

Preventing Safeguarding:

The Prevent strategy
and children's rights



Acknowledgements

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CRIN is a creative think tank that produces new and dynamic perspectives on human rights issues, with a focus on children's rights. We press for rights - not charity - and campaign for a genuine shift in how governments and societies view and treat children.

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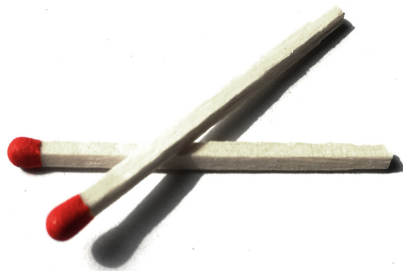
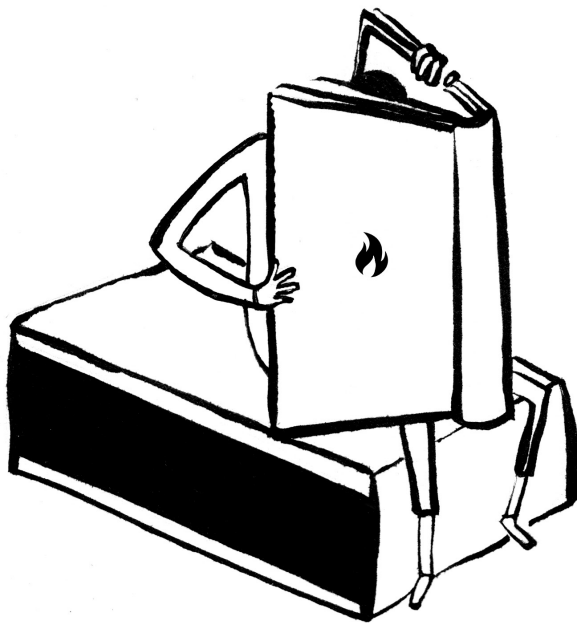
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Introduction

Over the last two decades, the proliferation of counter-terrorism strategies internationally has led to widespread violations of human rights, including those of children.¹

Through a series of publications, CRIN is examining how counter-terrorism measures in the United Kingdom are affecting children's rights. This first publication considers the impact on children of strategies aimed at the prevention of atrocities.

The Prevent strategy, as one of the four strands of the UK Government's counter-terrorism policy, is intended to identify people who may become involved in, or support, atrocities. Children account for almost half of all people referred through the Prevent programme, which touches almost all areas of their lives.

The Government committed to undertake an independent review of Prevent by August 2020, then deferred publication to December 2021. At the time of writing, the review is still awaited. Concerns are widespread that it will not be the rigorous, impartial review that many believe is needed.

This publication critically examines the Prevent policy, placing children's human rights and well-being at the centre of the analysis, and concludes that the policy is failing children. Prevent infringes on children's fundamental rights, undermines their access to services and - contrary to its careful branding as 'safeguarding' - subordinates their welfare to national security priorities. The subversion of children's safeguarding mechanisms in favour of counter-terrorism policing and intelligence gathering has also been counterproductive on its own terms, by undermining meaningful attempts to stop children from being groomed and recruited by non-state armed groups and by creating mistrust.

This report is split into two chapters. The first addresses the Prevent policy as a whole, assessing its impact on children's rights. The second delves into the data processing practices implemented for the purposes of Prevent, and how these interfere with data protection and children's privacy rights. The report concludes with a number of recommendations addressed to policymakers, which suggest repealing the Prevent strategy and replacing it with an effective, rights-respecting approach to the prevention of atrocities.

¹ See Child Rights International Network (CRIN), *Caught in the crossfire: An international survey of anti-terrorism legislation and its impact on children*, 2018, available at: https://static1.squarespace.com/static/5afadb22e17ba3eddf90c02f/t/6076f1b1e3746062a6837831/1618407866033/CRIN_Caught+in+the+Crossfire%3F.pdf.

Terminology

Counter-terrorism law and policy over the last two decades have developed new terminology. Many of these terms lack clear definition; they are often overly broad, contested or applied selectively to certain groups and acts. As these terms are inseparable from the logic of counter-terrorism measures and the impact they have had on children's rights in the UK and beyond, we do not want to use them uncritically in this report.

The key terms in UK counter-terrorism law and policy are terrorism, extremism and radicalisation, none of which has an internationally-agreed definition. Controversies remain about the core elements of the definition of terrorism, for example, and negotiations on a comprehensive treaty on terrorism have long been stalled.²

Here we outline the issues raised by these terms and set out the language that we use in their place. Where we have used the official terminology, it is to refer to official counter-terrorism discourse, in which cases we have enclosed them in quotation marks.

Terrorism

UK law defines terrorism as “the use or threat of action which is designed to influence the government or an international governmental organisation, or to intimidate the public or a section of the public, and which is made for the purpose of advancing a political, religious or ideological cause. The action used or threatened must involve serious violence against a person, serious damage to property, endangering a person's life, creating a serious risk to public health or safety, or the intention to interfere with or seriously disrupt an electronic system.”³

The Supreme Court has described this definition as “very far-reaching indeed”.⁴ The UK's former Independent Reviewer of Terrorism Legislation, Lord Anderson, has acknowledged that the breadth of the definition gives wide discretion to government, prosecutors and police, and could have a chilling effect on freedom of expression. He also recognised that in the UK there was a “potentially discriminatory” tendency to “categorise Islamist-inspired violence as terrorism more readily” than violence by other groups.⁵

² European Parliament, *Understanding definitions of terrorism*, 2015, available at: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2015/571320/EPRS_ATA\(2015\)571320_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2015/571320/EPRS_ATA(2015)571320_EN.pdf).

³ Section 1 of the Terrorism Act 2000, as summarised in HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf, p. 20, fn. 14.

⁴ *R v Gul* [2013] UKSC 64, para. 29, available at: <https://www.supremecourt.uk/cases/docs/uksc-2012-0124-judgment.pdf>.

⁵ David Anderson QC, *The Terrorism Acts in 2013: Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, 2014, available at: <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2014/07/Independent-Review-of-Terrorism-Report-2014-print2.pdf>, pp. 73-80.

Accordingly, we use the term **'atrocities by non-state armed groups' (atrocities)** to discuss the acts of violence that have proliferated since 2001, while recognising that other actors, including States, may also commit atrocities. We use the term **'children accused of/convicted of terrorism offences' (accused/convicted children)** to refer to the impact of specific counter-terrorism measures on children in the UK.

Extremism and radicalisation

The UK defines extremism 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 [as well as] calls for the death of members of our armed forces”.⁶

Reliance on the subjective notion of ‘fundamental British values’ renders the definition ambiguous. It opens the door for a wide range of views to be labelled as ‘extremist’, with concerning implications for freedom of expression. In practice, the label ‘extremist’ is applied selectively. Many prominent public figures in the UK could be accused of exhibiting opposition to “mutual respect and tolerance of different faiths and beliefs”, but are not accused of ‘extremism’ or flagged as a potential threat to public safety.

Radicalisation is defined in equally imprecise terms as “the process by which a person comes to support terrorism and forms of extremism leading to terrorism”.⁷

UK counter-terrorism policy describes ‘radicalisation’ as a process in which ideology plays a major role, on the assumption that support for ‘extremist’ ideas brings an increased risk of committing atrocities in the future; an association that lacks evidential support.⁸ As is the case with ‘extremism’, ‘radicalisation’ is so defined as to draw individuals into the ambit of counter-terrorism authorities when they have not committed a criminal offence.

In place of characterising some children as ‘extremist’ or ‘terrorist’, we use the phrase **'recruitment and use of children by non-state armed groups'**, which is recognised by international law as a violation of children’s rights.⁹ Rather than assuming that the risk to children lies with their ‘radicalisation’, we prefer the language of the increased **'vulnerability'** of some children to recruitment.

6 HM Government, *Prevent Strategy*, 2011, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf, p. 107.

7 Ibid., p. 108.

8 B Shuurmann and M Taylor, ‘Reconsidering radicalization: fanaticism and the link between ideas and violence’, *Perspectives on Terrorism*, 2018, 12:3, available at: <https://www.jstor.org/stable/pdf/26343743.pdf>.

9 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Article 4, available at: <https://www.ohchr.org/en/professionalinterest/pages/opaccrc.aspx>.



Chapter I: The Prevent strategy

What is Prevent?

The UK Government's counter-terrorism strategy, CONTEST, is divided into four areas named Prevent, Pursue, Protect, and Prepare. Prevent is the part designed to stop people "becoming terrorists or supporting terrorism".¹⁰

When CONTEST was first developed in 2003, the Prevent strand was aimed at stopping people from supporting *violent* 'extremism', with a particular focus on the threat from Islamist armed groups such as al-Qaeda. In 2011, the strategy's scope was widened to include threats from all forms of armed groups, notably including right-wing groups, and to bring *non-violent* as well as violent 'extremism' into its ambit. As of 2018, the stated objectives of Prevent have been to:

- Tackle the causes of radicalisation and respond to the ideological challenge of terrorism;
- Safeguard and support those most at risk of radicalisation through early intervention, identifying them and offering support; and
- Enable those who have already engaged in terrorism to disengage and rehabilitate.¹¹

This section primarily addresses the early intervention aspects of Prevent under the second objective: those aimed at both identifying individuals 'at risk of radicalisation' and intervening to prevent this.

Under Prevent, individuals deemed 'at risk' are referred into the Channel process for 'support'.¹² In 2015, the Government used the Counter-Terrorism and Security Act¹³ to put Prevent and Channel on a statutory footing. The Act placed a duty on certain bodies - including those in the local government, education, childcare, criminal justice, police, and health and social care sectors - to "have due regard to the need to prevent people from being drawn into terrorism".¹⁴

10 HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, 2018, p. 8.

11 *Ibid.*, p. 31.

12 The Channel programme was piloted in 2007 and rolled out across England and Wales in 2012. HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964567/6.6271_HO_HMG_Channel_Duty_Guidance_v14_Web.pdf, p. 7.

