2021

Do participants consider that the Prevent duty has had a ‘direct’ or an ‘indirect’ chilling effect on freedom of speech in the context of external speaker events?

This chapter will first present the unanimous view of participants that there was no direct impact of the Prevent duty on freedom of speech. It will then go on to explore their arguments in support of this view.

11.1 ‘I DON’T SEE IT AS SOMETHING THAT IS BEING ERODED’³

Despite the widespread concerns outlined in Chapter Four, participants were unanimous in concluding that the Prevent duty did not erode freedom of speech in their university. This is not a surprise finding given those of the previous chapter, which show that participants did the minimum possible to comply with the Prevent duty and mainly relied upon pre-existing legislation. Participants considered freedom of speech to be high on the agenda of all higher education institutions – something the sector was considered to be ‘really good at’.⁴ However, there was significant variation in the reasons given by participants to support this conclusion. This chapter will first identify the following four reasons provided by participants: (i) speakers and events were not routinely cancelled; (ii) the starting point in the risk assessment was that events should proceed; (iii) freedom of speech is essential to the underlining ethos of a university; and (iv) staff and students are involved in the implementation of the Prevent duty. It will then go on to analyse *how* participants balanced the Prevent duty with the freedom of speech duty, before going onto assess whether or not their method supported their view that freedom of speech was not impacted.

11.2 THE FOUR ARGUMENTS

11.2.1 EVENTS ARE SELDOM STOPPED

A key reason cited by participants as evidence that freedom of speech has not been impacted is that they have not stopped any events from proceeding under the Prevent duty. Almost all participants⁵ stated that they had never stopped or banned an event.

³ Participant 1

⁴ P3

⁵ P1; P3; P4; P5; P7; P8; P10; P11; P12; P13; P14; P15 P16

Participant 1, for example, pointed out that they had 'never actually had to stop an event going ahead'. Several participants emphasised that they had assessed external speaker events for a long period, and that during that time no events had been cancelled. For example, Participant 4, who confirmed that they had had this responsibility for nine and a half years, argued, 'in all my time here, we've never actually had to turn down a speaker request'. Likewise, Participant 3 stated that they were 'not aware of any examples here, in the five or six years I've been responsible, where we haven't let an event go ahead because of any concerns'. Participant Seven, who also had a similar role in a previous university, asserted, 'but in my time as the [senior university role with general remit]⁶ here and in the previous institute, we've never actually banned anybody'. When Participant 8 was questioned regarding whether they had cancelled any events, the response was 'not when I've been doing it, no. I don't think there was when my predecessor was doing it and certainly not in the time that I've done it'.

Some of these participants did acknowledge that they had applied certain restrictions on some events, even if they had never cancelled any events. For example, Participant 5 said, 'we've only had a handful of meetings with special status categories applied. And broadly speaking, I'm not aware if we've declined an event to people. We've put additional restrictions in place, but we've never prevented an external speaker event from taking place'. Likewise, Participant 7 suggested that on 'a couple of occasions ... we have had to escalate it to another venue, because [the organisers] were expecting a thousand people, and we don't have a thousand people capacity venue'.

Only three participants⁷ acknowledged that they had stopped an event from taking place.

I've been here for just over eight years, I can only think of a couple of occasions where we've said an event can't go ahead, and as far as I can remember, the only one where we've done that, the issue was not about we think the speaker is going to break the law so this event can't happen. It's we can't guarantee the safety of the people that are going to be attending this event, because the

⁶ The actual role title has not been mentioned to protect the anonymity of the participant.

⁷ P2; P6; P9

subject has been so emotive, there has been such a lot of controversy, so we've either said you have to do this at a different date or we said sorry it can't happen.⁸

We've only deferred one event. There was an event called '.....' and it was arranged by [a Palestinian solidarity group] at the Student Union. We didn't allow it to proceed because it had the potential to breach the code of practice on freedom of speech at the University. The reason for that was that it was to take place during the Israeli Apartheid week, so there was an obvious tension there. We would have allowed it to proceed at any other time, but not at that point in time. We didn't allow an event about Charlie Hebdo that we weren't particularly fond of. [Participant 6]

We had also postponed an event by a speaker, it's down on record we had banned them, it's not true – we had postponed them on the old code of practice. People had to give 21 days' notice. They hadn't given 21 days' notice and some pretty horrific stuff had come up on the internet search. Now the worrying thing about the internet is that who's putting the stuff up and is it inaccurate and all that? But the particular person, I think was worse than this, but the thing that came into my mind that I recall was he was close to saying that Sunni Muslims were real pigs and that they were even worse than the Jews and the Christians, but there's other stuff which suggested inciting violence. We said that event is not going ahead, postpone. We want to have time to sort it out. But actually, it didn't happen. [Participant 9]

The event Participant 2 was referring to was stopped on the grounds that they viewed the topic as 'emotive' and 'controversial', which gave rise to safety concerns, which according to the participant was 'the only one' event as far they could remember. Considering that the participant held this position for eight years, it can be argued that they are not routinely rejecting external speaker events. Moreover, the event was not stopped due to Prevent-related issues, but on health and safety grounds.

⁸ P2

Participant 6 said that they had cancelled two events, but they did not suggest that the cancellations were on the grounds of the Prevent duty, but rather loosely mentioned 'tension' and 'we weren't particularly fond of'. Presumably, the 'tensions' in the Israel and Palestine event were between students or that the Participant supposed that there would be 'tensions' if the event went ahead. In any case, the word 'tension' suggests that this cancellation was very likely on the grounds of health and safety or pressure from students or external groups and not Prevent. The second event that they cancelled was about Charlie Hebdo, for which it is harder to speculate the reason, as the Charlie Hebdo attack was a terror incident, but the event could have been to show solidarity with the magazine.

Regarding the event that Participant 9 said was 'postponed' but recorded as 'cancelled', their internet search revealed incitement to violence and extremism, which has the potential to be assessed and stopped under the Prevent duty. However, the event was 'cancelled' or 'postponed' on the grounds that it did not give '21 days' notice', which may indicate reluctance to use Prevent as the threshold to ban or stop events.⁹ It can be argued that stopping the event on the grounds of insufficient notice does not mean that the university failed in their statutory obligations under the Counter Terrorism and Security Act 2015 (CTSA), because the implementation of the Prevent duty would have produced a similar result.

Nonetheless, only three participants acknowledged that they had cancelled events. The rest said that they had not cancelled any event during the period that they were responsible for assessing event applications and making the final decision. Thus, this study shows that university management (UM) may not be routinely rejecting external speaker requests and events. This can explain, in conjunction with other arguments in this chapter, why participants hold the view that the Prevent duty has not had an effect on freedom of speech on their campuses. However, since Participants 2, 6 and 9 suggested that they had stopped an event and provided reasons for their decision, it is

⁹ Using other policies instead of Prevent is discussed in Chapter Ten, section 10.2.5.1

important to explore their justifications in light of the philosophical arguments explored in Chapter Four.

11.2.1.1 PHILOSOPHICAL UNDERPINNINGS

Cancellations on the grounds of health and safety, be it because of ‘tensions’ between students and speakers or because of incitement to violence, may be grounds upon which freedom of speech can be restricted, according to the philosophical approaches discussed in Chapter Four, section 4.2.3. For example, Van Mill argues that if political free speech is essential for providing citizens the environment to develop and exercise their goals and talents, then on the same grounds political free speech may be restricted if it curtails these same capacities.¹⁰ The proponents of the argument from autonomy, such as Barendt, have similarly argued that if freedom of expression is important for self-fulfilment, then by the same token speech may be restricted if it hinders the self-fulfilment of others.¹¹ Likewise, Mill’s argument from truth did not support an absolute right to free speech. Not being an absolutist, he argued that the only purpose for restricting someone’s free speech and exerting power over them is to prevent harm.¹² Thus, in light of the above three arguments, it can be argued that if speech involves incitement to violence, or health and safety concerns for people attending the event, it can be restricted on the grounds that it (a) ruins the environment needed for people to exercise their goals, talents and abilities, (b) hinders self-fulfilment, and (c) can lead to the harm of others.

11.2.2 STARTING POINT

The second argument made by a number of participants¹³ to support their claim that freedom of speech was not being eroded was that their starting point for any event escalated to them is always ‘how do we make sure this event can happen’.¹⁴ Once that

¹⁰ David Van Mill, ‘Freedom of Speech, (2016) Stanford Encyclopedia of Philosophy, p28

¹¹ Eric Barendt, *Freedom of Speech* (Oxford University Press 2005) p15

¹² John Stuart Mill, *On Liberty* (Boston: Ticknor and Fields 1863) p23

¹³ P1; P2; P3; P5; P14; P15; P16

¹⁴ P2

starting point is established, they assess whether mitigation measures are needed for any potential risks.

So, our starting position has always been yes, as an initial starting point. We may then have to put some controls in place, but we're not going to say 'no you're not', we're actually going out to say 'yes you can, but you may want to have some controls in place to facilitate this'. [Participant 5]

Participant 3 suggested that this starting point would only change if the speaker was proscribed, which would essentially make it illegal to allow them to speak.

The assumption always is that the event will take place and the only reason any institution will stop a speaker speaking is if they are a proscribed speaker. [Participant 3]

Participant 16 emphatically asserted that 'the starting point and end point for me is freedom of speech'. The words 'end point' in conjunction with 'starting point' seem to imply that freedom of speech would always trump Prevent when assessing external speaker events, which also infers that they will not ban events. Such uncompromising starting positions can explain why it is very rare to find events that have been banned due to Prevent, which supports the view of participants that freedom of speech is not being eroded by Prevent. This starting point is very different to what can be extrapolated from the Higher Education Prevent Duty Guidance (HEPDG). The literal wording of HEPDG seems to imply that the starting position ought to be that 'risky' events must be cancelled unless universities are 'entirely convinced' that the risks can be 'fully mitigated'.¹⁵

Other than the seven participants indicated above, the rest did not expressly mention freedom of speech as their starting point; however, this does not imply that other

¹⁵ HM Government, Prevent Duty Guidance: For Higher Education Institutions in England and Wales, Home Office (Updated 1 April 2021) para 11 <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 30 September 2021

participants did not have the same starting point or that they have a different approach that is more restrictive. Other participants provided various alternative reasons for why they believe freedom of speech is not being eroded.

11.2.3 THE ETHOS AND VALUES OF A UNIVERSITY

The acknowledgement that freedom of speech is part of the ethos of their university was the third argument presented by participants to support their claim that freedom of speech was not being eroded by the Prevent duty. The ethos and values of a university seem to be at the foundation of the decision to take a pro-freedom-of-speech stance as the starting point, as pointed out by Participant 2:

If they are escalated then our starting premise is always how do we make sure this event can happen, because that's where our values are: freedom of speech, everybody having the right to express their views, universities being about open debate and exchange and all that kind of thing.

All participants stressed the importance of freedom of speech in very emphatic terms. For example, Participant 10 asserted:

University is meant to be about broadening your horizons, meant to be about opening you up to other stuff, and if the first thing we do is put people back in the same box and shut them down, we will fail.

Participant 1 referred to free speech as the 'fundamental ethos of a university', Participant 4 stressed that freedom of speech 'is at the core of the[ir] institution's approach and methodologies', Participant 13 described freedom of speech as their 'main goal' which they have to preserve as a 'legal requirement'. Participant 14 asserted in very clear terms that freedom of speech 'is probably the most important thing we can do. If we can't do that then we might as well pack up and go home'. Participant 15 highlighted 'I fundamentally believe universities are a place where freedom of speech should exist and we should have staff and students exposed to challenging views, whether that's around the executive table, in the dining hall, on campus lectures, public lectures, or you know in academic discussions'. 'Freedom of speech being the ethos of

universities’ also neatly summarises the key arguments made in the House of Lords leading up to the CTSA 2015:

Central to that battle for hearts and minds—the powerhouse of it—is higher education and the universities.¹⁶

[T]here are no improper debates in universities. There are improper actions as a result of debates; there are improper actions during debates; but to put a case and to argue the case is an essential part of university education.¹⁷

Since the central role of freedom of speech in universities was solidified by Section 43 of the Education (No.2) Act 1986,¹⁸ which makes it a legal duty upon UM to ensure freedom of speech is protected, it is not surprising that UM have expressed their views in such emphatic terms.¹⁹ In any case, given that personal beliefs of bureaucrats have an important influence on how they implement policies,²⁰ it is argued that these views of participants, or ‘fundamental beliefs’, to use the term of Participant 15, have likely skewed how they implement their duties in favour of freedom of speech duty vis-à-vis the Prevent duty, regarding which, as noted in section 10.4 of Chapter Ten, they were largely critical. Since literature around public administration and organisational behaviour recognises that when applying administrative rules and completing standard forms, ‘front-line workers exert their own judgments and develop their own

¹⁶ Lord Judd, HL Deb 04 February 2015, vol 759, col 693

¹⁷ Lord Deben, HL Deb 04 February 2015, vol 759, col 690

¹⁸ Section 43 establishes freedom of speech as statutory duty upon universities for ‘members, students and employees of the establishment and for visiting speakers’. See: Education (No. 2) Act 1986, Section 43 (1)

¹⁹ The role of freedom of speech in universities is often spoken of in powerful and poetic manner, for example during the debates in the House of Lords on the then Counter-Terrorism and Security Bill, Lord Judd argued, ‘Central to that battle for hearts and minds - the powerhouse of it - is higher education and the universities’. See: Lord Judd, HL Deb 04 February 2015, vol 759, col 693

²⁰ Marisa Kelly, ‘Theories of Justice and Street-Level Discretion’, (1994) 4 *Journal of Public Administration Research and Theory* 119

strategies',²¹ it is argued that UM will also exert these strongly held convictions for freedom of speech and criticisms of Prevent in their judgements, which explains their stance in favour of freedom of speech.²² Moreover, a strong stance for freedom of speech is not surprising, considering that their interactions with academic staff, students and work colleagues will also have an influence on their understanding of what is important when balancing the two duties.²³

11.2.3.1 PHILOSOPHICAL UNDERPINNINGS

The arguments of Participants 10 and 15 seem to resonate with the argument from autonomy,²⁴ according to which if people are restrained from expressing their opinions an element of their humanity is denied, which is individual development and self-realisation. The feedback a person gets from their environment after expressing their inner self allows them to self-develop and find their meaning and place in the world. Thus, 'broadening of horizons of students' and 'opening them up to other stuff', as argued by Participant 10, and 'exposing students to challenging views' as mentioned by Participant 15, are ways of facilitating self-development through free speech, reflecting the argument from autonomy. Restricting free speech in universities would result in diminishing self-development and realisation, or as argued by Participant 10 'put[ting] people back in the same box and shut[ting] them down'. This unique role of universities was expressed by Lord Mendelsohn in the House of Lords as follows: 'Listening to and rigorously questioning speakers about controversial issues is vital training for undergraduates and a life skill that universities are uniquely equipped to teach'.²⁵ According to the argument from autonomy, ensuring freedom of speech for students and visiting speakers is vital for universities being able to perform their unique role of

²¹ Jodi R. Sandfort, 'Moving Beyond Direction and Outcomes: Examining Public Management from the Front Lines of the Welfare System' (2000) 10 *Journal of public administration research and theory* 729, p742

²² For a fuller discussion on street level bureaucracy, see section 6.4.4 in Chapter Six.

²³ As Sandfort argues that staff do not develop understandings and strategies in isolation, but they 'depend on their interactions with their colleagues to help shape their understanding of events'. (n21) p742

²⁴ For a fuller discussion on the argument from autonomy, see Chapter Four, section 4.2.1.

²⁵ Lord Mendelsohn, HL Deb 26 November 2015, vol 767, col 862

developing 'life skills'. This philosophical underpinning to the arguments presented by the participants explains their strong conviction that upholding freedom of speech is upholding the ethos of the university. Thus, in their view freedom of speech is not being eroded, as it is protected by the ethos of the university.

11.2.4 STUDENT AND STAFF INVOLVEMENT

A further argument that supports the view of participants is that students and staff are involved in various aspects of Prevent implementation. This section will explore this argument as follows: First, it will show that participants who were tasked with making the final decisions on external speaker events, and responsible for shaping policies, acknowledged that students and staff had negative perceptions of Prevent. Second, it will show that while UM refer to consulting external information, in practice they also include their own staff and students in their Prevent working groups. Third, it will argue that in difficult circumstances where the requirements of the Prevent duty and the opinion of students or staff may conflict, UM are likely to take decisions that are favourable to their students and staff.