13 Counter-Terrorism and Security Act 2015, available at: <https://www.legislation.gov.uk/ukpga/2015/6/contents>.

14 *Ibid.*, section 26, available at: <https://www.legislation.gov.uk/ukpga/2015/6/section/26>.

To meet this Prevent duty, bodies must “demonstrate that they are protecting children and young people from being drawn into terrorism by having robust safeguarding policies in place to identify children at risk, and intervening as appropriate”.¹⁵

Typically, “intervening” means making a referral to the police,¹⁶ who then decide whether to make a further referral to the local Channel panel (in England and Wales) or Prevent Professional Concerns panel (in Scotland). Such panels assess whether the individuals referred are “vulnerable to being drawn into terrorism”, and coordinate a “support plan” for them if necessary.¹⁷ “Support plans” can include such interventions as mentoring, cognitive behavioural therapies, “theological/ ideological support”, or signposting to mainstream services, such as health, education, or housing.¹⁸ All ‘support’ received through Channel is said to be voluntary - in the case of children, a parent/guardian must consent for their child to receive support (see below).¹⁹

The panels, chaired by the local authority, are composed of representatives from various services and a counter-terrorism police officer known as the Channel Case Officer. This officer has considerable responsibilities for the management and referral of cases, and has the option of escalating them to a police-led space.²⁰ Following a pilot in 2017,²¹ the Home Office has transferred the responsibilities of the Channel Case Officer role to the local authority in some regions, but even in these areas the police retain responsibility for initial assessment and triage of referrals and leading on “high risk cases”.²² Various agencies are required by statute to cooperate with the panel and the Channel Case Officer, including government

15 Home Office, *Revised Prevent duty guidance: for England and Wales*, last updated on 1 April 2021, available at: <https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales>, para. 68.

16 Although “local referral routes may include submission via local authority mechanisms [...] all Prevent referrals will be forwarded to police”. HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, p. 20.

17 Counter-Terrorism and Security Act 2015, section 36, available at: <https://www.legislation.gov.uk/ukpga/2015/6/section/36>.

18 HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, p. 35.

19 See Counter-Terrorism and Security Act 2015, section 36(4)(b), available at: <https://www.legislation.gov.uk/ukpga/2015/6/section/36>.

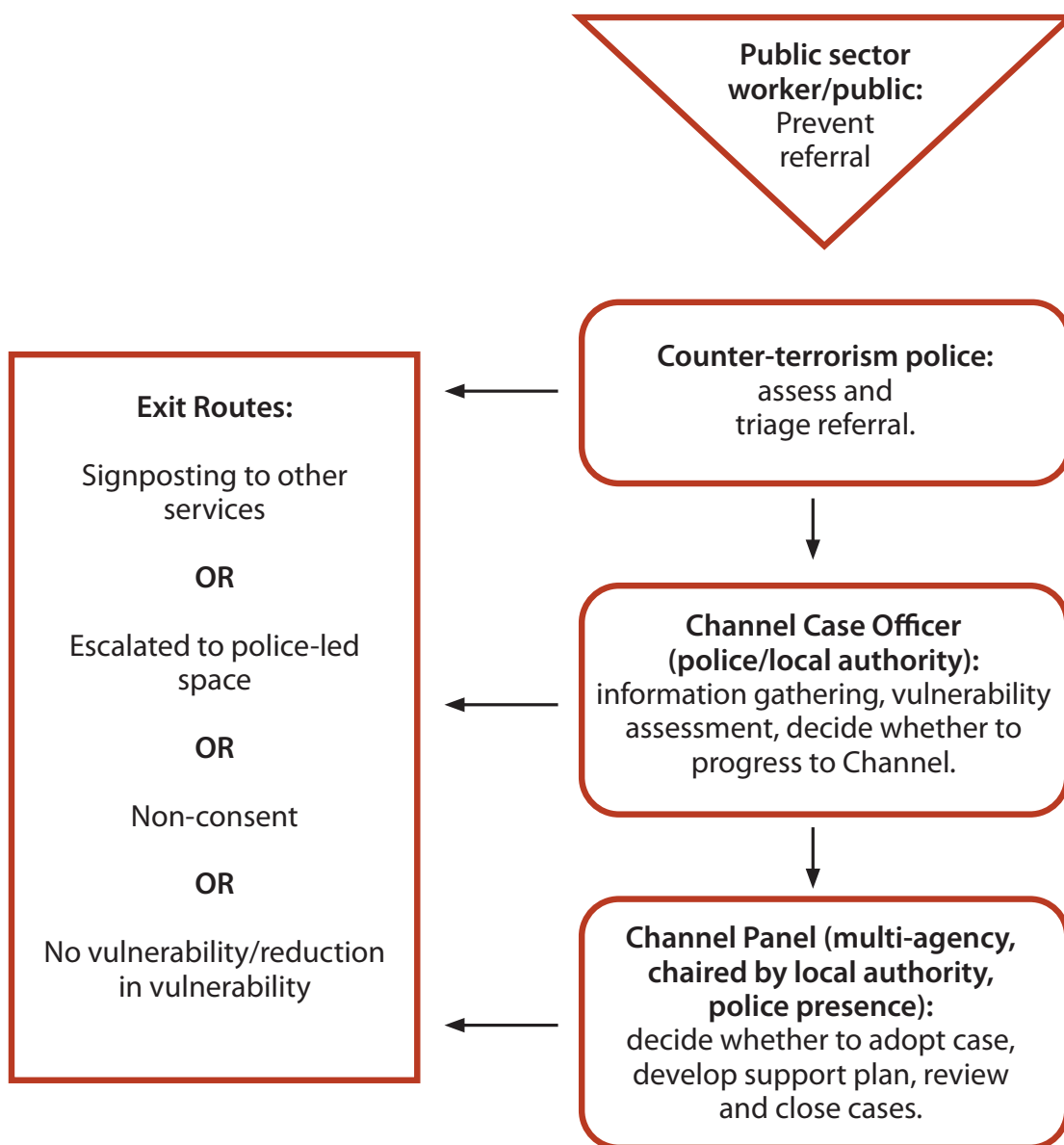
20 HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, p. 14.

21 “Operation Dovetail” was piloted in nine areas in 2017 (Brighton, Croydon, Haringey, Kent, Kirklees, Lancashire, Luton, Oldham and Swansea), and has since been rolled out in other regions of England and Wales, including the North-West. Local Government Association, *Operation Dovetail update*, 2018, available at: <https://lga.moderngov.co.uk/documents/s16757/Operation%20Dovetail%20update.pdf>.

22 Wigan Council, *Prevent Channel policy, guidance and procedure for working with adults and children/young people who are vulnerable to the messages of violent extremism*, 2019, available at: <https://www.wigan.gov.uk/Docs/PDF/WSCB/PVE-Policy.pdf>, p. 5.

departments, local government, criminal justice, education, child care, health and social care, and police.²³ For example, these agencies must share information about an individual who is the subject of a Prevent referral.²⁴

Figure 1: Referral pathway for Prevent and Channel²⁵



23 Schedule 7 of the Counter-Terrorism and Security Act 2015, available at: <https://www.legislation.gov.uk/ukpga/2015/6/schedule/7>.

24 Counter-Terrorism and Security Act 2015, section 38, available at: <https://www.legislation.gov.uk/ukpga/2015/6/section/38>.

25 Simplified from diagram in HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, p. 21.

Prevent and children

This section focuses primarily on the Prevent programme in England and Wales; the Scottish programme is smaller. In 2020/21, for example, 55 individuals were referred to Prevent in Scotland, compared to 4,915 in England and Wales.²⁶

Since the Prevent duty was introduced in 2015, an average of 3,000 children under the age of 18 have been referred each year, although fewer than one in ten of these have been adopted as a Channel case (see Fig. 2). Children, who make up 21 percent of the UK population, account for nearly half (47 percent) of all referrals under Prevent.²⁷ Many further children are affected without a formal referral ever having been made (see case study B for example). Around five in every six children referred are male, with boys also slightly more likely than girls to be adopted as a Channel case.²⁸

In the last year for which data is available (April 2020 to March 2021), significantly less children were referred to Prevent (1,920), and the percentage of these that were adopted as a Channel case was higher than in previous years (18 percent).²⁹ It's possible that this was due, at least in part, to the Covid-19 pandemic. For long periods of this year, children had significantly reduced contact with services, and much contact that continued was remote, for example online teaching.

26 Police in Scotland, *Prevent Referral Data 2020-21*, 2021, available at: <https://www.scotland.police.uk/spa-media/ej0f3bzu/prevent-referral-data-2020-21.pdf>; Home Office, *Individuals referred to and supported through the Prevent Programme, April 2020 to March 2021*, 18 November 2021, available at: <https://www.gov.uk/government/statistics/individuals-referred-to-and-supported-through-the-prevent-programme-april-2020-to-march-2021>.

27 At the time of the last census (2011), 21% of the population of England and Wales was under the age of 18. HM Government, *Ethnicity facts and figures*, 17 August 2020, available at: <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/age-groups/latest>.

28 Home Office, *Response to Written Question 6170*, 2 June 2021, available at: <https://questions-statements.parliament.uk/written-questions/detail/2021-05-24/6170>.

29 Home Office, *Response to Written Question 115834*, 4 February 2022, available at: <https://questions-statements.parliament.uk/written-questions/detail/2022-02-01/115834>; HM Government, *Individuals referred to and supported through the Prevent Programme statistics*, last updated on 18 November 2021, available at: <https://www.gov.uk/government/collections/individuals-referred-to-and-supported-through-the-prevent-programme-statistics>.