Participants pointed out some of the common perceptions held by students and staff concerning Prevent. The first and the most common perception concerned surveillance. For example, Participant 6 pointed out that students 'see Prevent as a big brother mentality', where the university is 'spying' on their every move. The second perception highlighted was that Prevent is seen as 'anti-Islamic' and racist. As Participant 7 argued, 'when academics say that it is having a chilling effect, what they are trying to say is that they don't like Prevent. They regard it as a politically motivated agenda that they don't subscribe to. That it is anti-Islamic. I think that is essentially what they are saying'. The third perception that several participants mentioned was that Prevent is a hindrance to dialogue. For example, Participant 10, when commenting on the perception of Prevent, said that 'there are many people who would say it's been problematic in terms of helping to create dialogue because it's just another barrier you need to get over'. The above three perceptions of students and academics concerning Prevent are not new concerns,

as they are consistent with much of the literature around Prevent, as mentioned in Chapter One, section 1.5.2, and Chapter Five, section 5.3.5.²⁶

Participant 10 also noted that Prevent had become a 'toxic' label due to its poor early implementation, which had caused the negative perceptions held by students and staff:

I had a conversation about this with someone in the department of education and they were saying, 'we think the term Prevent isn't as toxic as it once was' and I was laughing. It's like the *News of the World*, you know. It has reached such a point that anything that is helpful around this term is actually lost, because it was so badly handled right at the start. [Participant 10]

However, participants who cited the above perceptions among students and academic staff also seemed to distance themselves from them. For example, Participant 6 asserted that Prevent was not about spying and surveillance, 'It's not about that'. Likewise, Participant 10 argued that there was 'a disconnect' between the perception of Prevent held by students and the way Prevent actually works:

²⁶ University and College Union, 'The Prevent Duty: A Guide for Branches and Members', (December 2015) <https://www.ucu.org.uk/media/7370/The-prevent-duty-guidance-for-branches-Dec-15/pdf/ucu_preventdutyguidance_dec15.pdf> accessed 29 October 2020; National Union of Students, 'What is PREVENT and why should we oppose it?', (Wednesday 07 November 2018) <<https://www.nusconnect.org.uk/resources/what-is-prevent-and-why-should-we-oppose-it>> accessed 29 October 2020; Fahid Qurashi, 'The Prevent strategy and the UK 'war on terror': embedding infrastructures of surveillance in Muslim communities', (2018) 4 Palgrave communications; Arun Kundnani, 'Spooked! How not to prevent violent extremism' (Institute of Race Relations, October 2009) < <https://irr.org.uk/app/uploads/2016/12/spooked.pdf>> accessed 08 April 2023; also see: Department for Communities and Local Government, 'Preventing violent extremism pathfinder fund: guidance note for government offices and local authorities in England', (December 2008) <<https://emosandcrane.co.uk/resources/DCLG-PreventingViolentExtremismPathfinderFund.pdf>> accessed 20 February 2020; Katy Sian, 'Born Radicals? Prevent, Positivism, and 'Race-Thinking'', (2017) 3 Palgrave communications; Ruth Blakeley, Ben Hayes, Nisha Kapoor, Arun Kundnani, Narzanin Massoumi, David Miller, Tom Mills, Rizwaan Sabir, Katy Sian and Waqas Tufail, 'Leaving the War on Terror A Progressive Alternative to Counter-Terrorism Policy', (Transnational Institute July 2019) <https://www.tni.org/files/publication-downloads/leaving_the_war_on_terror_online.pdf> accessed 20 February 2020

We supported, as an institution and our Student's Union, a motion to NUS conference about how we must oppose the racist Prevent duty. And in the same year in the *Guardian* they had an article that said 27 or 32% of referrals in that year to Channel were far right extremism. So, white nationalism extremism, and I was saying: so, what's going on here? Like there is some kind of disconnect. And I'm not saying that's wrong. But there are people who legitimately point at bits and the ways that Prevent is used to have a racist intent or what they would feel as racist intent. But at the same time, it is doing this other bit, which is literally trying to bring in racists and stop them from engaging in extremism. So, yeah, it's interesting. [Participant 10]

The above perceptions of Prevent are reflections of designated officers on how it is viewed by students and staff. At first glance, it may seem that the secondary and anecdotal evidence of the perception of students and staff has little significance in how the duty is implemented. However, the findings of this project also indicate that the designated officers' understanding of the perceptions of students and staff can influence their choices and decisions on external speaker events. For example, Participant 10 also spoke extensively about how their process involved discussions with student groups and the decision of external speaker events was 'situational, it would depend on the outcome and that comes from discussions with the groups'. Likewise, many participants spoke about staff and student involvement in the manner Prevent was implemented. Participants spoke about building a relationship and liaising with the student community on the implementation of their policies. When talking about their internal Prevent group, Participants 11 and 12 pointed out, 'a representative from the Students' Union sat and still does sit on that [Prevent working group], and they get their say in terms of whether they think we're going off track. It allows them to say: oh, hang on, how do you think that will sit with students? We involve them and I think that's another benefit that we have that maybe some other institutions might not have'. Likewise, Participant 5 said:

In the University, we've got an academic member of staff in our Prevent Committee, so that we use that individual and take his advice and experience.

And also we can use him to seek a position from our academic colleagues as to whether or not they think those values are being challenged.

Participant 5 also mentioned that their panel of Prevent-related individuals was 'representative of senior management within the University, Students' Union and the student body.' This reflects the important role of student and staff perception during the implementation of the Prevent duty, to the extent that some participants spoke about not upsetting students. For example, Participant 6 pointed out:

And we had a social cohesion group and one of its remits was to consider Prevent-related matters, but in the context of social cohesion, making sure that we didn't do anything that *upset the student body*... We tried to make it inclusive. So, that people's views were recognised and taken on board when we took decisions.

It is argued that the role of students and staff in Prevent groups (who, as noted in Chapters One and Five are likely to hold negative views of Prevent) shows that their views are given consideration and are likely to have a significant impact on how the duty is implemented. In addition, UM can at times become the focus of student protests and pressure that could sway policy decisions, as pointed out by Participant 13:

We have a really lively student community that feels to me, as part of management, that it's quite free to express its opinions. This time last year, we were in the middle of the industrial action, our students occupied our senior building... We don't want our offices to be occupied very often, but they're nice people and they are passionate. They did express their views very freely to the university in the front of the senior management, which is a healthy sign.

Thus, having the discretion to apply the Prevent duty and draft policies in a manner that is suitable to their context, UM may respond favourably on behalf of their students and

staff. To expand upon this point, this project will utilise Lipsky's concept of 'street-level bureaucracy'.²⁷

11.2.4.1 STREET-LEVEL BUREAUCRACY

Lipsky argued that 'street-level bureaucrats are also the focus of citizen reactions because their discretion opens up the possibility that they will respond favourably on [their] behalf'.²⁸ This can be applied to the findings explored in the above section to form the following argument: participants are unlikely to adopt risk-averse approaches and are likely to favour students and staff. The following reasons can be identified to support this argument: (a) participants understand that students and staff generally hold negative perceptions of Prevent; (b) student and staff are involved in the implementation of Prevent; and (c) participants may try not to 'upset' their students or staff.

However, this may lead to instances in which the student and staff voice is in stark conflict with the requirements of the Prevent duty, a situation which can be difficult to balance. Participant 14, for example, asserted:

The law says the university should do all these things, some of which contradict some of our own duties, some of which are impractical and yet because of the heightened political climate around it, you are kind of stuck in the middle of it.

Participant 14 also provided examples of such conflicts:

The other concern I've got about Prevent is protecting students who might engage with radical ideas for legitimate academic purposes, and you can think of obvious examples. We've got [a politically sensitive] research unit. So, I think it's entirely reasonable that staff and students might want to look at *The Anarchist Cookbook*, for example. Now, we need to protect our students and we've framed some of this through our safeguarding policy. What I don't want is bloody special

²⁷ The concept was explored in section 6.4.4 of Chapter Six

²⁸ Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Service*, (first published 1980, Russell Sage Foundation 2010 30th Ann. Ed) p9

branch coming around and hauling someone off because they've been doing legitimate research. The other thing I've got a concern about is the use of appropriation of extremist imagery in art, where let's say someone from a final year student wants to appropriate ISIS imagery for use in a final year art project. Well that's entirely legitimate from my perspective in terms of academic freedom. But it does mean that they will be using all sorts of imagery. Again, I think, we as an organisation need to be really clear that that's entirely reasonable and we'll protect our staff and students who might be engaged in that activity.

The above examples demonstrate that there are situations in which UM will face challenges when trying to balance the Prevent duty requirements on the one hand, and the pressure from their students and staff to allow controversial events or research on the other. In such instances, according to Lipsky's 'street-level bureaucrat' theory, it is likely that UM will adopt a favourable orientation towards their students, as the above quotation from Participant 14 indicates. This favourable orientation towards students and staff could require UM to show symbolic compliance to the Prevent duty.²⁹

In short, the four arguments that (i) universities are not routinely banning events or speakers, (ii) their starting point in assessing events is 'how do we put this event on', (iii) that UM recognise that freedom of speech is at the ethos of their university, and (iv) staff and students are involved in the implementation of the Prevent duty, all form part of the explanation of the participants regarding their view that freedom of speech is not being eroded. The next section will focus on the relationship between the freedom of speech duty and the Prevent duty.

11.3 BALANCING FREEDOM OF SPEECH WITH PREVENT

The findings of this project have demonstrated that not a lot of events are escalated³⁰ and those that are escalated are generally not Prevent related.³¹ It would therefore appear that participants have not had many instances in which the need arose to weigh

²⁹ See Section 6.4.2 in Chapter Six and Section 10.2.5 in Chapter Ten for a fuller discussion on symbolic compliance.

³⁰ This finding is explored in the next chapter: Chapter Twelve, Section 12.1.2

³¹ Chapter Nine, Section 9.3.1

the Prevent duty with the freedom of speech duty; as noted in Chapter Eight, most participants claimed that radicalisation was not a problem on their campus.³² Nonetheless, most participants did explain how they would weigh the two duties if they were faced with a controversial event that required such an assessment in the future. An analysis of the data reveals three distinct views: first, freedom of speech is a higher duty than Prevent; second, the two duties are equal in weight; third, it is not a question of balance and weight as they are not competing duties. Each of these opinions are explored in the following section.

11.3.1 FREEDOM OF SPEECH TRUMPS PREVENT

Six participants³³ expressly argued that freedom of speech has more weight than the Prevent duty. For example, Participant 3 argued

We have spoken to lawyers about it and responding to the funding council, and they have said the same thing. That legislation is clear and that freedom of speech trumps some of the aspects of counter-terrorism and, therefore, that is the kind of approach we take. We take freedom of speech as a higher duty than the Prevent duty implementation, which is framed as guidance. They [the Government] are pretty clear as to what they want you to do, but legally its standing is that it is guidance.

In defence of giving freedom of speech more weight, participants submitted that their approach was drafted with legal advice. Participant 9 argued ‘I had a lawyer from the council come and help me with the drafting and we came out in favour of freedom of speech within law, after all that’s what we’re required to do. We’ve very much taken the view that there will be a very high bar before we decide to pull an event’. It is unsurprising that the advice from lawyers was that freedom of speech was a higher duty than Prevent, since, as detailed in section 5.3.2.1 of Chapter Five, the High Court in the *Butt* case had ruled that ‘particular regard’ to the free speech duty was ‘more important’

³² Chapter Eight, Section 8.1

³³ P3; P6; P7; P9; P12; P16

than the duty to have 'regard' to the HEPDG.³⁴ The argument of Participant 3 that 'legally its standing is that it is guidance', was precisely what the Court argued in paragraph 61 of the Judgement.³⁵ Participant 6 also used the terminology 'due regard' and 'legal responsibilities' to argue that freedom of speech was a higher duty, suggesting they were aware of the legislation surrounding Prevent:

I don't think a formal decision has been taken as to how we weigh this, but I would certainly approach this and the people I liaise with in the University, the officers, recognise that our legal responsibilities under Prevent are to have 'due regard to', and 'due regard' is a lesser test than our responsibilities to academic freedom and freedom of speech.

This approach of giving freedom of speech more weight than the Prevent duty can form part of the explanation as to why the above six participants argued that freedom of speech was not being eroded by the Prevent duty. However, this approach was not shared by all participants as the following sections will illustrate.

11.2.2 'WE DON'T PUT ONE ABOVE THE OTHER ON A PEDESTAL'³⁶

Participants 5 and 8 advanced that both duties had equal weight. Participant 5 argued 'we try to be consistent in our approach and not favour one over the other'. Participant 8 asserted, 'one's newer than the other, but both freedom of speech and protection against radicalisation are both statutory. They both carry statutory weight. We don't put one above the other on a pedestal'.

This approach may not seem to favour freedom of speech over Prevent, but both participants made it very clear that it did not involve cancelling events and thus there was no 'direct' impact on freedom speech. Participant 5 explained, 'It's about managing the risk. It's not about not taking risk, but it's about risk management, which is what we do on a daily basis'. The approach of 'managing risk' instead of 'not taking risk' indicates

³⁴ *Salman Butt v. Secretary of State for the Home Department* [2017] EWHC 1930 (Admin), [2017] 4 W.L.R. 154 [61]

³⁵ Ibid

³⁶ Participant 8

that they are not likely to cancel events. In other words, instead of banning 'risky' speakers, their approach is to manage the risk and allow the event to proceed. Participant 5 further explains that this involves using 'appropriate' mitigations that are not overly prescriptive: 'I think, provided we can demonstrate and articulate the fact that we have considered and put appropriate mitigations in place without being overly prescriptive, we will continue to take that approach'. Although 'appropriate mitigation' and not being 'overly prescriptive' may mean different things to different people, it does demonstrate that Participant 5 is not likely to cancel 'risky' events, but is more likely to 'take risks' and try and mitigate the risks without being 'overly prescriptive'. These responses suggest that even if both duties are given equal weight, participants are not likely to cancel events.³⁷

Participant 8, who also maintains that the two duties have equal weight, argued, 'what we try and do is balance the two [Prevent and freedom of speech] by putting in a second speaker that will speak to the different view'. It would appear that balancing the two duties in their view meant providing a balance of opposing views. However, at another point in the interview, when describing their approach, Participant 8 appeared to suggest that freedom of speech was a higher duty:

So, I suppose I'm saying, I'm putting freedom of speech above Prevent, but actually what I'm trying to say is that the radicalisation risk is far lower than the Prevent duty would have us believe, I think.

In other words, the belief that the risk of radicalisation is 'far lower' than the Government has suggested led Participant 8 to give greater weight to the freedom of speech duty. Since it is established that a person's personal beliefs have an impact on how they implement policies,³⁸ the belief that the risk is low is unlikely to lead to risk averse decisions such as the cancellation of events.

³⁷ The next chapter will explore whether mitigations can have an indirect chilling effect on free speech.

³⁸ See: Marisa Kelly, 'Theories of Justice and Street-Level Discretion' (1994) 4 *Journal of Public Administration Research and Theory* 119; Jodi R. Sandfort, 'Moving Beyond Direction and Outcomes: Examining Public Management from the Front Lines of the Welfare System' (2000) 10 *Journal of Public Administration Research and Theory* 729; Michael D. Siciliano, Nienke M. Moolenaar, Alan J. Daly and Yi-

11.2.3 'IT'S NOT ABOUT WEIGHT'³⁹

During the initial period of the Prevent duty, it was argued by several academic writers in the area that freedom of speech and Prevent were conflicting duties, which would cause the stifling of free speech.⁴⁰ As Jim Snaith and Karen Stephenson put it, universities would find themselves 'caught between a rock and a hard place'.⁴¹ In contrast to this view, three participants⁴² indicated that they did not view the two duties as conflicting or requiring a balance – 'It's not about one against the other'.⁴³ When speaking about the potential conflict between freedom of speech duty and the Prevent duty in external speaker events, Participant 1 indicated that from their experience, 'there was more hype associated with it than there is in practicality'. Given that Participant 1 has never had to cancel an event,⁴⁴ it is unsurprising that they viewed the conflict as associated with 'hype'.⁴⁵ Participant 15 also seemed reluctant to speak of balancing the two duties:

Hwa Liou, 'A Cognitive Perspective on Policy Implementation: Reform Beliefs, Sensemaking, and Social Networks' (2017) 77 *Public Administration Review* 889

³⁹ P15

⁴⁰ See: Neville Harris, 'Academic Freedom: New Conflict', [2015] *Ed Law* 3; also see the open letter signed by 500 academics published in the *Guardian* as 'Counter-terrorism and security bill is a threat to freedom of speech at universities', *The Guardian* (2 February 2015)

<<https://www.theguardian.com/education/2015/feb/02/counter-terrorism-security-bill-threat-freedom-of-speech-universities>> accessed 02 March 2021. The JCHR also raised the same concerns during the legislative scrutiny stage. It argued, 'The Government does not appear to have considered how the proposed new duty, as it applies to universities, will relate to these existing duties concerning freedom of speech, nor the precise implications of the new duty for the codes of practice which universities are already required to have'. See: Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Security Bill*, Fifth Report (2014 – 15, HL Paper 86, HC 859) <<https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/86/86.pdf>> accessed 30 September 2021

⁴¹ Jim Snaith and Karen Stephenson, 'The Prevent Duty: A Step Too Far?' [2016] *Ed Law* 56

⁴² P1; P10; P15

⁴³ P10

⁴⁴ As mentioned in section 11.2.1

⁴⁵ The view of Participant 1 and 10 that the two duties are not conflicting could be shaped by their approach of only banning events if it would lead to the violation law.

It's navigating through them, rather than balancing, because it's not about weight. It is in fact navigating our responsibilities in each of those duties and it's not an exact science. You know, you can't weigh it up like that.

Although Participant 15 was reluctant to talk about weight, nonetheless, their approach to Prevent did not seem to be inclined towards cancelling events. For example, they asserted, 'I think that goes back to my point before about "how" you put these events on, not "whether" you put these events on. So, I think that's where we try to balance it'. Their approach of 'how to put an event on' as opposed to 'whether to put the event on' is unlikely to result in the cancellation of events, leading these participants to conclude that Prevent is not having a direct effect on freedom of speech.

It can be established that the approach of participants in balancing the two duties seemed to favour allowing events to proceed. Even those who saw Prevent as having equal weight to freedom of speech or viewed the process as navigating between them, did not believe that Prevent required the banning of events. Prevent, according to these participants, required consideration of how to put on events, rather than whether to put on events; it required management of risk, rather than not taking risk.

CONCLUSION

This chapter set out to answer the question:

Do participants consider that the Prevent duty has had a 'direct' impact on freedom of speech in the context of external speaker events?

The chapter has demonstrated that, in the view and experience of all participants, Prevent has not 'directly' impacted freedom of speech. Adding to the findings of the previous chapter, this chapter has highlighted the following reasons to support this view. First, most participants⁴⁶ argued that they had never or seldom stopped an event. Second, almost all participants stressed the importance of freedom of speech and believed freedom of speech was essential to the ethos of a university. Third, many

⁴⁶ P1; P3; P4; P5; P7; P8; P10; P11; P12; P13; P14; P15 P16

participants⁴⁷ argued that their starting point was ‘how do we make sure this event can happen’, which is a starting point that favours freedom of speech. Fourth, some participants⁴⁸ argued that freedom of speech was a higher duty than Prevent, with no participants regarding Prevent as the higher duty. Although Participants 5 and 8 argued that they had equal weight, their method in balancing the two duties did not lead to the banning of events, with Participant 5 describing their approach to Prevent as ‘it’s about managing the risk. It’s not about not taking risk’. Participant 8, at a later point in the discussion, even seemed to acknowledge ‘putting freedom of speech above Prevent’. Finally, Participants 1, 5 and 10 argued that the two duties did not compete, and as such Prevent is unlikely to have an eroding effect on freedom of speech.

The findings of this chapter and Chapter Ten illustrate that the likelihood of participants restricting lawful free speech under the Prevent duty is very rare. However, these findings should not be understood as indicating that there is no possibility that freedom of speech within law will be affected. As noted in the previous chapter, a small number of participants admitted to using tests that were vague, such as damage to reputation, inappropriate terminology, or terminology that is likely to upset people. These vague tests do have the (albeit small) potential to directly curb free speech. The next chapter will analyse the possibility that the Prevent duty has had an indirect chilling effect on freedom of speech in the context of external speaker events on university campuses.

⁴⁷ P1; P2; P3; P5; P14; P15; P16

⁴⁸ P3; P6; P7; P9; P12; P16

Chapter Twelve

CHILLING EFFECT ON EXTERNAL SPEAKER EVENTS

This chapter will explore the possibility of an indirect chilling effect on external speaker events – a concern raised in various critiques of the Prevent duty, as noted in section 5.3.5 in Chapter Five. Thus, in conjunction with the previous chapter, this chapter addresses the following sub-question:

Do participants consider that the Prevent duty has had an impact on freedom of speech in the context of external speaker events, be it a direct or an ‘indirect’ chilling effect?

This chapter is divided into four sections. The first part of the chapter will present and analyse participant views on the potential chilling effect of the Prevent duty on external speaker events. The second will identify mitigations used to reduce any associated risks and their potential impact. The third will reflect on the bureaucratic processes involved with organising an external speaker event. The final part will consider the impact of the Charity Commission’s guidance for student unions and societies.

12.1 PARTICIPANT VIEWS ON CHILLING EFFECT

This section will first identify participant views on the potential chilling effect of the Prevent duty on external speaker events, before going on to analyse these views.

12.1.1 VIEWS AND REASONING

Some of the participants¹ dismissed the suggestion that the Prevent duty has caused a chilling effect in the context of the application process for external speaker events. Participant 2, for instance, was clear that, ‘as much as I’d like to say Prevent has been dreadful and the legislation should be repealed in a sense, I don’t think it has had a chilling effect ... certainly, that’s not a message we get from our students. They are not saying to us that we would like to run this event or that, but because of Prevent we can’t’.

To support their view, participants pointed out that the kind of event applications that were submitted did not seem to indicate that students and staff were self-censoring. For

¹ P1; P2; P4; P5; P6; P10

example, Participant 2 argued, 'I doubt very much that if you went back to pre-Prevent, pre-2011, that there was anything different in the nature of events that were going on here than you would see now'. Participant 6 pointed to a number of controversial events that had been hosted by the Student Union, adding, 'I don't think our Students' Union feels in anyway restricted'. In a similar vein, Participant 10 asserted, 'if you look at the amount of activism on campus over the last few years around, just take, the BME type movements, such as "Decolonising the Curriculum", "Why Is My Curriculum White?", all of those kinds of things, those things don't indicate a chilling effect, those indicate an environment where students can have their voices on campus'. Participant 5 pointed out that their engagement, openness and supportive approach meant that there was no apparent chilling effect.

I think, one of the things we wanted to do was to be approachable, open and supportive to any event that takes place or request that comes, be that from the Student body, from members of staff, including our academics. I truly believe we're probably seeing 99.9% of events, because we've managed within the culture of the institution to encourage engagement and openness around the approach of the events. Whereas, I don't think, the processes and the approach that we have and we use, has driven events underground or done anything other than that. And I think the working relationship and the interactions and engagements that we have with both the student body and members of staff, is a really good developing opportunity and that's something I want to continue to work with and to encourage it to flourish. So, I think, from that point of view, I would say that from my experience over the past six or seven years in dealing with events is that it's not the case.

Another group of participants² put forward a more nuanced argument that the possibility of a chilling effect did exist, but asserted that it was difficult to prove or that there was no evidence for it on 'their' campus. They also relied upon the same argument as the first group that the kind of events processed showed that a chilling effect was unlikely. For example, Participant 3 highlighted that in general there was a chilling effect

² P3; P7; P8; P9; P13

on free speech in seminars and discussions, but there was no evidence of it in external speaker events:

Certainly from the feedback we get from some sections, particularly students and sometimes staff, is that there is a conflict, because there is a concern around the monitoring of Prevent that it does inhibit some of the things they might want to say. ... We have heard examples that students in certain topics, where they are discussing politics in the Middle East or whatever, will not want to say some of the things that they might wish to say in a seminar discussion, because they are concerned that they may be perceived as them espousing extreme views bringing them into the auspices of MI5.

However, when it came to external speaker events more specifically, Participant 3 seemed to suggest that they did not think it was happening:

If it's self-censoring then you don't know if it actually ever happened. So, it's quite hard to prove a negative. In general, I don't think it is the case, because we certainly continue to have a lot of what are perceived as contentious, difficult, potentially even extreme speakers coming here. I'm not aware of certainly any academics shying away from going ahead with any events that they want to do. With Student Union societies there may be some self-censoring and deciding not to have certain speakers come here. I've had no evidence for that. And the fact that they have had so many difficult speakers come here, makes me think they are not self-censoring. Again, that's not Prevent driven that's other areas as well. So, I'm not sure it's having a chilling effect myself, but there is a risk and I don't think it should be forgotten about.

Likewise, Participant 13, after acknowledging that 'students who are from ethnic minority backgrounds, particularly ones with middle-Eastern heritage or connections, would feel at risk and oppressed' by the Prevent duty, pointed out that their 'lively student community' during the industrial action occupied their senior building.

We don't want our offices to be occupied very often, but they're nice people and they are passionate and did express their views very freely to the university in the front of the senior management, which is a healthy sign. And it's not a sign of a chilling effect.

Only two participants³ acknowledged examples of self-censorship from students. Participant 14, for example, pointed out, 'I know that the Student's Union effectively self-censored a speaker. Now I don't think we would have banned the speaker had they sent it to us'. The participant elaborated, 'it was a speaker invited by the Islamic society who we might disagree with regards what that person had to say. But I couldn't see any grounds for banning the speaker, but they decided not to let the event proceed'. During the interview, it became clear that the grounds on which the event was cancelled by the students was Prevent, because the University took a view from the Prevent coordinator on the speaker, which shows that there were concerns around Prevent. Participant 14 said, 'We did send that to the Prevent coordinator and they said its OK'. Participant 14 further acknowledged how the Prevent duty could be linked to a chilling effect:

I could understand how a group of students might feel. I suppose, if I were to subject to Islamophobia over a period and I saw the Prevent duty, I could understand how I might see the Prevent duty through that lens. So, from my perspective as a white liberal it looks OK, but I could understand how others might form a different view on it.

On the contrary, Participant 12, who also said that students did cancel events, argued that those decisions were based upon no-platforming policies, which arguably is different to a chilling effect:

I don't think we've had it here. But I have worked with universities that have had their own student body cancel events. So, the university has said we're happy for that to happen and we're happy to allow it to go ahead, but the student body have said we absolutely don't want that person on campus and we are going to no-platform that person. I'm not aware that our student body has cancelled an event or felt they can't allow an event to happen.

In short, it can be said that participants can be grouped as follows: first, those⁴ who argued that a chilling effect was very unlikely; second, those⁵ who acknowledged that it was possible but argued it is difficult to prove and the kind of events that were processed

³ P12; P14

⁴ P1; P2; P4; P5; P6; P10

⁵ P3; P7; P8; P9; P13

show that a chilling effect was unlikely; third, Participant 12 who argued that cancelations by students were based upon no-platforming policies as opposed to a chilling effect of Prevent; and fourth, Participant 14 who acknowledged that Prevent has led to self-censorship in isolated cases.

The results suggest that in the view of most participants, there was no chilling effect on events. However, it can be argued that although the kinds of applications submitted show that students and staff are willing to organise controversial events, it cannot be used to conclude that there is no chilling effect at all; as noted by Participant 3, it is difficult to 'prove a negative'. This point was acknowledged by Sam Gyimah, the previous Minister of State for Universities, when he stated that, '[t]he last survey of students in 2016 showed that 83% of students felt free to express views on campus ... just as important is what is hard to measure: the large number of events that do not happen at all, either because organisers are worried about obstruction or because the overzealous enforcement of rules makes them seem more trouble than they are worth'.⁶ A similar argument was put forward by Participant 7:

I won't know about what I don't know about. But it's not impossible that certain societies ... might decide to not invite particular speakers because they are concerned about breaking the law under Prevent. I don't have any evidence of that.⁷

Based upon their experience of the kinds of events that they are processing, the view of most participants was that a chilling effect is unlikely at their university. However a full assessment of whether Prevent has led to a chilling effect on free speech would require data from student groups and staff that is beyond the scope of this project. Although the Joint Committee on Human Rights' (JCHR) report in 2018 did not find 'wholesale

⁶ Joint Committee on Human Rights, Oral evidence: Freedom of Speech in Universities, (HC 589, 7 February 2018), Q68,

<<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/freedom-of-speech-in-universities/oral/78267.pdf>> accessed 22 April 2021

⁷ P7

‘censorship of debate’ in universities, it did argue that there were ‘disincentives [that] could be having a wider “chilling effect”, which is hard to measure’.⁸

12.1.2 ANALYSIS OF PARTICIPANT VIEWS

This section will offer a critique of the participants’ arguments before going on to highlight some of the ‘disincentives’ that have the potential to cause a chilling effect. This critique will focus on the fact that: (a) since participants have acknowledged that the number of events escalated to them every year is small, it is problematic to conclude that there is no chilling effect; and (b) there is a possibility that some events are not escalated out of fear that they may be stopped or restricted.

12.1.2.1 ESCALATION IS RARE

A number of participants⁹ pointed out that the number of escalated applications was very small. For example, Participant 13 asserted, ‘we’ve had an extremely small number of cases come to my attention. I can remember one in the last few months, I can't remember the ones before that. My memory is not perfect but it speaks to the fact that they are rare indeed’. Participant 14 suggested that there were only ‘three or four events a year’, with Participant 15 describing the number of escalated events as ‘tiny, one a year’. Since the number of controversial events that are escalated to participants are small, the claim that the presence of controversial events is an indicator of the absence of a chilling effect is questionable. Conversely, it could also be argued that the small number of controversial events could be an indicator of a chilling effect, as it means that most events have ‘safe speakers’ and students are not organising events with controversial speakers.

Only Participant 16 said that a large number of events were escalated to them; however, they asserted that the vast majority did not meet the requirements for escalation.

So, the typical type of speaker approval request that comes through to me aren’t appropriate. They're not really speaker approval requests and fit the procedure,

⁸ Joint Committee on Human Rights, *Freedom of Speech in Universities*, Fourth Report (2017–19, HL PAPER 111, HC 589), <<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/589.pdf>> accessed 30 September 2021

⁹ P2; P4; P5; P7; P8; P13; P14; P15

they don't fit the threshold of actually coming through as needing to be investigated and risk assessed and stuff. So, for example carol concert, we're having a carol concert! So, we've booked a room and we want external speaker X approval please. So, somebody clearly hasn't read the procedure. There's no real risk, no controversial subjects and there's no likelihood of breaching the freedom of speech policy. But people submit the form ... So, as a proportion, I'd probably say 20-1. So, we get many more people unsure or wanting not to do the wrong thing and so they submit requests. And then there are very few, so ones or twos a year, where actually there is some substance potentially to this issue of risk of breaching the freedom of speech policy.¹⁰

Thus, the number of controversial speaker events is too small to enable a conclusion to be drawn that a chilling effect is unlikely.

12.1.2.2 EVENTS MAY NOT BE FLAGGED

Since the initial risk assessment is a self-assessment by event organisers, participants also acknowledged that they relied upon student societies or academics being honest in their risk assessment and that events only went through the escalation process if they were first flagged by the student societies or academics as being controversial or having the potential to breach the freedom of speech policy. This makes it possible for organisers to not 'flag up' events, if they are concerned that they would not be approved or if they felt that restrictions would be placed on their events. Some participants¹¹ spoke about this as one of their concerns. Participant 13, for example, pointed out 'I guess one potential challenge is that our trust is too high and we've said self-assessment is the primary mechanism by which we process the risks. And we overestimate the amount of trust we can place in event organisers. But I remain unaware of how placing too much trust has manifested itself as a risk'. Similarly, Participant 7 argued that 'they could have a club meeting and not tell you there is a speaker and then invite somebody along. So, you don't know, what you don't know about ... It's also not impossible that an academic unit or an individual academic could invite a speaker without us knowing. It's never easy to tell people what to do at a university'. Participant 8 acknowledged that

¹⁰ P16

¹¹ P13; P12; P7; P8

'it's possible that they booked something for one thing and actually bring a speaker in that they didn't tell us about'.

Whilst the above participants spoke of it as a concern, some¹² shared their experience of students not flagging certain speakers or events. For example, Participant 2 observed that 'to some extent we do rely on societies flagging up, you know, by the way this one is controversial so you may want to take a look at it. Though not entirely, we've had cases where societies haven't flagged speakers up and we've spotted them that this might be something that needs some thought'. Participant 3 pointed out:

The onus is on the person organising the event, what we call the 'principal organiser', to conduct a risk assessment and to be honest, open and transparent about what they're doing. And I think, some of the issues any organisation would have are due to, not maliciously but either through lack of knowledge or just thinking it's not an issue, they don't flag x, y or z, and then you only find out about it a day before or the day they speak. They think, so and so was coming to speak but I didn't think that was a problem. So, we've had one occasion when [a controversial religious speaker], he has spoken here several times, and because he's been here several times, he was coming to speak a few months ago, but nobody thought to escalate it. And we only found out he was coming the day after he had spoken.¹³

Participant 15 gave the following example:

So, couple of years ago, (.....) youth group came to this University and I think the following week there was the [a national newspaper] article saying, they are really concerned that we are aligning with far-right groups against Muslim men and child abuse investigations and all this kind of stuff. At that time, the University sort of expressed concern to say how's this happened? The society clearly didn't follow the speaker approval process and they should've put something in.¹⁴

¹² P2; P3; P15

¹³ P3

¹⁴ P15

Participant 2 gave an example where a staff member was bypassing the procedure:

A conference on (.....) was being held at our institute without our knowledge, because an honorary member of staff had been booking space for this conference for a number of years without actually saying what it was for. And the conference was an academic conference but included a large roster, but the speakers were all invited by this individual and the audience was also by invitation, so it wasn't advertised. And a lot of the speakers were with views about [a controversial scientific theory] and that kind of thing, which a lot of people find pretty offensive. And many people would argue has no scientific bases... But generally speaking, we do try and let events go ahead. The conference alone would not have done, because the individual was frankly deceitful about what he was doing. But that's a different issue. So, we never got around to analysing the content of the conference, it was just well you know, you didn't tell us the truth about what this was about.¹⁵

Participant 9 noted that:

The Islamic Society we're very sympathetic to, but they sort of seem to be in a state of thinking we are going to ban them. So, they try to leave it to the last minute and try and push it through, which isn't great. But hopefully we will improve relations.

This suggests that students and academics are perhaps unlikely to flag up events with controversial speakers or they are likely to 'to push them through' in the last minute if they feel that events are likely to be banned. Thus, the argument – that a chilling effect is not likely because participants have received applications for challenging events – does not take into consideration the events that are not flagged up due to fear of not being approved. It is argued that, conversely, the fear of events not being approved due to Prevent is likely to cause a chilling effect. This fear has manifested itself in the examples participants have provided of students not flagging potentially controversial events.

¹⁵ P2

12.2 DISINCENTIVES TO ORGANISING 'CONTROVERSIAL' EVENTS

The final sections of this chapter will consider the potential 'disincentives' to organising controversial and difficult events, which could be contributing to the 'wider chilling effect' described by the JCHR. Three potential disincentives will be identified: (a) the measures used to mitigate risk; (b) bureaucracy; and (c) the Charity Commission guidance.

12.2.1 MITIGATIONS

There are a number of mitigations deployed by participants to reduce the potential risk posed by extremist speakers. This section will analyse the following mitigations: (a) controlling officers; (b) insisting on chairs; (c) requesting that panels are balanced with speakers that hold alternative views; (d) requesting written speeches in advance; (e) asking speakers to sign declarations that they would not stray from the script or topic; and (f) imposing costs on organisers.

12.2.1.1 CONTROLLING OFFICERS

Some participants¹⁶ described sending a controlling officer to controversial events as a suitable mitigation. For example, Participant 14 said, 'Where we've had concerns about speakers, we tend to send a member of staff to sit in the event, to challenge the speaker and to observe'. Likewise, Participant 9 said they would mitigate with controlling officers; however, they also seemed to acknowledge that sending a controlling officer to the event had the potential to restrict freedom of speech:

We know that people in the Islamic Society feel that Prevent is there and they feel that they are being watched ... It could be that it is restricting what they are doing. I'd have to have that dialogue with them. I think they feel it definitely. We just have a controlling officer going in there and say this is to protect you and to protect the university as much as anything. But perception still may be what are these people doing here, these elderly white males?