	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	Total
Total referrals to Prevent (all ages)	7,631	6,093	7,318	5,738	6,287	4,915	37,982
Children referred to Prevent	3,630	2,918	3,556	2,879	2,915	1,920	17,818
Children adopted as a Channel case (n)	230	199	213	316	360	347	1,665
Children adopted as a Channel case (%)	6.3%	6.8%	6.0%	11.0%	12.3%	18.1%	9.3%

There is no legal requirement to obtain consent of a child or their parent/guardian before making a Prevent referral, but a parent/guardian must consent before a child may receive support under Channel.³¹ The law also specifically envisages that consent, once given, can be withdrawn.³² This means that, for example, if a parent agreed for their child to receive Channel support, once the child turns 18, the child is entitled to withdraw consent if they should so choose. Despite these safeguards, in practice conditions may be attached to co-operation with Prevent and Channel. In one family’s case, the parents’ refusal to engage with the referral of their children to Prevent led to the probation service changing the father’s licence conditions, with the effect that the children’s mother was no longer allowed to supervise contact between them and their father.³³

30 Home Office, *Response to Written Question 6170*, 2 June 2021; Home Office, *Response to Written Question 115834*, 4 February 2022; HM Government, *Individuals referred to and supported through the Prevent Programme statistics*, last updated on 18 November 2021.

31 Counter-Terrorism and Security Act 2015, section 36(4)(b), available at: <https://www.legislation.gov.uk/ukpga/2015/6/section/36> and section 41(1), available at: <https://www.legislation.gov.uk/ukpga/2015/6/section/41>. See also HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, pp. 33-34.

32 Counter-Terrorism and Security Act 2015, section 36(4)(e)(i), available at: <https://www.legislation.gov.uk/ukpga/2015/6/section/36>.

33 ‘Guardian wins appeal over decision by judge not to make child assessment order in case where father was convicted of terrorism offences’, *Local Government Lawyer*, 2 March 2020, available at: <https://www.localgovernmentlawyer.co.uk/child-protection/392-children-protection-news/42935-guardian-wins-appeal-over-decision-by-judge-not-to-make-child-assessment-order-in-case-where-father-was-convicted-of-terrorism-offences>. See also Case Study D, this report.

The highest proportion of referrals - around a third - have until recently come from the education sector, though in the last two years more referrals were made by the police.³⁴

Since 2014, schools have also been required to “actively promote British values”, which the Prevent strategy defines as “democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs”.³⁵ Schools’ compliance, with this and with the Prevent duty, is now included in the Ofsted inspection framework.³⁶

In recent years, organisations supporting people affected by Prevent have noted an increase in the proportion of referrals leading to a formal safeguarding enquiry about a child, under section 17 or section 47 of the Children Act 1989.³⁷ This means that police acting under Prevent may conduct a visit alongside social workers acting under safeguarding duties. Since social services have the power to conduct section 47 enquiries without a family’s consent, there are concerns that blurring the Prevent duty with local authority safeguarding duties could effectively compel children and families to co-operate with Prevent enquiries when they may otherwise choose not to do so. The implications of services treating ‘radicalisation’ as a new category of harm requiring a safeguarding intervention are concerning, as it is a politically-loaded term from counter-terrorism policy.

As discussed throughout the report, testimony from children referred to Prevent and civil society organisations supporting them shows that in some cases children and their parents have been placed under pressure to engage with Prevent,³⁸ and that refusal to do so attracted negative consequences.³⁹ Where pressure is exerted on children and families to engage with Prevent, even where consent is sought, it is unlikely to be valid, because it does not appear to be truly freely given. Since many Prevent data practices are opaque (see chapter II on children’s data and Prevent), it is also questionable that the consent is informed.

34 Education has accounted for the highest number of referrals in every year since 2015/16, except 2019/20 and 2020/21, when the highest number came from the police. HM Government, *Individuals referred to and supported through the Prevent Programme statistics*, last updated on 18 November 2021.

35 HM Government, *Guidance on promoting British values in schools published*, 27 November 2014, available at: <https://www.gov.uk/government/news/guidance-on-promoting-british-values-in-schools-published>.

36 Ofsted, *School Inspection Handbook*, 2021, available at: <https://www.gov.uk/government/publications/school-inspection-handbook-eif/school-inspection-handbook>; Ofsted, *Education inspection framework*, 2021, available at: <https://www.gov.uk/government/publications/education-inspection-framework/education-inspection-framework>.

37 See e.g. Case Study A and Case Study D, this report. See Children Act 1989, available at: <https://www.legislation.gov.uk/ukpga/1989/41/contents>.

38 See the discussion above about the blurring of local authority safeguarding duties and the Prevent duty. See also case study D, this report.

39 See the discussion above about conditions being attached to co-operation with Prevent or Channel.

The Children Act 1989

Section 17 places a general duty on local authorities to “safeguard and promote the welfare of children within their area who are in need”. Local authorities can conduct a “Child in need” assessment under section 17 to identify the child’s needs and ensure the family has the appropriate support in place to meet them.

Section 47 places a duty on the local authority - in cases where it has “reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm” - to make “enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child’s welfare”.

This chapter will show that the Prevent programme is failing to uphold the Government’s responsibilities to children, for several reasons:

- Prevent infringes children’s fundamental rights - including their right to non-discrimination, to privacy, and to freedom of expression, religion and assembly.
- Prevent is centred on security, not safeguarding: children’s welfare and best interests are not a primary consideration in the policy, as is required in law.
- Prevent conflicts with the functions of public services, undermining children’s access to their services (including safeguarding itself).

Prevent infringes children’s fundamental rights

I’m always cautious around teachers. I can’t go out with my friends as often because my family are worried if something might happen to me with the police. I worried about myself and family [about] how stressed we all were.

—Child, aged 14, referred to Prevent

The UK has a legal obligation to uphold children’s rights, which arises from both national law⁴⁰ and international treaties to which the UK is a party.⁴¹ This report shows that Prevent fails to comply with these obligations, undermining the rights of the children referred to it.

40 Human Rights Act 1998, available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents>; Equality Act 2010, available at: <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

41 Inter alia, the Convention on the Rights of the Child, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; the International Covenant on Civil and Political Rights, available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; and the European Convention on Human Rights, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

Right to non-discrimination

Children are disproportionately referred to Prevent. Referrals of children who are Muslim, of Asian ethnicity, or who have mental health problems are also disproportionately high (see below). This practice may amount to discrimination contrary to law.⁴²

What are the UK's legal obligations regarding non-discrimination?

The UK is committed to respecting the prohibition on discrimination under national and international law. The European Convention on Human Rights and the Convention on the Rights of the Child contain almost identical prohibitions on discrimination, including on grounds such as race, religion and political or other opinion.⁴³ This means that people must not be treated differently when in relevantly similar situations based on these characteristics without an objective and reasonable justification. It is not necessary for discrimination to be intentional for it to be prohibited. Even where a policy is framed in neutral terms, if it nonetheless leads to disproportionately prejudicial effects against a particular group, it can still violate the prohibition on discrimination.

Considering the Prevent strategy for the first time in 2016, the UN Committee on the Rights of the Child recommended that the UK government “[s]trengthen the oversight mechanism, including regular independent reviews, to assess and ensure that the implementation of the counter-terrorism and counter-extremism measures, including the Prevent Strategy (2011), will not have a discriminatory or stigmatising impact on any group of children”.⁴⁴ At the time of writing, the follow-up review of the UK is under way. The Committee intends to focus on the potential discriminatory, racial or stigmatising impact of the UK's counter-terrorism and counter-extremism policy.⁴⁵

42 Human Rights Act 1998, Schedule 1, Part I, Article 14, available at: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I>; Convention on the Rights of the Child, Article 2, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; European Convention on Human Rights, Article 14, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

43 European Convention on Human Rights, Article 14, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf; Convention on the Rights of the Child, Article 2, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

44 UN Committee on the Rights of the Child, *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/5, 12 July 2016, para. 22(b), available at: <https://bit.ly/3i1wcBG>.

45 UN Committee on the Rights of the Child, *List of issues prior to submission of the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/QPR/6-7, 4 March 2021, para. 13, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FQPR%2F6-7&Lang=en.

Despite concerns, repeatedly raised at a high level, that Prevent policy and practices lead to religious and racial discrimination,⁴⁶ the Home Office “only hold[s] partial data on the ethnicity or religion of Prevent referrals and Channel cases”, as recording this information is not mandatory.⁴⁷ In recent years, the Department has rejected requests to provide this data under the Freedom of Information Act.⁴⁸

In response to one such request by CRIN, the Home Office claimed that it was necessary to withhold the data for purposes of national security (section 24 of the Freedom of Information Act). The reasoning given was:

As this data is partial due to recording ethnicity and religion not being mandatory, it could be taken out of context to create a misleading picture of the ethnic/religious makeup of Channel referees under 18. This could lead to the parents of those referred to Channel refusing to give consent to adopt their children onto Channel. This would lead the referred individuals with unaddressed vulnerability to being drawn into terrorism. This would increase the likelihood of a terrorist attack in the UK.⁴⁹

The Home Office’s decision not to collect and publish data on the ethnicity and religion of people affected by Prevent precludes meaningful scrutiny from the perspective of the UK’s legal duty not to discriminate against children from certain social groups. The Department’s reasoning also implies that children and their parents may be less likely to consent to cooperate with Prevent if they believe that the policy discriminates against them; if their free consent is to have meaning as such, they should be able to withhold it on whatever grounds they see fit.

Home Office data from 2014 to 2016, released prior to the Department’s decision to refuse requests to provide such data, shows that 39 percent of children referred under Prevent were recorded as Muslim and 38 percent were ethnically Asian.⁵⁰ This is vastly disproportionate to these groups’ representation in the UK population; five percent and six percent respectively. Since these early years of the Prevent duty, referrals with ‘types of concern’ other than ‘Islamic extremism’ have increased markedly; in 2020/21 referrals at all ages for ‘Right-wing extremism’ slightly exceeded those for ‘Islamic extremism’, and there were twice as many

46 See e.g. End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland, 2018, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23073&LangID=E>; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, 2017, available at: <https://digitallibrary.un.org/record/1298881?ln=en>.

47 Home Office, *Response to Written Question 6170*, 2 June 2021.

48 Home Office, *Response to Freedom of Information Request* (Ref. 62693), 3 June 2021.

49 Ibid.

50 Reporting period: March 2014 to March 2016. Information obtained under the Freedom of Information Act and held on record.

referrals for 'Mixed, unstable, or unclear ideology'.⁵¹ A disproportionate impact on Muslims remains, however.⁵² The UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance has reported that the "commitment in policy to targeting a more diverse universe of ideological extremism will not cure the fundamental ills" with Prevent's discriminatory operation.⁵³

Children with mental health problems or developmental disorders also appear to be disproportionately affected. Research by the health workers' charity Medact into the number of referrals in the NHS from specialist mental health departments and trusts, compared with other departments and trusts, suggests that people receiving mental health care are more likely to be referred.⁵⁴ Regarding children with developmental disorders, the UK's Independent Reviewer of Terrorism Legislation said in 2021, "my understanding is that the incidents of autism and Prevent referrals are [...] staggeringly high."⁵⁵ This is despite studies finding that "evidence for official claims that people with mental health conditions are more likely to be drawn into terrorism is not robust enough to base policy upon,"⁵⁶ and that "there is no empirical evidence to link autism and terrorism."⁵⁷

Freedom of expression, thought, conscience and religion

Prevent "operates in a 'pre-criminal' space".⁵⁸ While support for or association with proscribed groups is a criminal offence in the UK, the Prevent strategy targets a wide range of *lawful* activity, including thought, expression and behaviour, deemed to predict future criminal activity. It is particularly concerned with "non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists then exploit".⁵⁹ The Prevent duty therefore requires public bodies to monitor children for ideas or behaviour that may be both legal and non-violent, such as dissenting political views outside of the mainstream

51 Home Office, *Individuals referred to and supported through the Prevent Programme, April 2020 to March 2021*, 18 November 2021, available at: <https://www.gov.uk/government/statistics/individuals-referred-to-and-supported-through-the-prevent-programme-april-2020-to-march-2021>.

52 End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland, 2018.

53 Ibid.

54 Medact, *False Positives: The Prevent counter-extremism policy in healthcare*, 2020, pp. 35-36, available at: <https://www.medact.org/wp-content/uploads/2020/07/MEDACT-False-Positives-WEB.pdf>.

55 "Staggeringly high" number of autistic people on UK Prevent scheme, *The Guardian*, 7 July 2021, available at: <https://www.theguardian.com/uk-news/2021/jul/07/staggeringly-high-number-of-people-with-autism-on-uk-prevent-scheme>.

56 Medact, *False Positives: The Prevent counter-extremism policy in healthcare*, 2020, p. 6.

57 Z Al-Attar, 'Autism spectrum disorders and terrorism: how different features of autism can contextualise vulnerability and resilience', *The Journal of Forensic Psychiatry & Psychology*, 31:6, 2020, available at: <https://www.tandfonline.com/doi/abs/10.1080/14789949.2020.1812695>.

58 NHS England, *Prevent Training and Competencies Framework*, 2017, available at: <https://www.cumbria.gov.uk/eLibrary/Content/Internet//537/6683/6687/17169/42977111912.pdf>, p. 6.

59 Home Office, *Revised Prevent duty guidance: for England and Wales*, last updated on 1 April 2021, para. 8.

or changes in religious expression, and which are thus protected under human rights law.⁶⁰ While staff who work with children have a professional responsibility to attend to signs of risk of harm, the targeting of ‘radicalisation’ and ‘extremism’ has encouraged monitoring of a much wider range of behaviour, interfering with children’s right to privacy.⁶¹

Children’s awareness that their behaviour is being monitored, and that this could culminate in a referral to the police, can result in them self-censoring what they say and do, resulting in a chilling effect on their lawful freedom of expression. This particularly applies to certain kinds of expression specifically targeted under Prevent as potential indicators of ‘radicalisation’ or ‘extremism’, including religious expression (particularly of Muslims), political activism (particularly concerning Israel and Palestine), and discussion of ‘terrorism’ as a political and social issue. For example, in 2016 the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association found that the policy had:

Created unease and uncertainty regarding what can legitimately be discussed in public [...] some families are reportedly afraid of even discussing the negative effects of terrorism in their own homes, fearing that their children would talk about it at school and have their intentions misconstrued.⁶²

Indeed, in its ongoing review of the UK, the UN Committee on the Rights of the Child has asked for clarification of the steps taken to “[e]nsure that counter-terrorism measures, including the Prevent Strategy, do not undermine children’s rights to freedom of expression, thought, conscience and religion.”⁶³

Case Study A

In 2021, a 12-year-old Muslim child was referred to Prevent by their school on the basis of an allegation by another child that they had made a comment condoning violence towards gay people. The child denied the allegation, maintaining that they had referred only to what their religion says

60 The right to freedom of expression and to freedom of thought, conscience and religion is protected in both national law and human rights treaties ratified by the UK. See Human Rights Act, Schedule 1, Part I, Articles 9-10, available at: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I>; Convention on the Rights of the Child, Articles 13-14, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; European Convention on Human Rights, Article 9-10, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf; International Covenant on Civil and Political Rights, Articles 18-19, available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

61 Human Rights Act 1998, Schedule 1, Part I, Article 8, available at: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I>; Convention on the Rights of the Child, Article 16, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; European Convention on Human Rights, Article 8, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

62 Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United Kingdom, 2016, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19854&LangID=E>.

63 Committee on the Rights of the Child, *List of issues prior to submission of the combined sixth and seventh review of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/QPR/607, 4 March 2021, para. 17(b).

about homosexuality. The referral had additionally noted several other 'concerns' about the child, including non-violent political views they had expressed and a picture they had drawn, which had either not been previously identified as a concern or were addressed already by staff with the parents.

After the referral, the family received an announced visit from a Prevent officer and social worker. When the Prevent officer asked if he could question the child alone, the parents said they would prefer to stay but agreed to leave the room when the officer said it was best if they were not present. Although the social worker remained present, they did not observe the questioning.

The child later described the interview as intimidating and harassing. The officer told the child that if they had indeed made the alleged statement, they could get a criminal record, which would mean they would struggle to go to university or to get a good job. In his remarks, the officer undermined the relevance of the Quran in modern society and warned the child not to say everything that may be on their mind. After the visit, social services opened section 47 enquiries, in part because of the Prevent referral.

This case raises several concerns:

- The child's non-violent political views and creative expression were all viewed as cause for concern by the school and police.⁶⁴
- Being told to censor what they say had a chilling effect on the child's freedom of expression,⁶⁵ which impeded their social and educational experience at school.
- The child's best interests⁶⁶ were unlikely to have been served by the referral, given that they had denied making the alleged statement. As an alternative, school staff could have addressed the issue of potential discriminatory language with the child, as is routine in most schools.
- The officer's line of questioning intimidated the child and appears to have targeted their religious beliefs.

64 In cases where authorities have restricted speech on national security grounds, the European Court of Human Rights (ECtHR) has considered the likelihood of the concerned speech to exacerbate or justify violence, hatred or intolerance (ECtHR (Grand Chamber), *Perinçek v Switzerland* [2015] App. No. 27510/08, para. 206). A restriction lacking these criteria may lead to a violation of Article 10 of the European Convention on Human Rights. Pursuant to section 2(1)(a) of the Human Rights Act 1998, the UK courts "must take into account" decisions of the European Court of Human Rights. See: <https://www.legislation.gov.uk/ukpga/1998/42/section/2>.

65 The ECtHR has found that the risk of being investigated on the basis of unclear legislation may lead to an unlawful interference with the right to freedom of expression and acknowledged "the chilling effect that the fear of sanction has on the exercise of freedom of expression" (ECtHR, *Altuğ Taner Akçam v Turkey* [2011] App. No. 27520/07).

66 Convention on the Rights of the Child, Article 3(1); Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3 para. 1)*, CRC/C/GC/14, available at: https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf.

Unnecessary and disproportionate interference with children’s rights

Such extensive monitoring of children’s behaviour and the consequent restriction of their fundamental rights can only be justified if it can be shown to meet strict conditions set out in human rights law (see text box below).

What are the Government’s responsibilities to children with regards to the prevention of their recruitment by non-state armed groups?

The UK has accepted the legal responsibility under international human rights law to take all feasible measures to prevent the recruitment and use of children by non-state armed groups.⁶⁷

Under human rights law, the UK may place restrictions on some of children’s fundamental rights, including their right to privacy, freedom of expression, freedom of assembly, and freedom of thought, conscience and religion, if the express purpose is to protect national security or public safety, and provided only that such restrictions are:

- Necessary for those legitimate purposes;
- Proportionate to the aim;
- Prescribed by law.⁶⁸

The high numbers of children referred to Prevent, combined with the low proportion (9 percent) of child referrals that are adopted as a Channel case,⁶⁹ suggest that the strategy is driving a much larger-scale and intrusive response than is necessary and proportionate to respond to the risk of children being groomed and recruited by non-state armed groups. As explained below, the adoption of a child as a Channel case is also far from indicative that they are at significant risk of this harm.

It is also doubtful that these restrictions on children’s rights are necessary and proportionate, because evidence of Prevent’s effectiveness is lacking. The strategy’s assumption that putatively ‘extremist’ views or association with non-violent ‘extremist’ groups predict any kind of criminal offending has been widely criticised; many experts in psychology and in counter-terrorism have described this premise

67 The UK has ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), see Article 4, available at: <https://www.ohchr.org/en/professionalinterest/pages/opaccrc.aspx>.