¹⁶ P2; P4; P9; P12; P14; P15

Participant 12 also acknowledged that the presence of staff at events could have the effect of censoring speech; noting that they would avoid this mitigation in some circumstances:

So, if they felt quite strongly that having a staff member in the room is going to censor speech, then we would work with them. Who could we have there? And would they be comfortable? And then maybe have a telephone number to call in the event of anything; have security close by. Not necessarily in the room, but definitely on campus and with an awareness that this event was taking place and there was potential for disruption. But we'd work with the organiser to make sure that we weren't going to..., because what's the point of the talk going ahead if what we're going to do in terms of control is going to diminish the talk.¹⁷

In contrast, Participant 14 said that they would '*insist* on a member of staff being present'. The word '*insist*' seems to suggest that organisers do not have a choice. In any case, the presence of a controlling officer reinforces that speakers and the organisers are being watched. Since students tend to 'see Prevent as a big brother mentality' as argued by Participant 6, it can be argued that the presence of administration staff, who are there as 'controlling officers', will reinforce that perception of Prevent. Moreover, the sense of being monitored under the Prevent duty was argued by Participant 3 as something that has led to a chilling effect in seminar discussions: 'It does inhibit some of the things they might want to say, because they are concerned that it may be picked up and put them in some kind of monitoring sphere'. It is, therefore, possible that having 'controlling officers' present with the purpose of observing the event and speakers will cause a chilling effect, as controlling officers will become the visible symbols of monitoring. According to Foucault's idea of panopticism, a controlling officer being the visible symbol of monitoring, similar to the watch tower in the Panopticon, may induce a psychological state of controlling and self-regulating speech in students and speakers.¹⁸

The impact of controlling officers on speech is a conceivable outcome, especially because the purpose of a controlling officer is to control speech, as Participant 2 argues,

¹⁷ P12

¹⁸ For a fuller discussion of the theory of Panopticism, see Chapter five, section 5.3.5.1

‘We will sometimes or the Student Union will sometimes decide to have a senior member of staff or senior officer present, just so that they can make sure that the speakers stick to what the topic is supposed to be and don't stray away from that’. If a controlling officer intervenes during a speech, it could result in a direct restriction of free speech rather than an indirect chilling effect. Thus, this measure not only has the potential to cause a chilling effect, but can potentially lead to a direct restriction of free speech.

12.2.1.2 IMPOSING A CHAIR TO MODERATE

Another mitigation identified by participants¹⁹ is imposing a chair to moderate the discussion or debate. For example, Participant 1 said they would ensure that ‘there is a strong enough chair who can manage if either the speaker goes off topic or if there is inappropriate behaviour from the floor’. A number of online university policies also show that they require ‘an impartial Chair whose knowledge and experience is relevant to the topic or requirements’.²⁰ Since the purpose of imposing a chair is to moderate speech, this could have a similar direct and indirect impact to the presence of a controlling officer.

12.2.1.3 IMPOSING SPEAKERS WITH OPPOSING VIEWS

Imposing that the panel should have speakers with opposing views to mitigate ‘hard line’ views was also mentioned by some participants²¹. Participant 8, for example, observed that ‘if this person is going to present a particularly hard line on one position, can we find a speaker that presents a view the other side? Can we mitigate the two out? And that's what we've done where we've needed to’. Likewise, Participant 4 asserted, ‘One of the mitigations would be that you would request that there be a speaker from the opposing view point allowed to speak at the event or that there is going to be some challenge to the views that the person is promulgating’. This mitigation appears to be a response to paragraph 11 of the Higher Education Prevent Duty Guidance (HEPDG),

¹⁹ P1; P; P3; P15; P16

²⁰ See for example, External Speaker Code of Practice, University of Essex, p5, <<https://www.essex.ac.uk/-/media/documents/about/governance/external-speaker-code-of-practice.pdf>> accessed 17 May 2021

²¹ P4; P6; P8; P15; P16

which states that relevant higher education bodies must 'ensure' that extremist views 'are challenged with opposing views as part of that same event'. Participant 15 argued:

In order for the talk to go ahead there would need to be a neutral chair and there would need to be a balanced and opposing point of view. So, the audience would have a chance to hear a point of view. And if the person wanting to put the event on wouldn't allow that to happen, that's when we wouldn't allow the event.

In contrast, some participants²² found the requirement to 'balance' opposing views problematic and thus chose not to enforce it. It was suggested that finding an appropriate person with opposing views, who is also available on the day and willing to participate, was difficult and could therefore become a disincentive. For example, Participant 9 pointed out that arranging a speaker or chair with opposing views is not always practical or possible, and would not, therefore, stop the event from going ahead.

Well, I think the things we do put into place are effective mitigations. The other one I didn't mention was that there are speakers of opposing views in the chair, but practically we can't always organise that. But even so if there wasn't one, we wouldn't suppress the event.

Moreover, Participant 2, whilst commenting on this part of the guidance, said: 'on the whole we've taken the view that, that part of the guidance isn't particularly helpful, because if you've got a speaker with strong views, then saying to a society you have to have somebody else with differing views doesn't seem to me as being a good way of guaranteeing either that the event goes smoothly or that there is genuine freedom of speech in exchange and debate'. Participant 10 also explained that 'what we wouldn't say is go in to the Palestinian society events and say OK you are going to bring someone who wants to talk about their experiences, in order to do that you must bring some one from the Israeli Defence Force and put them on that side to talk about their experiences at the same time'. Participant 10 acknowledged that not all events are intended to be debates. Rather, 'the nature of the event that they are doing may be just for that smaller community, it may just be this is us just talking about our experiences it is not necessarily that we are going to have the wider debate about this larger issue'. This shows that not

²² P9; P2; P3; P10

all participants would enforce this mitigation. These contrasting responses suggest that universities differ in how they deploy mitigations; some may cancel events if panels are not balanced, whilst others may allow the events to proceed. However, if it is enforced, as was the approach of Participant 15 and as required by paragraph 11 of the HEPDG, it could prove to be difficult and challenging, not only because such a person may not be available, but also because it could create tensions and be difficult to manage, especially in events regarding highly controversial issues, such as Palestine and Israel. If it is enforced and a speaker with opposing views cannot be found, then it can become a direct restriction on free speech. In any case, it could be a disincentive for putting on challenging events, due to the difficulty in making such arrangements. In short, controlling officers and enforced chairs, which have the purpose of controlling speech, and speakers with opposing views, are mitigations that are likely to be disincentives for event organisers, in addition to being difficult to arrange.

12.2.1.4 REQUESTING SPEECH TRANSCRIPTS IN ADVANCE

Three participants²³ said they would request a transcript of the speech in advance from a controversial speaker as a mitigation. For example, Participant 6 said, 'if they are a controversial speaker with Prevent-related concerns, then we could ask them for a precise copy of what they will say, and we'd review that'. This mitigation is also found in the Universities UK²⁴ document, published in 2013,²⁵ concerning which Participant 6 said, 'We use Universities UK or Committee of University Chairs guidance on external speakers and the potential mitigations you can put in place and we've put every single one of those mitigations into a document we circulate to everyone responsible for decision making around these designated events'. There are 20 mitigation actions mentioned in the Universities UK document, including 'requesting a script or précis from the speaker outlining what they intend to say and requiring them to sign an undertaking

²³ P6; P13; P14

²⁴ Universities UK is a collaborative voice for 140 universities in the UK, its members are vice-chancellors or principals of UK universities. See: <<https://www.universitiesuk.ac.uk/about-us/introducing-uuk>> accessed 30 September 2021

²⁵ Universities UK, 'External speakers in higher education institutions', (November 2013) p22, available online at: <https://www.gla.ac.uk/media/Media_657117_smxx.pdf> accessed 22 April 2021

acknowledging that their speech will be terminated if they deviate from it'.²⁶ Some online university policies also mention submission of a script from the speaker in advance as one of their mitigations.²⁷ However, the JCHR report in 2018 also pointed out that imposing advance submission of speeches on speakers is an 'unreasonable condition', that is likely to be a disincentive.²⁸

12.2.1.5 SIGNING DECLARATIONS TO NOT DEVIATE FROM TOPIC

Similarly, although Participant 2 did not mention a precise copy of the transcript, they did assert that they would require the speaker to sign a declaration that they would not deviate from the topic.

We do ask speakers, where there is a concern about controversy, to sign a declaration which says that I understand what the requirements on me are ... and this is what I'm going to talk about and I'm not going to stray into other issues. So, they understand what their position is.²⁹

Requiring speakers to sign a declaration that they will not deviate from the script or topic is a direct restriction on free speech. It is very likely that such measures and declarations are disincentives for speakers and organisers that can also have a wider chilling effect on speech. It is possible that a speaker may refuse to sign such a declaration or may not be able to provide a transcript in advance. Not only are these disincentives that may cause a speaker to pull out, but universities may also use them as a reason to ban a speaker. For example, Participant 8, argued, 'when we ask any speaker to come, we ask them to sign our freedom of speech policy or sign up to our freedom of speech policy. There was one that said he wouldn't do it. So, we said well OK you can't come. You know it's quite straightforward and therefore they then pulled out but we've not cancelled any events as far as I'm aware'.

²⁶ Ibid, p22

²⁷ See for example Para. 6.9 of London South Bank University's External Speaker Policy, <https://www.lsbu.ac.uk/data/assets/pdf_file/0003/80157/External-Speakers-Policy-December-2019-March-2020-v4-formatted.pdf> accessed 17 May 2021

²⁸ Joint Committee on Human Rights (n8) para 93

²⁹ P2

12.2.1.6 EXTENDED ADVANCE NOTICE OF EVENT

Another mitigation measure was extending the advance-notice duration of a controversial event. Whilst some universities require a two-week period for event approvals, Participant 16 mentioned they required six weeks:

I mean we use a six-week time span at the moment. I think that's excessive. Having said that, it would sometimes depend on the time of year. It can be really difficult for me to allocate enough time to do a proper job on those kinds of things.³⁰

12.2.1.7 ASKING ORGANISERS TO PAY FOR ADDITIONAL COSTS

Not only could the above mitigations have a chilling effect by disincentivising event organisers, asking societies and organisers to pay for the cost of those mitigations could also result in organisers cancelling events. Four participants³¹ spoke about imposing costs upon societies for the mitigations.

Our head of security and emergency ... would identify what resources were required and the organiser has to pay for the extra security, if that is what we believe is required. [Participant 4]

You could also ask the organisers to pay for the extra costs, for the extra staff that you may need to put on. [Participant 7]

When I first started working with the Student's Union and we had a student group who said we'd like to call [a far right speaker] on the campus and at the time [the far-right group] hadn't fundamentally imploded or any of those things. This was around about seven years ago and you know the discussion on that was, OK, bringing a person of that kind on the campus, this is the likely security cost of doing that and the University is under no obligation to pay that security cost. So, if you can pay that security cost, including police bill and our own, then yeah fine. OK, well put in place the safeguards, well do the risk assessment. It might be that, say we have a 3-week notice period, we go actually to practically have that speaker on campus we're going to need a lot longer, because we'll need to

³⁰ P16

³¹ P4; P5; P7; P10

engage with the local police force. If publicising that is likely to draw people from outside who might like to protest, we need to think about it infrastructurally. How are we going to allow that to happen? We're going to have to work on our press strategy, because we'll get the *Daily Mail* coming and asking us questions about this. But ultimately, we say yeah, well do everything in our power to make that happen. [Participant 10]

It might be that the society have had restrictions placed upon them that either there has been a requirement to have some door safe to help manage the event because it was either going to be a ticketed well-attended event or could have been controversial and we wanted to make sure that there were appropriate controls in place. And as a result of either there not being sufficient leading period or there being some uncalculated costs associated with running the event and it was delayed as opposed to cancelled. [Participant 5]

As noted in the above response, certain mitigations implemented under the Prevent duty have costs associated to them, for example door staff, security checks, tickets, and having extra speakers with opposing views, which some universities refuse to fund. Not only has this led to some events being delayed, but it also has the potential to force the organisers to cancel the event or not hold an event in the first place, as they may see the event not worth the costs associated with it. In 2013, when the appearance of the leader of the English Defence League (EDL) was cancelled at the Oxford Union, the President of the Oxford Union wrote an email explaining the reason for cancellation as follows:

Unfortunately, as we are a student society running on a budget based on student membership, we will be unable to cover the significant security costs that would be required to host you as a speaker.³²

Since imposing the cost of the extra mitigations upon event organisers is likely to stop events from occurring, the Department of Education in its recent publication argued:

³² Kevin Rawlinson, 'EDL leader's Oxford Union appearance cancelled', *The BBC* (10 September 2013) <<https://www.bbc.co.uk/news/uk-24037103>> accessed 28 February 2021

HEPs [Higher Education Providers] should not be too quick to cite security costs as a reason to prevent an event from going ahead, though there will be limited circumstances where it is reasonable for a HEP to consider costs as prohibitive. Where an event is refused on the basis of security costs, the reasons must be clearly explained.³³

In contrast to the above participants, the approach of Participant 2 suggests that not all universities make organisations pay for the extra costs:

We sometimes arrange for additional security. We don't charge societies for that. That's something that we pick up as an institutional responsibility and it's not a huge cost anyway, because this sort of thing does not happen quite often.³⁴

In summary, mitigations, such as controlling officers, moderating chairs, requiring panels to be balanced with opposing speakers, requesting speeches in advance, requesting the signing of declarations of not straying from the script or topic, and imposing the costs of security are all strong disincentives to organising events with controversial speakers. Some of the mitigations can result in direct restrictions on events, whilst others are disincentives for organisers. The fact that students submit requests for controversial speakers does not prove the absence of a chilling effect. Rather, the above section has shown that there are disincentives that may cause a chilling effect.

12.2.2 BUREAUCRACY

The effect of bureaucracy on participants and their universities was considered in Chapter 10.³⁵ This section will analyse the perceived³⁶ effects of bureaucracy on

³³ Department of Education, 'Higher education: free speech and academic freedom' (CP 394, 2021) para 51,

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961537/Higher_education_free_speech_and_academic_freedom_web_version.pdf> accessed 01

March 2021

³⁴ P2

³⁵ Chapter Ten analysed effects of bureaucracy on UM, when considering the possibility of 'risk aversion' and 'symbolic compliance'.

³⁶ It should be noted that this project did not collect data directly from students and staff. Thus, the following discussion is based upon how UM perceive the effects of bureaucracy on students and staff and an examination of online policies.

organisers of events, as the procedure and process for an event application can also become a disincentive for event organisers.

In 2018, the JCHR report observed that ‘regulatory regimes are presenting barriers to securing freedom of speech in universities’,³⁷ and that freedom of speech codes and procedures for external speakers ‘put barriers in the way of events rather than facilitating them’.³⁸ The JCHR report further highlighted that some Student Unions felt that ‘unnecessary bureaucracy in organising events’ and ‘regulatory complexity’ were barriers to inviting external speakers.³⁹ The report quoted the Northumbria Students’ Union as saying:

Since the advent of Prevent [...] there is an increased bureaucratic process required to vet speakers to satisfy all parties [...] the level of scrutiny the Union must bring has served to dissuade student groups from the effort of inviting speakers or they have thought to invite ‘safer’ speakers. ⁴⁰

An examination of online policies indicates significant variety in levels of bureaucracy.⁴¹ An example of a very complicated and bureaucratic process that was identified by the JCHR was from the University of Southampton ‘Code of Practice to Secure Freedom of Speech within the Law’.⁴² See Appendix 6 for the over-complicated flow chart of the University of Southampton.

Similar concerns were echoed by some participants. Participant 6 described the process at their institution as ‘very nebulous and difficult’, requiring event organisers to ‘fill in a form, a lengthy detailed form with details of the event’. In some cases, however, processes were altered and developed over time in order to reduce the level of bureaucracy. For example, Participant 11, after acknowledging that their initial process was heavily bureaucratic, argued that they made changes to simplify the process:

For me the major change was making it less bureaucratic. So, obviously, when

³⁷ Joint Committee on Human Rights (n8) p5

³⁸ Ibid

³⁹ Ibid, para 39

⁴⁰ Ibid, para 71

⁴¹ 20 students’ union policies were analysed.

⁴² Joint Committee on Human Rights (n8)

you start out with something its quite oddly and you begin to discover that there are processes within the university that are putting too much pressure on this particular process and you try to remove some of the working parts, to make sure it runs sort of smoothly.

The Office for Students (OfS) frequently uses a ‘stress test’ when assessing higher education providers and the ability of their staff to implement their own external speaker process. It argued that ‘in one case we found that a provider’s staff could not follow their own policy when set the stress test’.⁴³ The report further points out that it gave feedback to some providers by challenging their policies as being ‘disproportionate in the level of administrative burden it placed on them’, because they adopted a complex procedure that was difficult to implement.⁴⁴ In paragraph 36 it argues ‘Some policies tended to be overly complex and created unnecessary administrative burden. This led us to have concerns about how effective the policies would be in practice’.⁴⁵ The next four sub-sections will analyse the interview data in relation to the bureaucratic procedures that may have a chilling effect on free speech.

12.2.2.1 SECOND APPROVALS

Some universities require events to be approved twice. The University of Plymouth process is an example of such high-level bureaucracy. Appendix 7 contains a flow chart for event approval at the University of Plymouth Students’ Union, which indicates that the only events referred to the University are those not approved by the Students’ Union. However, the University of Plymouth External Speakers and Events Policy suggests that even events approved by the Students’ Union will end up at the desk of the Head of Student Appeals, Complaints and Conduct for a second approval. It states:

Once an event has been *approved* by the Student Union, a booking request will be submitted to the University’s Timetabling Team, who will forward the request to the Head of Student Appeals, Complaints and Conduct for *approval*. Once

⁴³ OfS, ‘Prevent review meetings Findings from the 2019 programme’, (OfS 2020.09, Published 6 February 2020) p10 < https://www.officeforstudents.org.uk/media/dab85cfd-3648-4ca7-a21d-61ac4bb2699a/prevent-review-meetings_findings-from-2019-programme.pdf> accessed 04 April 2023

⁴⁴ Ibid, para 18

⁴⁵ Ibid, para 36

approval is granted, the Timetabling Team will book the event.⁴⁶ [Emphasis added by author]

The policy then states that if there are concerns, the Head of Student Appeals, Complaints and Conduct may do one or more of the following:

- Refer the proposal back to the Student Union for further information
- Seek the advice of the Director of Student Services, the Director of External Relations and/or the PVC Teaching and Learning
- Escalate the request to the Deputy Vice Chancellor for decision.⁴⁷

Not only is there a second approval, but referring the once-approved application back to the Students' Union for further information has the effect of prolonging the procedure, which may involve contacting the event organisers and the speakers.

12.2.2.2 'WE DON'T HAVE TIME TO DOUBLE CHECK'⁴⁸

The interview data suggests that not all students' unions and universities would require a second approval. For example, Participant 12 pointed out:

We don't have time to double check every single assessment we get submitted. We are a large organisation, you can imagine we get a lot. We do some sample checking at the end of the year just so that if there was any that slipped through that we should have reassessed.⁴⁹

Hence, not all universities or student unions require a second approval. For example, the procedure adopted by Nottingham Trent Students' Union is less complex than the University of Plymouth process. According to the Nottingham Trent Students' Union Freedom of Speech policy,⁵⁰ applications from student societies are submitted to the

⁴⁶ External Speakers and Events Policy, University of Plymouth,

<https://www.plymouth.ac.uk/uploads/production/document/path/7/7327/Plymouth_University_External_Speakers_Policy_v5.pdf> accessed 14 January 2020

⁴⁷ Ibid

⁴⁸ P12

⁴⁹ P12

⁵⁰ Freedom of Speech Policy, Nottingham Trent Students' Union,

<<https://www.trentstudents.org/resources/freedom-of-speech-policy>> accessed 14 January 2020

CEO and the President of Nottingham Trent Students' Union via a form, or to the Dean of School if the applicant is a student acting personally or a member of staff. The Dean or the CEO and the President 'will undertake an appropriate review based on an assessment of risk of the event in question'.⁵¹ They also have the 'discretion to refer the matter for consideration and decision by an Event Approval Panel (EAP) comprising the Approving Manager and two other senior officers of the University and the NTSU'.⁵² The EAP will make the final decision as to whether the event is (a) approved, (b) approved with conditions, or (c) rejected.

12.2.2.3 REFERRAL OF EVERYTHING

Participant 8 mentioned that in their previous Prevent return, '61 or 62 cases were escalated to the top level', which they argued 'was only because until March the Student's Union had to refer everything up'. Although the University of Participant 8 no longer requires the escalation of every event or meeting, it nonetheless shows that the initial level of bureaucracy involved escalating even non-controversial events. Participant 16 also seemed to complain that their procedure was causing confusion to the extent that even non-controversial events were being escalated, which in effect is the same as referring every event up. Participant 16 argued:

As they say, universities worry, individuals in universities worry sometimes about we need to be concerned about getting in to trouble.... So, there's a balance, I think, between trying to promote the procedure and ensure compliance without actually then forcing or encouraging loads of inappropriate submissions, and that's not a balance I think the University gets right all the time.⁵³

Participant 16 attributed the cause for the high number of inappropriate event requests to the over-reaction of their University in implementing the policy.

But sometimes the University does over-react to those things and the by-product of that particular instance was I was flooded with inappropriate applications for speaker approval for a range of things including the carol concert, and loads of

⁵¹ Ibid

⁵² Ibid

⁵³ P16

other activities that were never needed and clearly didn't fall within the remit of this procedure.⁵⁴

Thus, complicated procedures do not ensure that applications are processed in the most effective way. Rather, unsuitable procedures or improper implementation of procedures may cause confusion and lead to 'inappropriate submissions', making it difficult to put on non-controversial events, such as carol concerts. Although most participants did not speak about the effects of their procedures on events, Participants 8 and 9 did reflect on it when talking about freedom of speech, as discussed in the next sub-section.

12.2.2.4 EFFECTS OF COMPLICATED PROCEDURES

It is argued that these bureaucratic and complex processes in some universities are likely to be a contributing factor to the chilling effect on external speaker events, as argued by Participant 8:

It's a process to go through, and it's a pain, because academics do not like going through processes and I understand that.

It is arguable that if academics do not like going through processes, then they are not likely to put on difficult events that are likely to engage large bureaucratic structures and policies. Participant 9 acknowledged that there is a possibility that speech is being restricted by their process:

I don't know, it could be that it is restricting what they are doing. I'd have to have that dialogue with them. I think they feel it definitely.

The high level of bureaucracy that exists in some universities could be a significant disincentive that can make it difficult to organise events, leading to a 'wider chilling effect'.

12.2.3 CHARITY COMMISSION GUIDANCE

One of the key differences between the events processed through the students' union channel and the academic staff channel is the guidance of the Charity Commission that is only applicable to student unions. It is thus necessary to consider whether this

⁵⁴ P16

guidance has the potential to lead students' unions to be more risk averse than their affiliated universities. Participant 14 acknowledged that their student union had self-censored a speaker, who the university would have allowed.

The Student's Union probably tended to be stricter than we the University would be ... I think they are more risk averse than we are a little bit. I think, they are more likely to stop a speaker than we are.⁵⁵

In 2018 the JCHR found that there were a number of factors limiting free speech for students in particular.⁵⁶ One of those factors was the guidance for students' unions from the Charity Commission, which the Committee described as 'problematic':

The Commission's guidance is not easy to use, is in places unduly restrictive, could deter speech which is not unlawful and does not take adequate account of the importance of debate in a university setting.⁵⁷

The JCHR finding was based upon the evidence presented by Scott-Baumann and Perfect, in which they argued that student unions are required to ensure that they are functioning according to their 'charitable purposes' and avoiding certain political topics or activities as well as avoiding activities that might bring the charity sector into disrepute.⁵⁸ The Commission's guidance, published in 2013 and titled, 'Protecting Charities from Harm: Compliance Toolkit', states:

⁵⁵ P14

⁵⁶ The report highlights the following: 'intolerant attitudes, often incorrectly using the banner of "no platforming" and "safe-space" policies; incidents of unacceptable intimidatory behaviour by protestors intent on preventing free speech and debate; unnecessary bureaucracy imposed on those organising events; fear and confusion over what the Prevent duty entails; regulatory complexity; unduly complicated and cautious guidance from the Charity Commission; concern by student unions not to infringe what they perceive to be restrictions. See: Joint Committee on Human Rights (n8) p3

⁵⁷ Ibid, p5

⁵⁸ See: Written evidence from Alison Scott-Baumann with Simon Perfect (FSU0075), para. 7

<<http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Human%20Rights%20Joint%20Committee/Freedom%20of%20Speech%20in%20Universities/written/75991.html>>

accessed 17 April 2021

They argued that their empirical research found 'that some students' union officers feel caught in a bind - they are elected by students to represent them on the issues students are passionate about, but as

All charities, including higher education institutions, debating societies and student unions can be challenged on whether they have given due consideration to the public benefit and associated risks when they, or one of their affiliated societies, invite controversial or extremist speakers to address students.⁵⁹

The evidence from Scott-Baumann and Perfect highlighted that the Commission's concerns regarding speakers that were controversial but legal meant that some student unions were under pressure not to invite such speakers, which was problematic in a university setting where orthodox ideas are supposed to be challenged and tested.⁶⁰ The issue highlighted was that unlike the Prevent duty, which states that 'particular regard' should be given to the duty to ensure freedom of speech, the Commission's guidance did not recognise the role and importance of freedom of speech in student unions and societies.⁶¹ The guidance has since been updated and now reflects the importance of freedom of speech:

[W]here speech is lawful, you should consider the risk of damage to your charity's reputation that could be caused by inhibiting free speech.⁶²

The document now includes the following answer to the question, 'Can someone with controversial views be invited to a charity event to speak?':

Yes. For some charities, enabling debate and discussion of controversial issues may even be integral to their charitable purposes. This guidance should not be used, and is not intended ever to be used, to prohibit those with lawful, albeit unpopular, views. Nonetheless, you and your co-trustees must be clear about

charity trustees they cannot make public statements on issues of politics that do not affect students 'as students'. (para. 7) Their research showed that Muslim student groups and those interested in the Middle East were under specific pressure. (para. 22)

⁵⁹ The document has been updated, thus this extract has been taken from the JCHR report, para 82: See: Joint Committee on Human Rights (n8) p35

⁶⁰ Alison Scott-Baumann with Simon Perfect (n58) para 13

⁶¹ Joint Committee on Human Rights (n8) para 82

⁶² Charity Commission, Chapter 5: Protecting charities from abuse for extremist purposes, Section 10.2, <<https://www.gov.uk/government/publications/protecting-charities-from-abuse-for-extremist-purposes/chapter-5-protecting-charities-from-abuse-for-extremist-purposes#fnref:4>> accessed 14 January 2020

how this will further the charity's objects and take active steps to manage any resulting risks.⁶³

Aarti Thakor from the Charity Commission acknowledged that there were problems with the previous guidance:

[W]e have recognised that our guidance in this area has not always been read in the manner in which it was intended and has not done enough to highlight the centrality of freedom of speech to charities with purposes to advance education. We acknowledge that this may have caused difficulty in decision-making for some trustees.⁶⁴

Round one of the interviews in this project were conducted prior to this change, and the second round of interviews were conducted immediately after the guidance was updated.⁶⁵ Thus, the arguments and experiences of Participants 14, who was expressing a past experience, should be understood in light of the previous guidance. Participant 16 also acknowledged that the risk assessment differed between the university channel and their student union channel:

So, the Students Union as a charity have responsibilities that are slightly different than the University's, and their decision-making process has to recognise slightly different factors than the University's. But we're looking to have if not an integrated procedure, then a harmonised one and an aligned procedure between us. So, it might be that their risk assessment might be slightly different than ours, but it would operate in the same framework.⁶⁶

The 'slightly different factors' that Participant 16 was alluding to are considerations around 'public benefit', 'advancing the charity's purpose', and the 'charity's integrity or

⁶³ Ibid, Section 10.5

⁶⁴ Aarti Thakor, 'Freedom of speech helps charity, and society thrive – but it's not an absolute right', *Wonkhe* (19 November 2018), <<https://wonkhe.com/blogs/freedom-of-speech-helps-charity-and-society-thrive-but-its-not-an-absolute-right/>> accessed 17 April 2021

⁶⁵ The guidance was updated in November 2018. Round one, which involved seven interviews, were conducted in May and June of 2018, whilst round two, which are the remaining interviews, they were conducted from December 2018 to March 2019.

⁶⁶ P16

public trust and confidence'. Since this project did not involve interviews with student union officials or student societies, participants did not speak on the role of the Charity Commission. However, the research conducted by Scott-Baumann and Perfect, as well as the findings of the JCHR report regarding the guidance from Charity Commission, may explain the risk aversion of the Students' Union that Participant 14 referred to. It remains to be seen whether or not the updated Commission's guidance still has the effect of risk aversion in the context of external speaker events, as the guidance still requires student unions to take into regard extra considerations, such as 'public benefit', 'advancing the charity's purpose', and the 'charity's integrity or public trust and confidence', which are not found in the academic staff channel.⁶⁷

12.3 ARE THE ACTIONS OF UM CHILLING SPEECH?

This chapter has identified considerable tension and disjuncture between the actions the interviews have revealed and the understanding of the participants regarding free speech. It was noted in section 12.1 that some participants⁶⁸ argued that Prevent did not have a chilling effect, whilst others⁶⁹ argued that although there was a possibility of a chilling effect, this was unlikely and there was no evidence for it on their campus. Only

⁶⁷ For example, section 13.2 still reads:

All charities, including higher education institutions, students' unions and debating societies, *can be challenged* on whether they have given due consideration to the public benefit and associated risks when they, or one of their affiliated societies, invite speakers to address students. [emphasis added]

Section 10.6 reads:

You should be able to show that an activity supports the charity's purposes, and that in doing so it does not lead to undue public harm or detriment. *In some instances, strongly partisan or controversial views may compromise the charity's integrity or public trust and confidence in it.* It may risk the charity's operations and other activities, or the safety of its staff and volunteers. [emphasis added]

See: Charity Commission, Chapter 5: Protecting charities from abuse for extremist purposes, <<https://www.gov.uk/government/publications/protecting-charities-from-abuse-for-extremist-purposes/chapter-5-protecting-charities-from-abuse-for-extremist-purposes#fnref:4>> accessed

14 January 2020

⁶⁸ P1; P2; P4; P5; P6; P10

⁶⁹ P3; P7; P8; P9; P13

two participants⁷⁰ acknowledged examples of self-censorship. In justification for their views, participants provided four broad arguments. First, students have not said that their speech is being chilled.⁷¹ Second, the applications for contentious and controversial events are evidence that chilling effect is unlikely.⁷² Third, the culture of openness and engagement with staff and students surrounding the approach to events meant that a chilling effect was unlikely. Fourth, students protesting and occupying the offices of senior management is evidence that students are not afraid to express their views.⁷³ Although these arguments display a healthy culture and relationship between the management and students, they cannot be taken as evidence for no chilling effect on speech at all. This section will assess each argument in turn.

Contrary to the first argument of the participants, it can be argued that the absence of an express statement on the chilling effect of Prevent does not mean that a chilling effect does not exist. It is conceivable that those students who feel a chilling effect may also feel unable to express their views on Prevent to the management. The likelihood of such an extended chilling effect is plausible, as students may fear being labelled as extreme or radicalised, especially considering that in the view of Government and external think-tanks, universities are breeding grounds for terrorists.⁷⁴

The second argument that ‘applications for contentious and controversial events are evidence that a chilling effect is unlikely’ is problematic, as a number of participants⁷⁵ have also acknowledged that escalated events are very rare. For example, Participant 14 argued that the number of escalated events was ‘three or four events a year’⁷⁶ and Participant 15 suggested it was ‘tiny, one a year’.⁷⁷ Thus, the number of controversial events escalated is too small to conclude that a chilling effect was unlikely. Rather, the small number of controversial events may suggest that students and staff are largely

⁷⁰ P12; P14

⁷¹ P2 in section 12.1.1

⁷² P2; P3; P6; P10 in section 12.1.1

⁷³ P13

⁷⁴ For a fuller discussion on the view of Government and think tanks that formed the background to the statutory Prevent duty, see section 1.3 in Chapter one.

⁷⁵ P2; P4; P5; P7; P8; P13; P14; P15

⁷⁶ P14

⁷⁷ P15

organising events with safe speakers. Although Participant 16 argued that there were a large number of events escalated, they expressed frustration that the vast majority of them did not meet the requirements of escalation.

The third argument, of openness and engagement with staff and students regarding their approach to events, reflects a healthy and student-friendly environment. However, whether or not in practice this stops or reduces a chilling effect needs to be tested with empirical evidence, which is beyond the scope of this project, as it did not collect such data. However, section 12.1.2.2 of this chapter revealed that some participants⁷⁸ had concerns that some events were not flagged up due to fear that they would not be permitted or would have restrictions placed on them. This finding of fear and uncertainty contradicts claims of openness and engagement between students and management. Although the fourth argument regarding student protest and occupation of senior management offices during industrial action suggests that some students are able to protest on some topics, this does not mean that Prevent has no chilling effect on the speech of other students. Moreover, there seems to be tension between the preceding two arguments, as the occupation of senior management offices does not appear to reflect a culture of openness and engagement between students and UM.

On the contrary, it can be argued that section 12.2 of this chapter has shown that there are clear disincentives that are not only likely to cause a chilling effect, but the actions of UM may result in direct restrictions on events. Mitigations, such as controlling officers and imposing a chair to moderate an event, are not only likely to have a chilling effect on speech, as they are visible symbols of monitoring, but could also lead to direct restrictions on free speech. Participant 2, for example, described the role of their controlling officers as '[making] sure that the speakers stick to what the topic is supposed to be and don't stray away from that'. Likewise, imposing speakers with opposing views for events to proceed could also lead to a direct restriction on freedom of speech in situations where speakers with opposing views cannot be found or are difficult to find. Difficult mitigations such as these are likely to be disincentives that may make organising events more trouble than they are worth. Requesting a speech transcript in advance, making speakers sign declarations that they will not deviate from

⁷⁸ P2; P3; P7; P8; P12; P13, P15

the script, requiring extended advance notice of events, and making organisers pay for additional costs are all mitigations that are not only disincentives that may cause a chilling effect, but also have the potential to lead to a direct impact on freedom of speech, if events are cancelled as a result.

Likewise, the level of bureaucracy in some universities, such as requiring the escalation of all events,⁷⁹ and complicated procedures, some of which require the approval of an event twice,⁸⁰ are likely to cause confusion, lead to 'improper submissions' and even make putting on non-controversial events, such as a carol concert, difficult.⁸¹ This level of bureaucracy and difficulty is compounded by the requirements of the Charity Commission for events that are organised by students' unions, as argued in the previous section. There is thus a clear tension between the view of participants regarding the absence or improbability of a chilling effect, on the one hand, and the actions and procedures, on the other, which not only make a chilling effect likely, but could also lead to a direct restriction on events and speakers. As such, this chapter demonstrates that there is a need for further empirical research that takes into consideration the views of students on whether or not a chilling effect on freedom of speech exists.

CONCLUSION

This chapter, together with the previous chapter, aimed to answer the following sub-question:

Do participants consider that the Prevent duty has had an impact on freedom of speech in the context of external speaker events, be it a direct or an 'indirect' chilling effect?