68 Human Rights Act 1998, Schedule 1, Part I, Articles 8-11, available at: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>; Convention on the Rights of the Child, Articles 13-16, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

69 See Figure 2 above.

as fatally flawed, especially for its over-simplification.⁷⁰ The UK Government's own research supports this view, according to a Whitehall paper leaked in 2010:

It is sometimes argued that violent extremists have progressed to terrorism by way of a passing commitment to non-violent Islamist extremism [...] We do not believe that it is accurate to regard radicalisation in this country as a linear 'conveyor belt' moving from grievance, through radicalisation, to violence [...] This thesis seems to both misread the radicalisation process and to give undue weight to ideological factors.⁷¹

While the Government's latest counter-terrorism strategy explicitly disassociates itself from the 'conveyor belt' theory,⁷² the focus on 'non-violent extremism' has not been dropped. Prevent still aims to identify individual children 'at risk' on the basis of their views and activities, rather than seeking to address the underlying conditions conducive to children's exploitation by armed groups. The Neuchâtel Memorandum, as the leading international standard on criminal justice and children in the context of counter-terrorism, states that prevention strategies should focus resources on "key structural and social factors" that render children vulnerable to recruitment and use, such as "exclusion and discrimination; lack of access to education; domestic violence; lack of social relations; poor economic background and unemployment; prior petty offending; time in juvenile custody; and the appeal of money offered by terrorist groups", as well as children's displacement, especially due to conflict.⁷³

Prevent practices aimed at preventing 'radicalisation' also lack a solid basis in evidence, particularly as they apply to children. To identify vulnerability to 'radicalisation', Channel provides a Vulnerability Assessment Framework that sets out 22 factors (see Fig. 2).⁷⁴ These factors are derived from a tool called the Extreme Risk Guidance 22+ (ERG22+), based on an unpublished study from 2010. The authors of the study acknowledge that the tool was based on a specific group - adults convicted of terrorism offences - at a specific time, and that its main limitation is a "current lack of demonstrated reliability and validity".⁷⁵ The 22 factors identified clearly include some inherent to many adolescent children, including "being at a transitional time of life", "desire for political or moral change" and need

70 See e.g. Open Society Justice Initiative, *Eroding Trust: The UK's Counter-Extremism Strategy in Health and Education*, 2016, pp. 36-38, available at: https://www.justiceinitiative.org/uploads/f87bd3ad-50fb-42d0-95a8-54ba85dce818/eroding-trust-20161017_0.pdf.

71 'Hizb ut Tahrir is not a gateway to terrorism, claims Whitehall report', *The Telegraph*, 25 July 2010.

72 HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, 2018, p. 32.

73 Global Counterterrorism Forum, *Neuchâtel memorandum on good practices for juvenile justice in a counterterrorism context*, 2016, available at: <https://www.thegctf.org/Portals/1/Documents/Lifecycle%20Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf?ver=2016-09-13-141037-077>, pp. 4-5.

74 HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, pp. 51-52.

75 M Lloyd and C Dean, 'The development of structured guidelines for assessing risk in extremist offenders', *Journal of Threat Assessment and Management*, 2:1, 2015, available at: https://research.birmingham.ac.uk/portal/files/42816555/Lloyd_and_Dean_The_development_of_structured_guidelines_Journal_of_Threat_Assessment_and_Management_2017.pdf, p. 22.

for identity, meaning, belonging, status, excitement and adventure. Others, such as “individual knowledge, skills and competencies”, are ambiguous and broad. As the Royal College of Psychiatrists points out, it is extremely difficult to develop tools that predict events as rare as atrocities by non-state armed groups, especially given the lack of data on individuals who have engaged in these acts and how they differ from the wider population.⁷⁶

Figure 3: Channel Vulnerability Assessment Framework factors⁷⁷	
<p>Engagement with a group, cause or ideology</p> <ul style="list-style-type: none"> • 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 • Relevant mental health issues <p><i>Example indicators:</i> changing their style of dress or personal appearance to accord with the group; possession of material or symbols associated with an extremist cause.</p>	<p>Intent to cause harm</p> <ul style="list-style-type: none"> • Over-identification with a group or ideology • ‘Them and Us’ thinking • Dehumanisation of the enemy • Attitudes that justify offending • Harmful means to an end • Harmful objectives <p><i>Example indicators:</i> clearly identifying another group as threatening what they stand for and blaming that group for all social or political ills; using insulting or derogatory names or labels for another group.</p>
	<p>Capability to cause harm</p> <ul style="list-style-type: none"> • Individual knowledge, skills and competencies • Access to networks, funding or equipment • Criminal capability <p><i>Example indicators:</i> having occupational skills that can enable acts of terrorism (such as civil engineering, pharmacology or construction).</p>

76 Royal College of Psychiatrists, *Counter-terrorism and psychiatry: Position Statement PS04/16*, 2016, available at: https://www.rcpsych.ac.uk/docs/default-source/improving-care/better-mh-policy/position-statements/ps04_16.pdf?sfvrsn=a6681467_4, pp. 5-6.

77 HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, pp. 51-52.

Finally, Prevent infringes the requirement that any interference with children's fundamental rights must be prescribed by law. This means that the measure must be formulated with sufficient precision and implemented uniformly in order to allow individuals, including children, to adapt their conduct in accordance with the law. The Prevent duty as set out in law and statutory guidance is notably vague. The guidance for schools, for example, requires them to "assess the risk of children being drawn into terrorism...[and] demonstrate that they are protecting children and young people from being drawn into terrorism by having robust safeguarding policies in place to identify children at risk, and intervening as appropriate".⁷⁸ It does not prescribe how to identify children at risk, what level of risk requires intervention, or how to determine what an 'appropriate' intervention is. The ambiguity is exacerbated by the lack of consensus on the practical meaning of key Prevent terms. 'Extremism', for example, 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".⁷⁹ The nature of values deemed 'fundamental' to the nation state is an inescapably subjective matter of opinion, which blurs the distinction between the state's definition of 'extremism' and lawful political dissent.

The lack of clarity in the law, statutory guidance, and key terms affords professionals and bodies subject to the Prevent duty wide discretion. This has led to practitioners "filling in the gaps"⁸⁰ with their own notions of 'extremism' and 'radicalisation' (inevitably shaped by dominant political narratives and individual bias). The legal imprecision has also allowed locally-issued guidance, training and practice of varying quality⁸¹ to shape Prevent practice arbitrarily. For example, Government research in 2017 found a wide disparity in how local authorities were responding to their new 'radicalisation' duties, finding that "staff were most confident [...] in local authorities where safeguarding and child protection teams had arrived at a clear conclusion about who should take ownership of these cases, and developed guidance around assessment and handling of radicalisation cases."⁸² This lack of uniformity and clarity led the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to conclude that the "overall application of Prevent [is] unpredictable and potentially arbitrary, hence rendering it inconsistent with the principle of the rule of law".⁸³

78 Home Office, *Revised Prevent duty guidance: for England and Wales*, last updated on 1 April 2021, paras. 67-68.

79 HM Government, *Prevent Strategy*, 2011, pp. 107-108.

80 L Vaughn, 'Doing Risk': *Practitioner Interpretations of Risk of Childhood Radicalisation and the Implementation of the HM Government PREVENT Duty*, 2019, PhD thesis, University of Liverpool, available at: https://livrepository.liverpool.ac.uk/3047974/1/935620654_MAR2019.pdf, p. 188.

81 For example, the basic training for professionals required to implement the Prevent duty, known as Workshop to Raise Awareness of Prevent (WRAP), is only around an hour in length, and is delivered by a variety of different local providers, so consistency is not guaranteed. HM Government, *Prevent: Training Catalogue*, 2016, available at: https://educateagainsthate.com/wp-content/uploads/2018/01/Prevent_Training_catalogue_-_March_2016.pdf, p. 6.

82 Department for Education, *Safeguarding and radicalisation: Research report*, 2017, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/635262/Safeguarding_and_Radicalisation.pdf, p. 6.

83 Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United Kingdom, 2016.

Case studies B and C: Confused and flawed application of the Prevent duty

An 8-year-old child in London was referred to social services by his school exclusively on the basis of two concerns; that he wore a t-shirt which read “I want to be like Abu Bakr al-Siddique” (a reference to a major figure from the early history of Islam), and that he said his father had a “secret job” selling nail polish. Social services questioned the child, with his parents kept out of the room, about his religious beliefs and asked him whether the t-shirt was a reference to ISIL. Throughout the process, the school and social services showed uncertainty about the powers under which they were interviewing the child. The school had told the mother it was making a “referral” to social services, and the social services representative used the word “deradicalisation”, but the formal Prevent referral process was not followed. The head of social services subsequently said that the child’s situation was outside the scope of Prevent. Social services told the mother they had recorded a form of caution against the child, but the mother remains uncertain as to what this means.⁸⁴

In 2015, a Muslim student at Staffordshire University filed a complaint of discrimination after its staff, having seen him reading a book on terrorism in the library, questioned him about his religious beliefs and communicated their suspicions to security staff that he could be a “radical terrorist”. In response to the complaint, the University said that it had “a commitment to secure freedom of speech and to prevent people from being drawn into terrorism”, but described the Prevent duty as “very broad” and containing “insufficient detail to provide clear practical direction in an environment such as the University’s”. The staff member in question issued a letter of apology, which stated, “I do not possess any particular knowledge or experience of terrorism and radicalisation, and I have only attended a short training session on how to identify students who might be at risk of being radicalised.”⁸⁵ While this case concerns a higher education setting, the lack of clarity provided by Prevent policy, guidance and training is likely to have similar effects in education settings for children.

In sum, the Prevent programme entails a high level of monitoring of children’s behaviour, interfering with the enjoyment of their fundamental rights, without adequate evidence that this is either necessary for, or effective in, safeguarding children. Multiple shortcomings in the law and policy governing Prevent, and failures in its application, raise serious concerns over its compliance with human rights law. Prevent has intruded on the lives of Muslim and minoritised children especially.

84 RightsWatchUK, *Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools*, 2016, available at: https://www.rightsandsecurity.org/assets/downloads/preventing-education-final-to-print-3-compressed-1_.pdf, pp. 32-34.

85 MEND, *Evidence Submitted to the Independent Review of Prevent*, 2019, available at: <https://www.mend.org.uk/wp-content/uploads/2019/12/PREVENT-Submission-MEND.pdf>, p. 29.