To answer this question, a number of key findings have emerged from the data presented in this chapter. First, in the view of almost all participants, who are tasked with approving controversial events, a chilling effect on external speaker events was unlikely. The difficult or controversial events that were escalated to them for approval, in their view, were evidence that there was no chilling effect or that there was no

⁷⁹ P8

⁸⁰ Such as the University of Plymouth External Speakers and Events Policy. See section: 12.2.2.1

⁸¹ P16

evidence for it. However, this chapter has shown that this argument could be challenged on two grounds. First, the data shows that the number of escalated events were far too few in number for participants to conclude that there was no chilling effect. Rather, the small number of escalated events can equally lead to the opposite conclusion, given that organisers might be mostly opting for 'safer' speakers in order to avoid the escalation process. Second, the data suggests that some organisers may try to avoid the escalation process by not flagging up controversial events, out of fear that their events or speakers may not be permitted.

The findings of this chapter also support the conclusion of the JCHR that there are clear disincentives that are likely having a 'wider chilling effect' on external speaker events. This chapter has identified the following factors which could be contributing to a wider chilling effect: (a) mitigation measures, such as controlling officers and chairs that are tasked with controlling speech; submission of advance speeches and requirements to sign declarations that speakers will not diverge from the script or topic; (b) bureaucratic and complicated processes, especially for events organised by the student unions, which may require approval more than once; and (c) the original and updated Charity Commission guidance, according to which controversial events could be challenged regarding public benefit, advancing the charity's purpose and integrity, as well as public trust and confidence.

Chapter Thirteen

CONCLUDING REMARKS

The aim of this project was to examine how university management (UM) interpret the requirements of the Prevent duty and the implications of that interpretation on how it is implemented for external speaker events, with particular focus on their approach to balancing the Prevent duty with freedom of speech. This concluding chapter will explore how the project findings add to the existing body of knowledge surrounding Prevent and its impact on free speech. This chapter is structured as follows. First, it will present the findings that suggest there is ‘symbolic compliance’ with the Prevent duty by UM. Second, it will explore the impact of Prevent on freedom of speech. Third, it will consider whether these findings explain the dual narrative.¹

13.1 SYMBOLIC COMPLIANCE

According to the Counter Terrorism and Security Act 2015 (CTSA), there are three duties upon universities: (i) to ‘have particular regard to the duty to ensure freedom of speech ... [and] to the importance of academic freedom’,² which is referred to as the freedom of speech duty; (ii) to have ‘due regard to the need to prevent people from being drawn into terrorism’,³ which is referred to as the statutory Prevent duty; and (iii) ‘regard to any such guidance [issued by the Secretary of State] in carrying out that duty’,⁴ such as the Higher Education Prevent Duty Guidance (HEPDG) document. One of the key findings of this project is that the approach of participants, who were responsible for assessing and implementing the Prevent duty for external speaker events, to the HEPDG can be best described as ‘symbolic compliance’.⁵ However, the findings also suggest that this symbolic compliance does not mean that they are failing or complacent in their duties under the CTSA 2015. The Prevent duty is predicated on the premise that radicalisation

¹ The dual narrative is explored in section 1.4 in Chapter One.

² Section 31 (2)

³ Section 26 (1)

⁴ Section 29 (1) and (2)

⁵ Edelman *et al.* describe symbolic compliance as demonstrating compliance by using pre-existing policies and laws without necessarily creating significant change in behaviour. See: Lauren B. Edelman, Stephen Petterson, Elizabeth Chambliss, Howard S. Erlanger, ‘Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers’ Dilemma’, (1991) 13 Law & Policy 73

is a problem on university campuses and often a result of activity on campus.⁶ Yet as noted in Chapter Eight, those responsible for administering the Prevent duty when assessing external speaker events did not recognise radicalisation as a problem on their campus. In terms of whether radicalisation is a problem in universities in general, participants were divided in their opinions. In very candid expressions, some participants argued radicalisation to be ‘more hearsay than sort of fact’,⁷ ‘not a problem on our campus or probably in universities in general’,⁸ or ‘a slight confusion in the mind of Government’.⁹ Even those participants that acknowledged radicalisation as a possible risk argued that it was ‘far lower than the Prevent duty would have us believe’¹⁰ and that the risk was ‘by virtue of being a place’.¹¹

Likewise, the Government’s narrative is based upon the argument that radicalisation is driven by extremism; thus, risk assessment of extremism features heavily in the Prevent guidance issued by the Government, such as the HEPDG. However, the findings presented in Chapter Eight show that none of the participants acknowledged that they used the Prevent definition of extremism. Some openly admitted that they did not use the concept of extremism at all, with Participant 9 describing it as a ‘useless’ concept.¹² Others argued that they were reluctant to use Prevent to stop an event due to the difficulty in defining extremism.

There are three criteria for restricting a speaker. The third one, which is the statutory duty, effectively the Prevent duty, I think, would be the least likely we would use, because of the nature of how do you define extremism. [Participant 14]

⁶ HM Government, ‘Prevent duty guidance: for higher education institutions in England and Wales’, (updated 10 April 2019) para 2 <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 10 November 2020

⁷ P11

⁸ P3

⁹ P13

¹⁰ P8

¹¹ P10

¹² P9

Instead, as detailed in Chapter 10, participants candidly argued that they predominantly used pre-existing law and policies to risk assess external speaker events. The dominant view was that events would only be stopped if there was the fear that law would be broken. The approach of participants, as demonstrated throughout Chapter Eight, shows that there is a gap between the view of Government and those working in universities regarding the risk of radicalisation and extremism on campus. This has arguably reduced the impetus to implement Prevent using the HEPDG in the manner that was perhaps envisaged by the Government – which is to risk assess extremism, including non-violent extremism. It would also appear to explain why participants have continued to use pre-existing laws and policies instead of making significant changes to their practice and policies. The frank statements of participants in Chapter Ten, such as: ‘there are already Terrorism Acts on the statute book; we didn’t really need another one’,¹³ ‘most aspects of the Prevent duty take care of themselves and that’s my view; we don’t need to focus on Prevent’,¹⁴ ‘that [Prevent] policy is there partly because we’ve got to have one’,¹⁵ are testaments to the gap between the aim of the Government and the application by the participants. Chapter 10 also showed that participants were clear that they did not use the HEPDG and classified their approach to Prevent as ‘soft’, ‘not heavy-duty’, ‘benign’, ‘it’s not had a significant impact on what we do’, ‘we barely tweaked our approach’ and ‘we didn’t change [the external speaker policy] after the Prevent duty’.¹⁶

However as noted above, whilst the approach of participants, who were UM, may differ from the HEPDG, this does not necessarily mean that they are complacent or in breach of the CTSA 2015. Rather, by allowing events to proceed under their freedom of speech

¹³ P9

¹⁴ P16

¹⁵ P14

¹⁶ Being able to situate the Prevent duty in pre-existing policies was a finding of a previous study that analysed educationalists’ experiences on Prevent implementation in schools and colleges. See: Joel Busher, Tufyal Choudhury, Paul Thomas and Gareth Harris, ‘What the Prevent duty means for schools and colleges in England: An analysis of educationalists’ experiences’ [2017] Aziz Foundation, <<https://a10-vip-wwwprod.ncl.ac.uk/media/wwwnclacuk/socialrenewal/files/The%20Prevent%20duty%20in%20Schools%20and%20Colleges%20Report.pdf>> accessed 29 July 2021

duty, universities are compliant with their duties under the CTSA 2015, even where they may not be compliant with the HEPDG. This is because (a) the wording of the CTSA 2015 suggests that ‘regard’ to the HEPDG has less weight compared to ‘particular regard’ to freedom of speech, and (b) the High Court has clarified that universities may continue with events even if their actions do not comply with Prevent guidance issued by the Government, as ‘the HEPDG is not law’.¹⁷ Consistent with the approach of the High Court, Chapter Eleven found that a significant number of participants asserted that freedom of speech was a higher duty that ‘trumps Prevent’¹⁸ and none of the participants argued Prevent to be a higher duty than freedom of speech. Thus, participants have been able to use the high levels of discretion available in implementing the Prevent duty for external speaker events to let events proceed even if their actions did not comply with the HEPDG. After all, the HEPDG states, ‘[t]his guidance does not prescribe what appropriate decisions would be – this will be up to institutions to determine, having considered all the factors of the case’.¹⁹

Moreover, according to the *Butt* case, if non-violent extremist views do not pose the risk of drawing listeners into terrorism, then those views do not fall under the remit of Prevent, even if they seem to challenge British values.²⁰ Thus, speakers who speak negatively about homosexuality, for example, can be viewed as extreme, but their propensity to draw the audience to terrorism might be doubted.²¹ In such cases it would seem appropriate to assess such speakers under other pieces of legislation, such as the

¹⁷ *Salman Butt v. Secretary of State for the Home Department* [2017] EWHC 1930 (Admin), [2017] 4 W.L.R. 154 [61]

¹⁸ P3; P6; P7; P9; P12; P16. Even though two participants (P5 and P8) seemed to argue that they had equal weight, but when they elaborated on their approaches, it seemed more in favour of freedom of speech than Prevent, with Participant 8 even arguing ‘I suppose I’m saying, I’m putting freedom of speech above Prevent’.

¹⁹ HM Government, ‘Prevent duty guidance: for higher education institutions in England and Wales’, (Updated 1 April 2021) para. 5, <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> accessed 22 July 2021

²⁰ *Butt* case (n17) para 30

²¹ Ian Cram and Helen Fenwick, ‘Protecting Free Speech and Academic Freedom in Universities’, (2018) 81 (5) MLR 825

Equality Act 2010 or Public Order Act 1986. Participants' use of pre-existing law policies to assess external speaker events can thus be justified by applying the High Court's reasoning in *Butt* case.

Furthermore, since the *Butt* case has established that the risk only had to be mitigated as far as they could or was proper, it is unlikely that monitoring bodies would find universities in breach of the Prevent duty for allowing 'extremist' speakers, so long as universities could show that they have put in place appropriate mitigations. If the risk were still deemed to exist, then allowing a speaker to proceed would not be a breach of the duties established under the CTSA,²² even if it contradicts the wording of the HEPDG.²³

Although the wording of the HEPDG seems to regard the Prevent duty higher than the freedom of speech duty, recent official Government publications have taken a different view. For example, a recent publication from the Department of Education (DoE) argues, 'Government is clear that the Prevent Duty should not be used to suppress *lawful free speech*' [emphasis added by author].²⁴ This indicates a significant shift from the earlier stance of not allowing events to proceed unless universities were 'entirely convinced' that the risk was 'fully mitigated'.²⁵ This latest statement that 'the Prevent Duty should not be used to suppress *lawful free speech*' provides further legitimacy to the approach taken by universities, which is to assess events using predominantly pre-existing legislation. The DoE statement renders it difficult to make the case that universities are

²² *Butt* case (n17) para 61

²³ Paragraph 11 of the HEPDG states words to the effect that events should not be permitted unless Relevant Higher Education Bodies are entirely convinced that the risk is fully mitigated.

²⁴ Department of Education, 'Higher education: free speech and academic freedom', (CP 394, 2021) Para 36,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961537/Higher_education_free_speech_and_academic_freedom_web_version_.pdf accessed 01

March 2021

²⁵ However, the wording of paragraph 11 remains unchanged in the HEPDG, which can still create confusion.

failing in their statutory duty by allowing events with speakers that are deemed to hold extreme views, so long as the law is not breached.

The recent advice from the DoE further adds, '[t]here is no prescription from [G]overnment (or the OfS) in regard to what action HEPs should take once they have had due regard'.²⁶ This highlights that the Office for Students (OfS) does not dictate what action universities need to take to fulfil their due regard duty – which is the Prevent duty; rather, the action to fulfil the due regard duty is left to the Higher Education provider, be that according to the HEPDG or not. Thus, universities' current approach of predominantly using pre-existing law seems to satisfy the monitoring bodies of the statutory Prevent duty, as HEFCE and OfS reports clarify that the level of compliance to the duty is very high.²⁷ This is not surprising since in case law, freedom of speech is regarded as a higher duty than the Prevent duty.²⁸

Resorting to pre-existing policies and practices without making significant changes in practice and behaviour – what this project refers to as symbolic compliance – has thus become possible due to the wording of CTSA 2015 and the High Court ruling in *Butt*.

²⁶ Department of Education, 'Higher education: free speech and academic freedom', (CP 394, 2021) para 36

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961537/Higher_education_free_speech_and_academic_freedom_web_version.pdf> accessed 01 March 2021

²⁷ See: Office for Students, 'Prevent monitoring accountability and data returns 2017-18 Evaluation report' (OfS 2019.22) <https://www.officeforstudents.org.uk/media/860e26e2-63e7-47eb-84e0-49100788009c/ofs2019_22.pdf> accessed 29 July 2021

²⁸ In the *Butt* case (n17) it was established that (a) 'due regard' for the Prevent duty is a lesser duty than 'particular regard' for ensuring freedom of speech; (b) fully mitigate means 'so far as could be or was proper'; (c) the HEPDG is guidance and not law; (d) Relevant Higher Education Bodies (RHEBs) need to give the HEPDG 'regard', which is also less than the 'particular regard' for freedom of speech; and (e) RHEBs would not be in breach of their duties if they mitigate the risk as far as they could or they see proper and then allow the event to proceed.

13.2 THE IMPACT OF PREVENT ON FREEDOM OF SPEECH

Another key finding of this project is that although there are some factors that could make universities risk averse, there are strong indicators that the universities included in this project were not risk averse in practice and that Prevent did not have a significant *direct* impact on their external speaker events.

The possibility of risk aversion stemmed from the following arguments detailed Chapter Ten: (a) 'in nature, university hierarchy tends to be risk averse';²⁹ (b) compliance to the duty by external monitoring by a regulator can lead to risk averseness;³⁰ and (c) media pressure can lead to universities deviating from their values, causing risk aversion.³¹ Likewise, Chapter Nine showed that participants seek advice from some external agencies, such as the police and Prevent co-ordinators, who may themselves adopt a risk-averse approach.

However, all of the participants held the view that freedom of speech was not being eroded at their universities and provided reasons to be optimistic about the protection of freedom of speech on campus. Chapter Ten illustrated that participants seemed to not apply certain aspects of the HEPDG,³² which if applied have the potential to stop events from proceeding. Additionally, Chapter Eleven identified a number of other reasons to support the view of participants that Prevent did not directly curb free speech, such as (a) speakers and events were not routinely stopped; (b) the starting point in the risk assessment was that events should proceed; (c) freedom of speech is essential to the underlying ethos of a university; (d) staff and students, who generally have a very critical view of Prevent, were involved in the implementation of the Prevent duty; and (e) freedom of speech was viewed as a higher duty than the Prevent duty.

That said, the possibility of an *indirect* chilling effect cannot be disregarded, since disincentives in organising events do exist. Chapter Twelve identified several

²⁹ P16

³⁰ P15

³¹ P14 and P10

³² For example, most participants did not risk assess extremism or use the Prevent definition of extremism found in the HEPDG; they did not use the test mentioned in paragraph 11 of the HEPDG; they did not have a system to rate risk and the decisions are perhaps best described as judgement calls or as Participant 6 described it 'a sniff test'.

disincentives that could lead to an indirect chilling effect: (a) mitigation measures, such as controlling officers and chairs that are tasked with controlling speech, submission of advance speeches and requirements to sign declarations that speakers will not diverge from the script or topic; (b) bureaucratic and complicated processes, especially for events that are organised by student unions, which may require approval more than once; and (c) the Charity Commission guidance, according to which controversial events could be challenged based upon public benefit, advancing the charity's purpose and integrity, as well as public trust and confidence. Although, this project did not seek to gather data from student groups and academic staff; nonetheless, it has found factors that may lead to a chilling effect, which lends support to earlier studies³³ and to the JCHR report.³⁴

13.3 UNDERSTANDING THE DUAL NARRATIVE

The findings of this project also have the potential to explain the 'dual narrative' on Prevent in universities outlined in detail in Chapter One of this thesis.³⁵ The reports from Student Rights suggest that they have a different ontological and epistemological position than the participants of this study on matters relating to extremism. Extremism, according to Student Rights, is an established, identifiable, objective truth; hence, they seek to quantify the number of times an event is advertised with an extremist speaker, without considering researcher bias or interpretation of extremism. They argue, 'university campuses remain areas where non-violent extremism continues to manifest itself clearly'.³⁶ Hence, their reports do not analyse the definition of extremism, but

³³ Such as: Alison Scott-Baumann, 'Dual Use Research of Concern' and 'Select Agents': How Researchers Can Use Free Speech to Avoid 'Weaponising' Academia', (2018) 7 *Journal of Muslims in Europe* 237

³⁴ Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Security Bill*, Fifth Report (2014 – 15, HL Paper 86, HC 859)

<<https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/86/86.pdf>> accessed: 29 July 2021

³⁵ According to monitoring bodies universities have very high levels of compliance to the Prevent duty, whilst external bodies, such as Student Rights, claim that universities are failing in their Prevent duty by allowing extremist speakers on campus. See: sections 1.4.1 and 1.4.2 in Chapter One.

³⁶ Richard Black, 'Extreme Speakers and Events: In the 2016-17 Academic Year', (Henry Jackson Society 2017) p4 <<http://henryjacksonsociety.org/wp-content/uploads/2017/09/Extreme-Speakers-and-Events-in-the-2016-17-Academic-Year-Final-1.pdf>> accessed 26 July 2021

accept that it is a knowable entity that exists independent of the researcher. In stark contrast, participants, who were responsible for approving events at their universities, seemed to use a constructivist or interpretivist paradigm. For example, in Chapter Eight, section 8.2.2, participants argued, ‘one person’s extremist is another person’s normal and also perfectly acceptable person’³⁷ and ‘one person’s extremist is another person’s sensible politician’.³⁸ Likewise, section 8.2.2.2 documented the discontent of participants with the term ‘fundamental British values’ on the grounds that people differed in their constructs of these values, for example, Participant 15 argued, ‘If you spoke to a range of different people living in different communities in different parts of the country and ask them to define British values, they would all give you very different answers’.³⁹

As outlined in Chapter Eight and in section 13.1 above, participants tend to avoid using the test mentioned in HEPDG⁴⁰ and tend to avoid concepts such as extremism due to the problems associated with differing interpretations of terms like ‘fundamental British values’.⁴¹ In contrast, the positivist approach of Student Rights allows them to count the number of times ‘extremist’ events are advertised on campus and come to the conclusion that universities are failing. Hence, they argue:

The large number of recorded events – 112 in total – indicates that many higher education institutions (HEIs) are still playing host to events with an extreme and intolerant dimension, in spite of their legal compliance with fulfilment of their Prevent duty.⁴²

³⁷ P1

³⁸ P7

³⁹ P15

⁴⁰ The test was mentioned in Paragraph 11 of the HEPDG, according to which universities need to be entirely convinced that the risk of students being drawn into terrorism from extremism is fully mitigated or the event is cancelled.

⁴¹ The acknowledgment of Participant 14 that ‘the Prevent duty, I think, would be the least likely we would use, because of the nature of how do you define extremism’ is testament to this argument.

⁴² Richard Black (36) p52

The approach of Student Rights appears to be based upon the literal meaning of paragraph 11 of the HEPDG, which requires events with ‘extremist’ speakers to be banned unless universities are ‘entirely convinced’ that the risk can be ‘fully mitigated’.

Aside from the difference in paradigm, the second reason for the dual narrative may be the difference in institutional focus. The findings show that participants regard freedom of speech to be essential to the ethos of their university;⁴³ thus they seem to be in favour of allowing freedom of speech and ignoring extremism.⁴⁴ Student Rights, on the contrary, seems to be more focussed on limiting freedom of speech due to extremism, as it claims to be dedicated to ‘freedom from *extremism* on university campuses’ [emphasis added by author].⁴⁵ This difference in focus may also explain why external organisations differ with universities over how events are organised.

Moreover, as noted in section 1.4.1.1 in Chapter One, the Henry Jackson Society (HJS), the umbrella organisation of Student Rights, has been criticised for presenting a biased view and having an anti-Muslim agenda. The methodology of Student Rights has also been criticised as unreliable, as noted in section 1.4.1.1 of Chapter One.

13.4 PURPOSE OF PREVENT

This project has shown that most participants are using pre-existing laws to assess events and there is little indication that the HEPDG is being used in practice. This approach may appear at odds with the purpose of Prevent, suggesting that Prevent merely ensures compliance with existing legislation rather than creating a ‘new’ duty. Chapters Two and Three have demonstrated that the purpose of Prevent is to stop a process from occurring in which people are drawn into terrorism, which is referred to as radicalisation and officially defined as ‘the process by which a person comes to support terrorism and extremist ideologies associated with terrorist groups’.⁴⁶ This process, as

⁴³ See section 11.2.3

⁴⁴ See section 8.2.2.3

⁴⁵ See: <http://studentrights.org.uk/about-us/> (26/09/2021)

⁴⁶ HM Government, ‘Revised Prevent duty guidance: for England and Wales’, (Updated 10 April 2019) Section F. Glossary of terms, <<https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales>> accessed 10 February 2021

understood from the official guidance, starts with non-violent extremist ideology. Therefore, it would appear that the intention behind the Government's policy was for the risk assessment to be much broader than just assessing whether or not law will be broken; rather, the intention also entailed assessing the risk of non-violent extremism, which may create an environment that is conducive to terrorism.⁴⁷ This implies that the purpose of the statutory Prevent duty was to create a new duty that is distinct from previous legislation. However, this project has demonstrated that, in practice, the duty seems to have evolved from assessing non-violent extremism to ensuring pre-existing duties are implemented. Since applying pre-existing law fulfils the requirements of the CTSA 2015, it supports the argument that the CTSA 2015 was not needed, as argued by a number of participants.⁴⁸ This also supports the argument in Chapter One that counter-terrorism laws are often made in haste after an incident to show the public that politicians are dealing with the problem.

13.5 LACK OF UNIFORMITY IN APPROACH

Whilst Chapter Ten has shown that universities predominantly use pre-existing law to risk assess events, the data also shows that there is a lack of uniformity in how the law is applied. Ensuring freedom of speech 'within law' requires UM to balance the duty of free speech with other legal duties within law. For example, when determining harassment under the Equality legislation,⁴⁹ universities need to balance the 'unwanted conduct' with freedom of expression, as the explanatory note to the 2010 Act states:

In determining the effect of the unwanted conduct, courts and tribunals will continue to be required to balance competing rights on the facts of a particular case. For example, this could include balancing the rights of freedom of expression (as set out in Article 10 of the European Convention on Human Rights)

⁴⁷ This underlying intention or purpose of Prevent will be referred to as the 'official intention' in this analysis.

⁴⁸ See section 10.2.5.1

⁴⁹ Under section 26 (1) of the Equality Act 2010, if a person engages in 'unwanted conduct' relating to protected characteristics with the purpose or effect of (a) violating another person's dignity, or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for another person, then that is harassment in breach of civil law.

and of academic freedom against the right not to be offended in deciding whether a person has been harassed.⁵⁰

However, the Law Commission has pointed out that ‘conduct which stirs up hatred on the grounds of religion or sexual orientation, but is merely abusive or insulting – not threatening – is not captured by the legislation’.⁵¹ Arguably, there could be times when it may not be clear whether certain expressions are merely abusive and insulting or whether they are unlawful under the Equality legislation. As such, the Equality and Human Rights Commission has argued:

It is not always easy to draw the boundary between expressing intolerant or offensive views (which are afforded protection under Article 10) and hate speech or other very offensive communication so serious that it is not so protected.⁵²

Thus, when the requirements of the equality legislation need to be balanced with the free speech duty, UM may have to take difficult decisions. The results of this study show that in such scenarios, UM may not interpret pre-existing legislation in the same way, which is reflected in the differences between participants in dealing with homophobia and other forms of hate speech, such as anti-Semitism. For example, Participant 7 gave an example of a particular speaker who was allowed to speak on campus, yet had been arrested or investigated for race hate and had made anti-Semitic jokes.

I think he may have been arrested for that or the police investigated it as a race hate. When he spoke, no doubt he said some things that were anti-Semitic. But

⁵⁰ Explanatory Notes to the Equality Act 2010, para 99

<<https://www.legislation.gov.uk/ukpga/2010/15/notes>> accessed 13 December 2021

⁵¹ The Law Commission, ‘Hate Crime: Background to Our Review’, <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2019/07/6.5286-LC_Hate-Crime_Information-Paper_A4_FINAL_030719_WEB.pdf> accessed 18 December 2021

⁵² Equality and Human Rights Commission, ‘Guidance – Legal Framework: Freedom of Expression’, (February 2015)

<https://www.equalityhumanrights.com/sites/default/files/20150318_foe_legal_framework_guidance_revised_final.pdf> accessed 20 February 2021

were they in breach of Prevent? No. They wouldn't have drawn anybody into terrorism, but they were jokes that were potentially anti-Semitic in content.⁵³

The words 'potentially anti-Semitic in content' show that the jokes were in a grey area where the line between lawful and unlawful speech is unclear and had someone else assessed the event they could have reached a different decision. The difficulty in determining the stage at which views become anti-Semitic or views around homosexuality become discriminatory and unlawful became apparent in a recent court case. In *R (Ngole) v The University of Sheffield*, Ngole, a student at the University of Sheffield posted comments on social media disapproving of homosexual acts, using Biblical terms such as 'sin', 'wicked' and 'abomination'. The University embarked on disciplinary proceedings, leading to the decision to remove Ngole from their course. The Court of Appeal argued that the University had inaccurately recorded the complaint against Ngole as posting 'views of a discriminatory nature', and the Court argued, '[t]he mere expression of religious views about sin does not necessarily connote discrimination'.⁵⁴ This case highlights the difficulty in deciding the point at which controversial speech becomes discriminatory and unlawful. The approach of the University of Sheffield can be contrasted with the views of Participant 9 from this study to show how UM may differ in their understanding and assessment of discrimination:

There are some that have a more nuanced view on homosexuality: homosexuality is not condoned by god; these people exist, but they shouldn't live as homosexuals or whatever. I think, if that's a conservative religious view we wouldn't stop anyone doing that but if anyone is preaching harm, extermination, gassing, amputation, violence, I think we would put a stop to that.⁵⁵

⁵³ P7

⁵⁴ *R (Ngole) v The University of Sheffield* [2019] EWCA Civ 1127, [115]

⁵⁵ P9

This lack of uniformity in the interpretation of legal concepts such as discrimination also becomes apparent when the views of Participant 8 are contrasted with the views of Participant 14 regarding whether or not homophobic speech should be banned:

If someone presents a very homophobic argument, well I wouldn't, in it of itself, want to stop them having it. I might not agree with it, but I wouldn't want to stop them having their right to speak. If they then turn and say: 'therefore, I want you to attack anyone you see in the street who you perceive to be LGBT'. Well OK, you've just gone from expressing a view to asking/enticing others to do something about your view. [Participant 8]

'Someone might be virulently homophobic without inciting violence, I think we would still stop them'. [Participant 14]

It therefore appears that according to Participant 8, homophobic speakers will only be banned if their speech involves incitement to violence; whereas, Participant 14 would stop a speaker even if the homophobic comments did not involve inciting violence. However, in practice, it is hard to determine whether Participants 8 and 14 would differ if the same speaker was invited to both of their campuses, who expressed views similar to Ngole around homosexuality, as decisions may also be based around a number of other factors. The above reflects how UM may differ in how the duty to ensure freedom of speech is ensured on their campuses.

The question of what is legal speech has been further muddied by the regulation of non-violent extremism under counter-terrorism, which has created a grey area around legal speech.⁵⁶ Section 3.2.2.3 in Chapter Three has shown that, on the one hand, the Prevent guidance describes extremism as something that 'can create an environment conducive

⁵⁶ Universities UK also told the Joint Committee on Human Rights (JCHR) that Prevent had created 'a grey area in relation to free speech which did not previously exist'. See: Joint Committee on Human Rights, *Freedom of Speech in Universities*, Fourth Report (2017–19, HL PAPER 111, HC 589), <<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/589.pdf>> accessed 03 March 2021

to terrorism'⁵⁷ and extremist organisations radicalise people,⁵⁸ whilst on the other hand, it also acknowledges that these extremist groups are legal⁵⁹ and they fall short of encouragement to terrorism.⁶⁰ It seems that the Government is arguing that extremism can be legal and fall short of encouragement to terrorism, but at the same time it can create an environment that is conducive to terrorism. However, the fine line between encouragement to terrorism, which is illegal, and being conducive to terrorism, which does not seem to be illegal, is not very clear. Prevent is meant to function in this grey area around legal free speech and it appears that the lack of uniformity between participants over what is and is not lawful speech may be a result of this murky boundary around free speech.

The lack of uniformity may not only stem from their divergent understanding of legal concepts, but it may also stem from the extent to which law is used. As Chapter Ten demonstrated, not everyone spoke of their legal threshold in the same manner. For example, on the one hand, a number of participants argued that 'law' in general was their threshold,⁶¹ which is a wide threshold and covers a broad range of grounds to stop events or speakers, from terrorism-related offences, such as promotion of terrorism, and other criminal law offences, such as incitement to violence, to civil law offences, such as discrimination on the grounds of religion or sexuality. On the other hand, Participant 3, for example, suggested that being from a proscribed organisation was the only reason they would stop an event.⁶² Likewise, Participant 7 also had a much

⁵⁷ HM Government, 'Prevent duty guidance: for higher education institutions in England and Wales', (Updated 10 April 2019) para 19 <<https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>> 09 February 2021

⁵⁸ HM Government, 'Revised Prevent duty guidance: for England and Wales' (Updated 10 April 2019) para. 7 <<https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales>> accessed 09 February 2021

⁵⁹ The Guidance says: 'the strategy also means intervening to stop people moving from extremist (albeit legal) groups into terrorist-related activity'. See: Ibid, para 8

⁶⁰ Incitement to terrorism is an illegal offence under Section 1 of the Terrorism Act 2006

⁶¹ P1; P5; P10; P11; P12; P13

⁶² See section '10.2.3.1 (b) Belonging to a Proscribed Organisation' in Chapter Ten

narrower threshold than law to stop an event, which was promotion of terrorism or being from a proscribed organisation.⁶³

The lack of uniformity may appear at odds with what may be understood as one of the Government's intentions behind introducing the Prevent duty. During the House of Lords debate in 2015, Lord Bates, whilst presenting the view of the Government, argued that Prevent had been implemented on 'a patchy basis' and it was not formally and independently evaluated.⁶⁴ He argued that by placing Prevent on a statutory footing, the Government is telling universities, 'Listen, we want you to raise your game to the standards of the best'.⁶⁵ He added, 'We fully expect that all universities will do what the best universities are doing already, which is to have their systems and procedures in place for this'.⁶⁶ It would appear that the Government's aim was to create some kind of uniformity in how Prevent is implemented across the higher education sector. Hence, a common aim found in various documents has been to establish 'a central point of information where practitioners can share information, advice and good practice'.⁶⁷ However, this project concludes that although universities are predominantly using law as a threshold, their decisions on similar events may vary, based upon their understanding of legal concepts and what the law requires.

13.6 FURTHER RESEARCH

There were concerns raised in Chapter Nine about the level of advice participants received from the Police and its influence on their decisions, with Participant 2 describing that one occasion they had 'push back from the police' and Participant 16 acknowledging that 'police recommendations can sway senior decision makers'. Likewise, concerns were also raised regarding the advice from Prevent co-ordinators, which may be based upon anecdotal evidence and reports. Moreover, some participants suggested that the advice went further than just providing information; it extended to

⁶³ At one point in the interview Participant 7 implied that in order to ban a speaker or event they would have to say something which is as severe as promotion or recruitment to terrorism, 'if they say "I want to encourage people to join ISIS" ... it would take something like that before you ban somebody'.

⁶⁴ Lord Bates, HL Deb 28 Jan 2015, vol 759, col 221

⁶⁵ Ibid

⁶⁶ Lord Bates, HL Deb 28 Jan 2015, vol 759, col 220

⁶⁷ HM Government, *Prevent Strategy*, Cm 8092, 2011, para 10.89

providing a position regarding freedom of speech and British values.⁶⁸ Given that this project could not gather sufficient data to paint a meaningful picture on the type or level of advice participants received from external agencies and that gathering such data would provide greater insight into how decisions are made, further empirical research is needed in this area. This would lead to a clearer understanding of how Prevent is functioning in universities.

Moreover, the findings of this project are limited to the universities that took part in the study and only reflect a specific period of time, namely from the start of the statutory Prevent duty in 2015 up to the middle of 2019. It is possible that universities have now varied their approaches; hence, this project proposes that further research is required to assess whether the findings of this project are applicable in other universities.

⁶⁸ P5

Appendix 1

Freedom of Information Request

Name: Nu Hud
Job Title: PhD Researcher
Organisation: University of York
Email: zh856@york.ac.uk
Address: xxxxxxxxxxxxxxxx,
xxxxxxxxxx,
xxxxxxxxxx,
Xxxx

Information Compliance Manager,
xxxxxxxxxxxxxx,
xxxxxxxxxxxxxx,
xxxxxx,
xxxxxxxxxx
xxxxxxxxxx

Date: 17/10/2018

Dear FOI Officer,

I am a PhD researcher at the University of York, researching the implementation of the Prevent duty for external speaker events. I am writing to make a freedom of information request for the following information:

1. Do you have a Prevent policy? And if so could you provide me a copy.
2. Could you also provide a copy of your code of practice on freedom of speech and any other document that reflects your freedom of speech policy.
3. Do you have an external speaker policy? If so, could you please provide a copy.
4. Are there any events that have been cancelled or re-scheduled due to Prevent-related concerns or the risk of radicalisation?
5. Could you provide a copy of the application form for external speaker events?
6. Do you have a document outlining the external speaker application and approval process? If so, could you please provide a copy.
7. Could you please provide a copy of any guidance issued to student societies for organising external speaker events?
8. Do you have a flow chart showing the application process for events or a flow chart showing the decision-making process for events? If so, could you please provide me with a copy.

9. Could you please provide any correspondence you may have received from members of student societies or academic staff highlighting difficulties and problems with the external speaker application process, during the academic year 2017-18?
10. Could you please provide copies of all your University's Prevent Risk Registers or other document where the risk assessment is recorded?

I would like the above information to be provided to me via the post or email. If this request is too wide or unclear, I would be grateful if you could contact me as I understand that under the Act, you are required to advise and assist requesters. If any of this information is already in the public domain, please can you direct me to it, with page references and URLs if necessary.

If the release of any of this information is prohibited on the grounds of breach of confidence or any other reason, I ask that you supply me with reasons for the decision, explaining the FOI exemption(s)/EIR exception(s) that apply.

I understand that you are required to respond to my request within the 20 working days after you receive this letter. I would be grateful if you could confirm in writing or email that you have received this request.

I look forward to hearing from you.

Many Thanks

Nu Hud

PhD Researcher

University of York

Appendix 2

Initial Email

Dear [name of participant],

Re: Interview request - academic research on university obligations around Prevent

I hope this email finds you well. I am a PhD student at University of York in the department of Law, studying how the Counter Terrorism and Security Act 2015 is translated into policies and practice by universities for external speaker events. The focus of the research is how universities are balancing academic freedom and the Prevent duty.

Main Research Question:

‘In practice, how are universities weighing the Prevent duty and academic freedom for external speaker events?’

So, I would much appreciate it if you would agree to an interview, for which full anonymity and confidentiality will be provided. I am attaching a short document to this email, which contains further information and contact details of my supervisors and the ethics team.

If you are willing to participate in the project, I can send you the informed consent form. If you have any questions regarding the project you can contact me or my supervisors. I am willing to travel to you at a time that is suitable for you.