The purpose of Prevent: Security over safeguarding

Any questions were met with judgement and hostility. The social workers and professionals were very condescending. The social workers kept saying at the start of the referral that the views and wishes of us, the children are important but they didn't care about that and used 'safeguarding' as an excuse to bully us into doing the Prevent assessment which we kept refusing.

—Three teenage children referred to Prevent

The framing of Prevent as a safeguarding framework, rather than counter-terrorism policing, has been crucial to its legitimisation. The desire to protect children from being groomed or recruited by non-state armed groups is a necessary and legitimate aim, but it is important to assess whether Prevent's design and implementation safeguards children in practice, or indeed militates against their best interests.

The government's statutory guidance defines "safeguarding and promoting the welfare of children" as:

- Protecting children from maltreatment;
- Preventing impairment of children's mental and physical health or development;
- Ensuring that children grow up in circumstances consistent with the provision of safe and effective care; and
- Taking action to enable all children to have the best outcomes.⁸⁶

The guidance elaborates that safeguarding requires a "child-centred approach". This means "working in partnership with [children] and their families" and putting "the needs of children first when determining what action to take", in line with the UN Convention on the Rights of the Child.⁸⁷ Among the conditions that might require a formal safeguarding intervention is the "risk of being radicalised", alongside factors such as "risk of modern slavery, trafficking or exploitation", "domestic abuse", and "gang involvement and association with organised crime groups".⁸⁸

Prevent departs from other types of safeguarding intervention because it requires bodies subject to the Prevent duty to intervene at a much lower threshold of risk to a child. The Children Act 1989 uses the language of "likelihood" of harm. Section 17 requires local authorities to safeguard children who are "in need". This includes those *unlikely* to achieve or maintain a reasonable standard of health or development, and those whose health and development are *likely* to be impaired.

86 HM Government, *Working Together to Safeguard Children*, 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942454/Working_together_to_safeguard_children_inter_agency_guidance.pdf, pp. 6-7.

87 *Ibid.*, pp. 9-11.

88 *Ibid.*, p. 14.

Section 47 requires local authorities to safeguard children who are suffering, or are *likely* to suffer, significant harm. In contrast to the safeguarding threshold in the Children Act, the “risk of being radicalised” has a much lower threshold; the Prevent duty does not require that a child be *likely* to be exploited by an armed group in order to authorise a formal intervention.

Prevent is also distinct from safeguarding because it is not centred on children’s best interests;⁸⁹ national security is its highest priority, which inevitably leads to conflict with the child-centred principles of safeguarding, as the case studies in this report illustrate. While Prevent and Channel policy use the language of identifying ‘vulnerable’ children ‘*at risk* of radicalisation’ [emphasis added] and offering them ‘support’, in practice the strategy also views the children within its scope as suspects; as individuals who may *pose a risk*. A government-commissioned report found that safeguarding professionals experienced this conflict of interest routinely:

There was often a perception [in local authorities] that the risk of radicalisation appears to be ‘to others’ (i.e. victims of potential extremism crimes) rather than to the young person, and that therefore tackling and preventing these crimes is a task that falls within the remit of community safety, rather than safeguarding or child protection.⁹⁰

The national security considerations in Prevent are evident from the fact that all referrals pass through counter-terrorism police intelligence as a first port of call, and from the compulsory presence and coordinating role of counter-terrorism police on the Channel panel (see Fig. 1). Children’s rights principles highlight the harm caused to children by exposure to the criminal justice system, and the need to prevent their contact with that system as far as possible.⁹¹ By bringing children who are not accused of any crime into contact with the police, Prevent fails to make their best interests a primary consideration, as required by the Convention on the Rights of the Child,⁹² as well as by the Government’s own definition of safeguarding.⁹³

89 Article 3(1) of the Convention on the Rights of the Child enshrines children’s right to have their best interests taken as a “primary consideration [...] [i]n all actions involving [them]”. The Committee on the Rights of the Child has held that this concept is threefold, encompassing a substantive right, a rule of procedure and an interpretative principle, all of which must be applied in particular situations regarding children and upon formulation of policies involving them. Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3 para. 1)*, CRC/C/GC/14, para. 6.

90 Department for Education, *Safeguarding and radicalisation: Research report*, 2017, pp. 15-16.

91 Convention on the Rights of the Child, Article 3(1), available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>; Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, CRC/C/GC/24, para. 2, available at: <https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>.

92 Convention on the Rights of the Child, Article 3(1), available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

93 HM Government, *Working Together to Safeguard Children*, 2018, pp. 6-7.

In addition, it is doubtful that the right of children referred to Prevent to be heard is honoured, or that their views are given due consideration in their treatment, as required by the Convention.⁹⁴

Case study D (Part 1)

In 2019, Prevent officers had been repeatedly trying to contact the father of a six-year-old child. The father declined to engage with Prevent officers, as he had no legal obligation to do so. In early 2020, the police visited the child's school, unannounced, to ask if staff had any concerns about the child. Staff reported no such concerns, but the police visit provoked one member of staff to recall a conversation with the child, in which they had spoken about Allah as the creator, said they wanted people to listen to Allah, and mentioned an Arabic prayer. The school passed this information on to the police on the grounds that it could be "of interest", though without explaining why.

The Prevent officers then made a referral to social services, resulting in a section 17 safeguarding enquiry. The family was visited, unannounced, later in the year by a Prevent officer and a social worker asking to speak to the father, who was not at home. The officer then explained that, since the father had chosen not to engage, they had safeguarding concerns for the child, declining to elaborate until the father spoke with them.

The mother reported later that the social worker looked confused and uncertain throughout the discussion, and had no input. She asked the social worker whether, if the police dropped the Prevent case with her husband, the safeguarding case with her child would also be closed, and the social worker confirmed that it would. The family said that this contact with the Prevent team and social services had added to their experience of police harassment. After a Channel meeting about the child, the case was indeed dropped, but at the time of writing the family are still trying to have the child's data deleted by the various agencies that hold it, including the police.

⁹⁴ Under Article 12 of the Convention on the Rights of the Child, children have the right to be heard in all matters affecting them and their views must be given due weight in accordance with their age and maturity. On this note, the Committee on the Rights of the Child has found that "simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views". See UN Committee on the Rights of the Child, *General Comment No. 12 (2009) The right of the child to be heard*, CRC/C/GC/12, 20 July 2009, available at: <https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf>, para. 28.

This case raises the following concerns:

- No safeguarding concern was raised about the child prior to the police visit to the school, and the conversation which formed the basis for the referral was not explicitly flagged as being of concern. Accordingly, it appears that the referral was motivated by policing priorities, e.g. intelligence-gathering about the father, rather than a genuine safeguarding concern for the child.
- In approaching the school for evidence of concerns about the child, the police risked stigmatising them, which is not in their best interests and thus conflicts with the UK's obligations under the Convention on the Rights of the Child. Indeed the police contact appears to have led the teacher to view the child differently, particularly in relation to their religious beliefs. The conversation reported, which concerned only Muslim faith and history and the Arabic language, was not suggestive of any risk to the child or to others.
- Although he had no legal obligation to engage with Prevent, the father was effectively coerced to do so by the referral of their child.
- What appears to be a misguided and police-led referral of the child still led to data about the child being collected, held and shared with a number of authorities (see chapter II for details).

More broadly, children's testimony indicates that they do not experience a Prevent referral as a process with their welfare, best interests, and views at its heart. Prevent's counter-terrorism purpose, and notably the involvement of the police, leads to children and families who have not committed a crime feeling criminalised and stigmatised. There are many reports of substantial distress caused in children, including young children, who have been removed from classes and questioned, often alone, sometimes by police, about their beliefs, private life, and views on 'terrorism'.⁹⁵ Testimony also indicates that, frequently, neither children nor their parents are invited to consent to the process before a child is referred to Prevent, despite UK safeguarding policy stating that it is "good practice to ensure transparency and to inform parent/carers that you are sharing information for these purposes and seek to work cooperatively with them".⁹⁶

95 See e.g. Case Studies A and E, this report; 'The T-shirt case' and 'The eco-terrorism case', RightsWatchUK, *Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools*, 2016; 'Case study 3', Open Society Justice Initiative, *Eroding Trust: The UK's Counter-Extremism Strategy in Health and Education*, 2016.

96 HM Government, *Working Together to Safeguard Children*, 2018, p. 21.

For children adopted as Channel cases, concerns have been raised over whether the ‘support’ given is in their best interests.⁹⁷ Stephanie Petrie, an academic and registered social worker, described Channel packages as:

A rag-bag of quasi-therapeutic interventions that have little coherence or any indication of how standards of professional expertise will be ensured [...] Many of these services – such as careers and health advice – should be made available to all young people as standard anyway. Many of the others, such as cognitive and behavioural therapies, have the potential to cause enormous damage if their provision is not properly regulated and supervised [...] Merely describing interventions into the lives of young and vulnerable people as ‘support’ and ‘protection’ doesn’t automatically make them so.⁹⁸

A leaked 2018 study commissioned by the Home Office into Prevent-funded interventions also found that more than 95 percent were ineffective, for reasons including that participants felt the programmes limited their freedom of speech, and that facilitators were uncomfortable dealing with sensitive topics such as race and religion. One of the directors of the study commented that even those interventions that did work “tended to work by chance — there was no grounding in psychological research that could potentially lead to impactful projects”.⁹⁹

In sum, Prevent is repeatedly inconsistent with Government guidance that defines safeguarding as “taking action to enable all children to have the best outcomes”.¹⁰⁰ Testimonies reveal children suffering from mental health problems,¹⁰¹ reluctant to express themselves,¹⁰² undermined in respect of their education,¹⁰³ and ceasing lawful activities that were deemed suspicious, such as political activism or drawing.¹⁰⁴ Indeed, the evidence of the impact on children suggests that Prevent has too often been inimical to safeguarding; the programme has frequently caused, rather than prevented, the “impairment of children’s mental and physical health or development”.¹⁰⁵

97 Convention on the Rights of the Child, Article 3(1), available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

98 ‘The Channel programme: helping vulnerable people or nudging them towards radicalisation?’, *The Conversation*, 9 October 2015, available at: <https://theconversation.com/the-channel-programme-helping-vulnerable-people-or-nudging-them-towards-radicalisation-48863>.