Many thanks,

Nu Hud

PhD Student at University of York

INFORMED CONSENT FORM

Study Name:

*Weighing Prevent Duty and Academic Freedom;
External Speaker Events*

Researcher:

Nu Hud, *BA GDL LLM*

PhD Candidate

zh856@york.ac.uk

Supervisor:

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Head of York Law School:

Caroline Hunter

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Contact Person from the Ethics Approval Committee:

Professor Tony Royle

tony.royle@york.ac.uk

PURPOSE OF THE RESEARCH

The purpose of this interview is to ascertain some of the challenges faced by universities and their method of overcoming those challenges in weighing the Prevent duty and academic freedom. Potential problems being:

- Some ambiguity in the appropriate amount of weight for both considerations, Prevent duty and academic freedom,
- Interpretation of extremism and the method of assessing extremism and radicalisation,
- Potential pressure from activists, think-tanks, media, students and HEFCE, to give more weight to one over the other

WHAT YOU WILL BE ASKED TO DO IN THE RESEARCH:

You will be asked to take part in a semi-structured interview about the challenges you face, especially with regards to the potential problems highlighted above, and the methods used to overcome those challenges. The interview is not anticipated to take longer than 45 minutes, which includes reading and signing the consent form. However, that time could be extended if you and the researcher consent to extend the duration in order to complete a conversation.

RISKS AND DISCOMFORTS:

We do not foresee any risks or discomfort from your participation in the research. You have the right to not answer any questions or terminate the interview at any time.

BENEFITS OF THE RESEARCH:

With much controversy over the Prevent duty and its impact on academic freedom, this research will seek to provide a better understanding of how the duty is implemented and, thus, provide a strong foundation for further research in areas such as assessing whether or not it restricts academic freedom, and to what extent is this justified or proportional to the aims it seeks? Is the current law fit for purpose or does it require reform? The research will benefit policy makers and legislators by giving them a better understanding of the law in action.

VOLUNTARY PARTICIPATION:

Your participation in the study is completely voluntary and you may choose to stop participating at any time. Your decision not to volunteer will not influence the nature of your relationship with York University either now, or in the future.

WITHDRAWAL FROM THE STUDY:

You can stop participating in the study at any time, for any reason, if you so decide. Your decision to stop participating, or to refuse to answer particular questions, will not affect your relationship with the researchers, York University, or any other group associated with this project. In the event you withdraw from the study, all associated data collected will be immediately destroyed wherever possible.

CONFIDENTIALITY:

The interview does not seek to collect any personal data. Other than your name on this consent form, your name will not appear in any document, recording or any other stored data. Likewise, any other information that could be used to identify you will not be stored, such as the name or location of the institute you work for. Furthermore, specific dates of events at your institute will not be logged. The interview will be audio recorded, which will then later be written as a transcript and the recording destroyed. Unless you choose otherwise, all information you supply during the research will be held in confidence and unless you specifically indicate your consent, your name will not appear in any report or publication of the research. Your data will be safely stored in a locked facility and only the researcher and their supervisor, when necessary, will have access to this information. The data will be kept for a maximum of three years after the conclusion of the PhD, after which it will be destroyed. Confidentiality will be provided to the fullest extent possible by law. The supervisory team for this study have all signed a declaration not to publish or share any information that may be used to identify the participants.

QUESTIONS ABOUT THE RESEARCH?

If you have questions about the research in general or about your role in the study, please feel free to contact my Supervisor, Professor Matt Matravers, by e-mail: matt.matravers@york.ac.uk. This research has been reviewed and approved by the Economics, Law, Management, Politics and Sociology Ethics Committee (ELMPS). If you have any questions about this process, or about your rights as a participant in the study, please contact Professor Tony Royle from the ethics committee, tony.royle@york.ac.uk.

CONSENT FORM FOR PARTICIPANTS

This form is for you to state whether or not you agree to take part in the study. Please read and answer every question. If there is anything you do not understand, or if you want more information, please ask the researcher.

Have you read and understood the information leaflet about the study? Yes No

Have you had an opportunity to ask questions about the study? Yes No

Do you understand that the information you provide will be held in confidence by the research team? Yes No

Do you understand that you may withdraw from the study for any reason, without affecting any services you receive? Yes No

Do you understand that the information you provide may be used in future research? Yes No

Do you consent for your email address to be kept until the results of this study are published, for the purposes of disseminating the results to you? After that the email address will be deleted. Yes No

Do you agree to take part in the study? Yes No

If yes, do you agree to your interviews being recorded? Yes No

(You may take part in the study without agreeing to this).

Legal Rights and Signatures:

I, _____, consent to participate in this study titled 'Weighing Prevent Duty and Academic Freedom' conducted by Nu Hud. I have understood the nature of this project and wish to participate. I am not waiving any of my legal rights by signing this form. My signature below indicates my consent.

Name of Participant _____

Signature _____

Date _____

Participant

Signature _____

Date _____

Researcher

Appendix 4

Four scenarios

Below is the small piece of paper that was handed to participants during the discussion on extremism, which served as a prompt for the discussions. It contains four scenarios. Participants were asked to expand on how they would deal with each scenario.

Scenario 1: Unknown speaker

Scenario 2: Labelled extremist by mainstream and/or social media

Scenario 3: Labelled extremist by Government

Scenario 4: A person from a proscribed organisation

Appendix 5

Definition of Extremism

Below is the definition of extremism that was provided to the participants on a small slip of paper during the discussion of extremism.

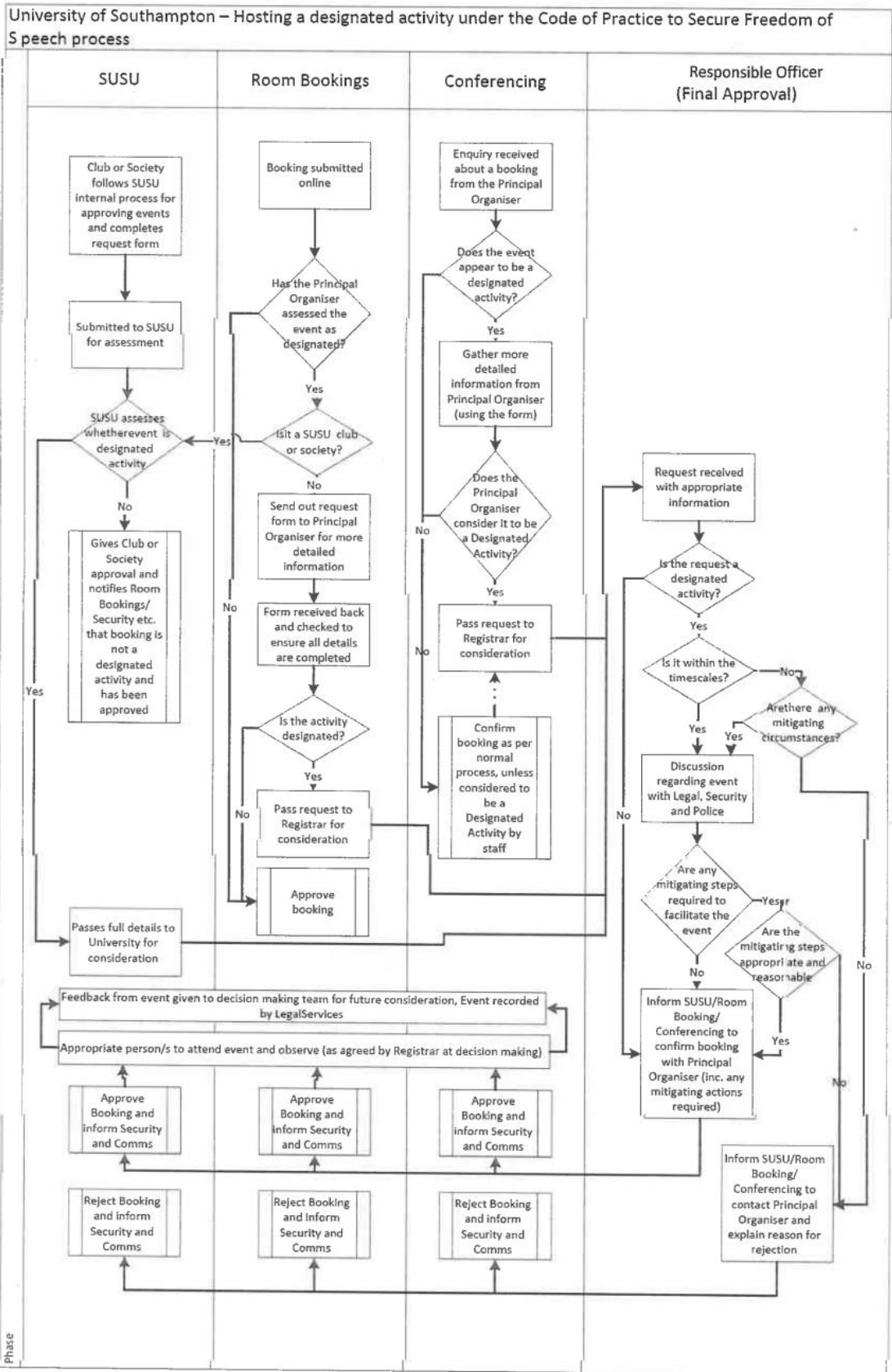
Extremism is:

Vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas.

Home Office, 'Revised Prevent duty Guidance for England and Wales',

<https://www.gov.uk/government/publications/prevent-duty-guidance/revise-prevent-duty-guidance-for-england-and-wales>

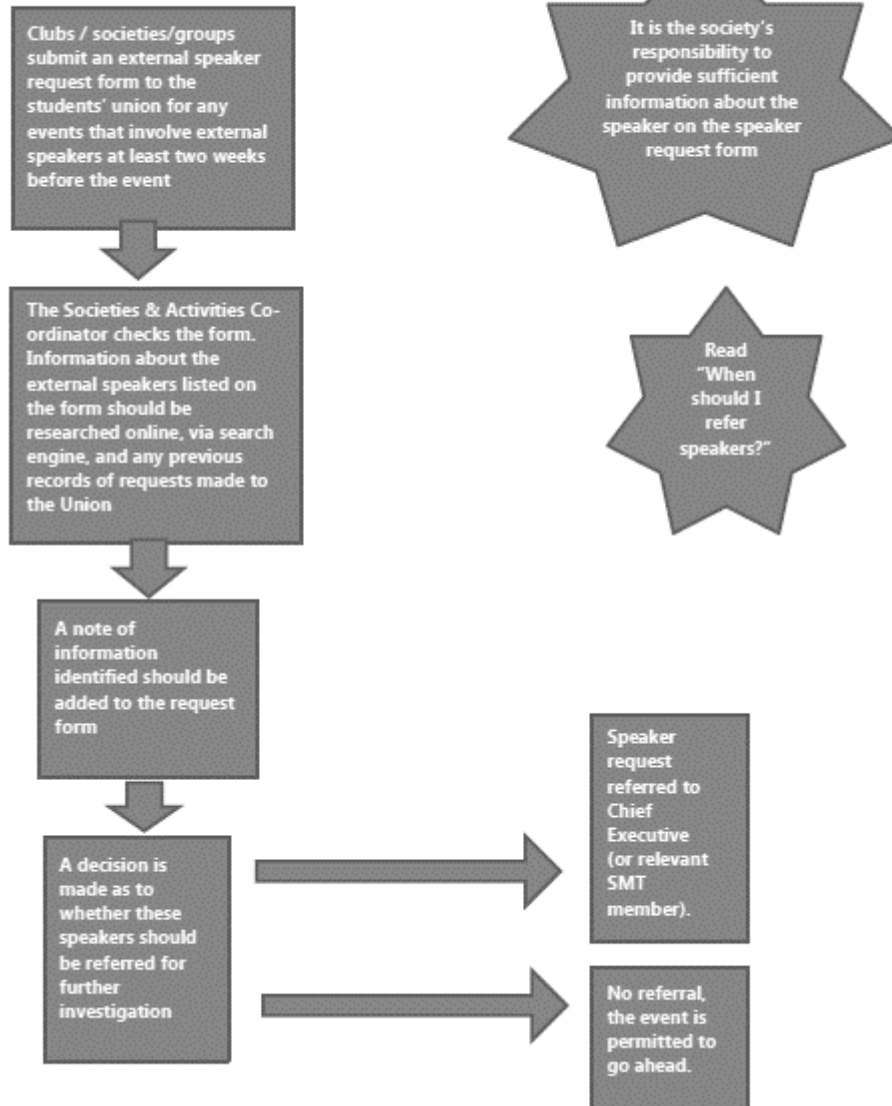
Appendix 6



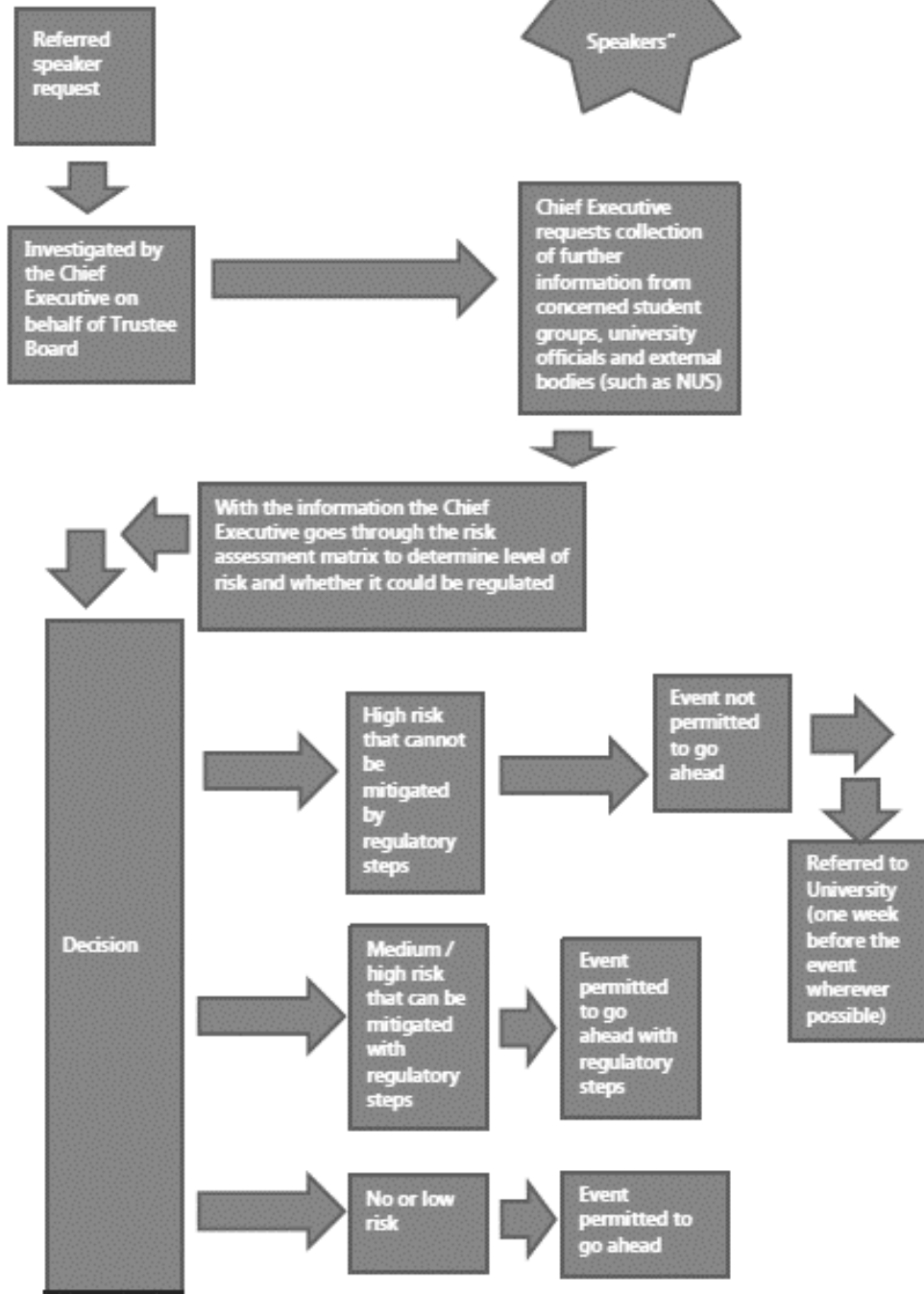
Appendix 7

University of Plymouth Students' Union

Stage 1: All Speaker Requests



Stage 2: Referred Speakers



List of Abbreviations

DoE	Department of Education
HEPDG	Prevent Duty Guidance for Higher Education Institutions in England and Wales
CTSA	Counter-Terrorism and Security Act 2015
HEFCE	Higher Education Funding Council for England
OfS	Office for Students
HEP	Higher Education Providers
RHEB	Relevant Higher Education Bodies
HJS	Henry Jackson Society
CSC	Centre for Social Cohesion
UM	University Management
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FOI	Freedom of Information Request
HEPI	Higher Education Policy Institute
UCU	University and College Union
AUSCO	Association of University Chief Security Officers
PRM	Prevent Review Meeting
JCHR	Joint Committee on Human Rights
HRA	Human Rights Act
ICCPR	International Covenant on Civil and Political Rights

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Gunduz v Turkey App no. 35071/97 (ECtHR, 4 December 2003)

Handyside v The United Kingdom App no. 5493/72 (ECtHR, 7 December 1976)

Hustler Magazine v Falwell 485 U.S. 46 (1988)

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Kelly v British Broadcasting Corporation [2001] Fam. 59, [2001] 2 WLR 253

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HC Debate 10 February 2015 – Consideration of Amendments from the other House

HL Debate 07 January 2015 – First Reading

HL Debate 13 January 2015 – Second Reading

HL Debate 20 January 2015 – Committee Stage

HL Debate 26 January 2015 – Committee Stage

HL Debate 28 January 2015 – Committee Stage

HL Debate 02 February 2015 – Report Stage

HL Debate 04 February 2015 – Report Stage

HL Debate 09 February 2015 – Third Stage

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