99 ‘Most programmes to stop radicalisation are failing’, *The Times*, 6 June 2018, <https://www.thetimes.co.uk/article/most-programmes-to-stop-radicalisation-are-failing-0bwh9pbtd>.

100 HM Government, *Working Together to Safeguard Children*, 2018, p. 7.

101 ‘Case 5’, Medact, *False Positives: The Prevent counter-extremism policy in healthcare*, 2020.

102 See e.g. ‘The t-shirt case’, RightsWatchUK, *Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools*, 2016; ‘Case study 3’, ‘Case study 5’ and ‘Case study 10’, Open Society Justice Initiative, *Eroding Trust: The UK’s Counter-Extremism Strategy in Health and Education*, 2016.

103 Ibid.

104 See e.g. ‘Rahmaan’s case’, RightsWatchUK, *Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools*, 2016; ‘Case study 4’, Open Society Justice Initiative, *Eroding Trust: The UK’s Counter-Extremism Strategy in Health and Education*, 2016.

105 HM Government, *Working Together to Safeguard Children*, 2018, p. 7.

Prevent undermines children’s access to public services

The schools were not supportive, they ignored our achievements and started looking for problems [...] A private conversation with a teacher about my mental health due to exam stress was mentioned in the social worker meeting needlessly by the appointed safeguarding member of the team at school.

—Three teenage children referred to Prevent

The Prevent duty supposedly “does not confer new functions on any specified authority”, but requires public services to “place an appropriate amount of weight on the need to prevent people being drawn into terrorism” when carrying out their usual functions.¹⁰⁶ In fact, considerable evidence indicates that the duty conflicts with those functions and is undermining the ability of various essential services to carry them out. Self-evidently, public services such as health, education and social work require public trust to operate effectively. The knowledge that a teacher, social worker, or health worker could refer any child to a police-led counter-terrorism programme without the family’s prior knowledge or consent has engendered a climate of mistrust that undermines children’s full access to essential services to which they are entitled.

A 2020 report into the implementation of Prevent in healthcare settings found evidence of referrals “damaging the therapeutic relationship between patient and practitioner, possibly setting back recovery [...] and damaging patient trust in health professionals in a way that interrupts care or causes them to disengage entirely”.¹⁰⁷ In the context of education, the National Union of Teachers passed a motion in 2016 calling on the government to withdraw the Prevent policy in schools and colleges, as it “could worsen relationships between teachers and learners, close down space for open discussion in a safe and secure environment and smother the legitimate expression of political opinion”.¹⁰⁸ Children’s right to health and education,¹⁰⁹ as well as multiple other rights dependent on access to public services, are thus impeded by Prevent.

106 Home Office, *Revised Prevent duty guidance: for England and Wales*, last updated on 1 April 2021, para. 4.

107 Medact, *False Positives: The Prevent counter-extremism policy in healthcare*, 2020, pp. 52-53.

108 ‘NUT prevent strategy motion: what it actually says’, *Schools Week*, 28 March 2016, available at: <https://schoolsweek.co.uk/nut-prevent-strategy-motion-what-it-actually-says/>.

109 Convention on the Rights of the Child, Articles 24, 28-9, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

Case study E

A 12-year-old child was being bullied at school, had few friends, and had befriended an individual online who said hateful things about certain ethnic groups and expressed violent intentions. In 2021, the child was referred to Prevent after using the term “jihadist” in school. They were pulled out of class and told off, which led to them being called names by the other pupils when they returned. The next day, the child was questioned, alone, by a teacher about their views and online activity. This caused severe distress to the child, who later described it as “the worst day of my life”. They were not clear on the meaning of “jihadist”. During the questioning, their mother was asked to bring the child’s devices into school for examination by the IT department. She did so, but the parents later said that they felt unable to make an informed decision about whether this had been a proportionate request, as they were intimidated by the school’s phone call and had been given little information. They did not know that this had not been discussed with the child, who felt that their privacy had been violated and their trust in staff broken.

The family are glad to have been made aware of the risks their child has faced online, but are disappointed that their child was treated like a criminal rather than a potential victim of online grooming. They are also upset that the school’s response has exacerbated the bullying rather than addressed it. A social worker made contact with the family to arrange a voluntary visit, but the family felt they were capable of supporting the child so declined. However, even after the case was closed by the social worker, the family have continued to receive calls, texts and emails from the Prevent team, which have continued to cause distress.

This case raises the following concerns:

- On the evidence available, it appears that the search on the child’s devices did not meet the conditions of being provided for by law, “proportionate” to the national security aim pursued, and in response to a “pressing social need”,¹¹⁰ which could amount to a violation of their right to private life.¹¹¹

110 ECtHR (Grand Chamber), *Vavřička and Others v. the Czech Republic* [2021] Apps. Nos. 47621/13 and 5 others, para. 273.

111 Human Rights Act 1998, Schedule 1, Part I, Article 8; Convention on the Rights of the Child, Article 16; European Convention on Human Rights, Article 8.

- The child's views on the referral and the search of their devices do not appear to have been sought; the school did not respect their legal right to be heard in the matter.¹¹² Continued contact of the family by Prevent officials, even after they had expressed their wish to handle any possible risks themselves and social services had closed their case, is an example of children's and families' views not being respected.
- The child experienced the school's response to the incident as stigmatising. It did nothing to address the serious bullying the child had been experiencing and or the effect on the child of possible grooming online. The approach wholly failed to put the best interests of the child at the centre of the school's response and risked further traumatising the child.¹¹³

Such conflicts of interest also undermine the ability of public services to safeguard children from risks, including the risk of recruitment and use by armed groups itself.¹¹⁴ The Prevent programme's erosion of trust means that children and those close to them are less likely to raise concerns for their welfare with professionals who may otherwise be in a position to intervene appropriately to safeguard them. One Muslim sixth form student described how this can be counter-productive:

If we isolate young Muslims what we are doing is only pushing them further [...] I think Prevent started out with this intention of helping people but what it is doing is making our teachers and making people that we trust into spies. And it isolates us so much that we don't know who to turn to. If that is the case then it is very dangerous... [students] may feel that they have to go to someone else that will accept them, be it someone with a small amount of knowledge about Islam or someone with lots.¹¹⁵

A 2017 government study, having discovered similar concerns among local authority staff, reported: "Safeguarding and child protection professionals worried that families who are sceptical of their role in the Prevent agenda may begin to see them as an arm of the police, damaging relationships and trust that has in many cases been built up through long-term engagement."¹¹⁶ The same study also found that "overzealous or oversensitive" Prevent referrals were putting stress on wider child protection resources:

112 Convention on the Rights of the Child, Article 12.

113 Convention on the Rights of the Child, Article 3(1).

114 Upon ratification of the OPAC, the UK has accepted the international obligation to take all feasible measures to prevent the recruitment and use of children by non-state armed groups (Article 4(2)).

115 RightsWatchUK, *Preventing Education? Human Rights and UK Counter-Terrorism Policy in Schools*, 2016, p. 44.

116 Department for Education, *Safeguarding and radicalisation: Research report*, 2017, p. 23.

Frontline practitioners in several authorities spoke of receiving referrals from universal services that were ultimately found to be below safeguarding and child protection thresholds, which nevertheless resulted in time consuming assessments and problems in relationships with families and young people.¹¹⁷

In alienating children and their families, whom professional services should be supporting, Prevent may also be feeding the very conditions in which the recruitment of children by violent or armed groups thrives.

The Prevent policy in 2022

In 2019, following calls from Parliament's Human Rights Committee,¹¹⁸ the former Independent Reviewer of Terrorism Legislation,¹¹⁹ the UN Committee on the Rights of the Child,¹²⁰ and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association,¹²¹ the Government agreed to commission an 'Independent Review' of Prevent with a statutory deadline of August 2020.¹²² This deadline was removed after the Government's first appointed Reviewer - Lord Carlile - was stood down following a legal challenge based on his bias in favour of the policy.¹²³ He had previously declared his "considered and strong support" for Prevent, and had told the House of Lords "I admit I played a part in [Prevent], so I may be somewhat biased towards it."¹²⁴ The appointment of his replacement - William Shawcross - was met with a boycott by 17 major human rights organisations and hundreds of Muslim organisations.¹²⁵

117 Ibid., p. 27.

118 Joint Committee on Human Rights, *Counter-Extremism: Second Report of Session 2016-17*, 2016, available at: <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/105/105.pdf>.

119 David Anderson QC, *Supplementary written evidence to the Home Affairs Select Committee*, 29 January 2016, available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/countering-extremism/written/27920.pdf>.

120 See UN Committee on the Rights of the Child, *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/5, 12 July 2016, para. 22 (b).

121 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland, 2017.

122 HM Government, *The Counter-Terrorism and Sentencing Bill – Independent Review of Prevent Fact-sheet*, 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/959446/cts-bil-fact-sheet0independent-review-prevent-jan-2021.pdf.

123 'Lord Carlile removed from Prevent review after legal challenge', *The Guardian*, 20 December 2019, available at: <https://www.theguardian.com/uk-news/2019/dec/19/lord-carlile-prevent-review-legal-challenge>.

124 Liberty, *Public statement on the appointment of Lord Carlile as Independent Reviewer of Prevent*, 18 July 2019, available at: <https://www.libertyhumanrights.org.uk/issue/public-statement-on-the-appointment-of-lord-carlile-of-berriew-as-independent-reviewer-of-prevent/>.

125 'Human rights groups to boycott government's Prevent review', *The Guardian*, available at: <https://www.theguardian.com/uk-news/2021/feb/16/human-rights-groups-to-boycott-government-prevent-review>; 'Hundreds of Islamic groups boycott Prevent review over choice of chair', *The Guardian*, 17 March 2021, available at: <https://www.theguardian.com/uk-news/2021/mar/17/hundreds-islamic-groups-boycott-prevent-review-william-shawcross-protest>.

Among their concerns were that Shawcross was on record expressing Islamophobic views, such as that “Europe and Islam is one of the greatest, most terrifying problems of our future.”¹²⁶ He also presided over the Charity Commission in a period when it was repeatedly accused of disproportionately targeting Muslim charities for investigation.¹²⁷ The Shawcross Review missed the revised deadline of 31 December 2021 and, at the time of writing, the Review is still awaiting publication.¹²⁸

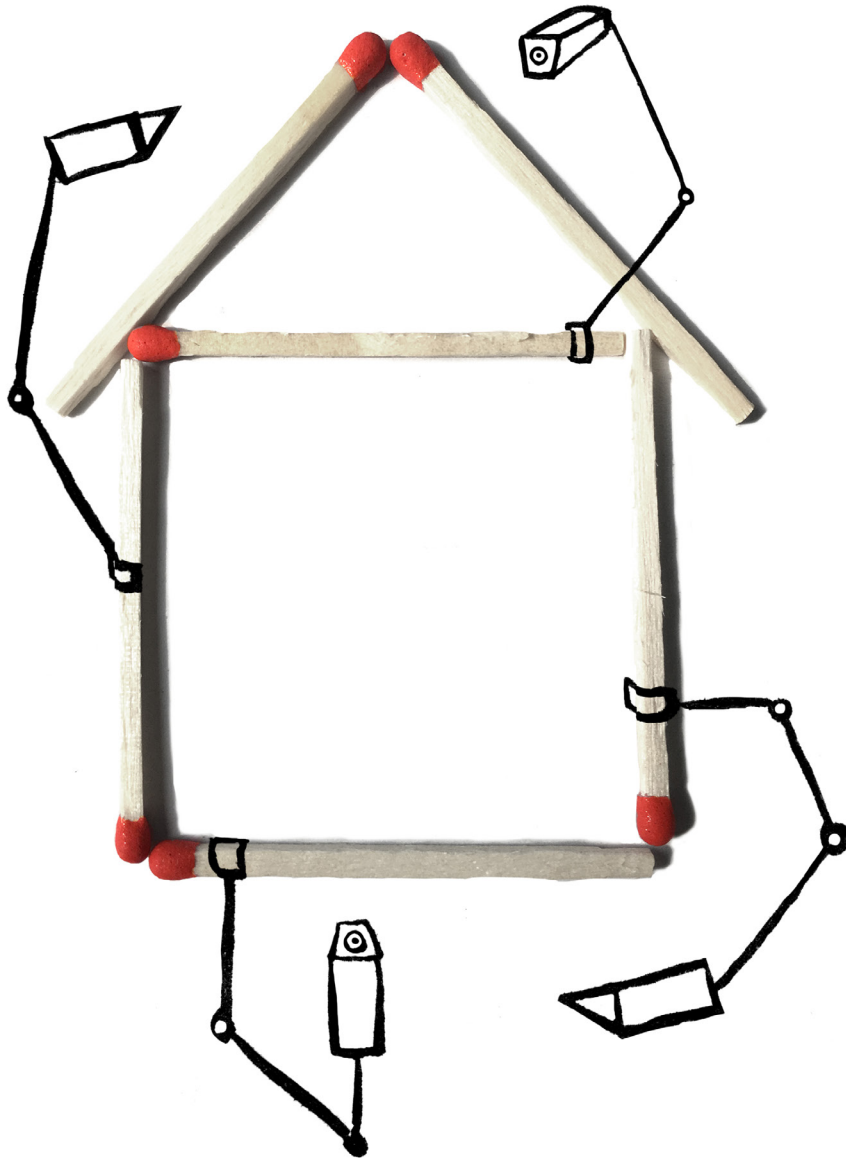
Despite widely held, well-evidenced criticisms of Prevent and a pending review, the Prevent duty is being replicated in other areas of police policy. For example, the Police, Crime, Sentencing and Courts Bill currently before Parliament includes a proposal for a Serious Violence Duty, which rights groups say has the potential to “risk further criminalising communities over addressing root causes [...] breach individuals’ data rights and their right to a private life and [...] erode relationships of trust between frontline professionals and the individuals they work with”.¹²⁹ The framing of the proposed duty differs from that of Prevent, but the latter’s influence on other areas of policy demands scrutiny.

126 Liberty, *Rights groups boycott Prevent Review*, 16 February 2021, available at: <https://www.libertyhumanrights.org.uk/issue/rights-groups-boycott-prevent-review/>.

127 Ibid.

128 ‘Review of Prevent counter-extremism programme misses deadline – almost three years after it began’, *The Independent*, 24 December 2021, available at: <https://www.independent.co.uk/news/uk/home-news/prevent-review-shawcross-delay-extremism-b1981654.html>.

129 Liberty et al., *Joint briefing for House of Commons ahead of Report Stage of the Police, Crime, Sentencing and Courts Bill*, 2021, available at: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/04/Joint-Briefing-on-Part-2-and-10-PCSC-Bill-Liberty-StopWatch-Fair-Trials-Big-Brother-Watch-Defend-Digital-Medact-Unjus.pdf>.



Chapter II: Prevent and children's data

The Prevent policy has dramatically changed how children's data is processed. From the monitoring of children's use of school computers, to reports from teachers, doctors, social workers and child-minders, a large amount of varied and detailed information about children's lives is being collected under Prevent. This information is shared with counter-terrorism police and other authorities, including, apparently, for purposes unrelated to national security. What kind of information is sought, which agencies collect it, for how long they hold it, and which third parties may also access it, are questions that remain largely unanswered. Although the Home Office admits that Prevent "must not involve any covert activity against people or communities",¹³⁰ the available evidence indicates that Prevent operates in an opaque manner. Data practices under Prevent appear to infringe children's rights, while making it difficult for children and their families to understand and challenge the processing of their data.

What laws govern data processing under Prevent and Channel?

The collection, sharing and retention of data for the purposes of Prevent and Channel must comply with human rights law (Human Rights Act 1998), data protection law (the UK's General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018) and with common law obligations, such as the duty of confidentiality.

Under human rights law,¹³¹ the interference by public authorities with the right to privacy is permissible only if it is in accordance with the law and necessary in a democratic society in the interests of a legitimate aim, such as national security, public safety, or the prevention of disorder or crime. The interference must also be proportionate to the aim in view.

The Home Office argues that its processing of personal data within Channel is justified under the UK GDPR and the Data Protection Act 2018¹³² because it is "necessary for the performance of a task carried out in the public interest or in

130 Home Office, *Revised Prevent duty guidance: for England and Wales*, last updated on 1 April 2021, para. 21.

131 Human Rights Act 1998, Schedule 1, Part I, Article 8, available at: <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>.

132 Home Office, *Channel data privacy information notice*, last updated on 19 April 2021, available at: <https://www.gov.uk/government/publications/channel-data-privacy-notice/channel-data-privacy-information-notice>.

the exercise of official authority”,¹³³ while the processing of “special category” or sensitive data such as that which reveals ethnicity, religion, and health is “necessary [...] for reasons of substantial public interest, and for the discharge of a statutory function which is set out in section 36 of the Counter-Terrorism and Security Act 2015”.^{134 135}

Counter-terrorism police process data for law enforcement purposes under the Data Protection Act 2018.¹³⁶ Those purposes are named as the “prevention, investigation, detection or prosecution of criminal offences”, including the “safeguarding against and the prevention of threats to public security”.¹³⁷ A total of six data protection principles govern data processing in this case, including that the processing must be lawful, fair and transparent, that personal data be adequate, relevant and not excessive, and that it be kept for no longer than is necessary.¹³⁸

Data processing under Prevent: A lesson in obscurity

Transparency is a fundamental principle of good data protection. When any personal data is being collected, it should be clear what that data is, who is collecting it, how it is being used, and what avenues are available to have data corrected or deleted. This applies especially to children, who are less able than adults to defend their rights in general and, in particular, to navigate complicated data protection policies. The collection and use of children’s data under Prevent fails to meet this standard and appears to violate children’s rights and national law.

What data is being collected?

It remains unclear how much data is collected for the purposes of a Prevent referral. The Home Office states that the data held at the start of the Channel process includes personal data (name, date of birth, gender, address, contact information), as well as “special category” or sensitive data (ethnic group, religion), and the reason for referral.¹³⁹

133 UK’s General Data Protection Regulation (UK GDPR), Article 6(1)(e), available at: <https://www.legislation.gov.uk/eur/2016/679/article/6> and Data Protection Act 2018, Part 2, Chapter 2, section 8, available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/8>.

134 See Counter-Terrorism and Security Act 2015, Schedule 6, available at: <https://www.legislation.gov.uk/ukpga/2015/6/schedule/6>.

135 UK GDPR, Article 9(2)(g), available at: <https://www.legislation.gov.uk/eur/2016/679/article/9> and Data Protection Act 2018, Schedule 1, Part 2, para. 6, available at: <https://www.legislation.gov.uk/ukpga/2018/12/schedule/1>.

136 HM Government, *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020, p. 34, para. 123.

137 See Data Protection Act 2018, Part 3, Chapter 1, section 31, available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/31>.

138 Ibid., Part 3, Chapter 2, First, Third and Fifth principles, available at: <https://www.legislation.gov.uk/ukpga/2018/12/part/3/chapter/2>.

139 Home Office, *Channel data privacy information notice*, last updated on 19 April 2021.

An online search reveals that, in practice, a much more extensive inventory of data is collected. For instance, for the purposes of Prevent and Channel, Bury Council¹⁴⁰ states it may process personal data including: personal details, family details, lifestyle and social circumstances, goods and services, financial details, employment and education details, housing needs, visual images, personal appearance and behaviour, licences or permits held, student and pupil records, business activities, case file information, and births and deaths data. Under “special category” or sensitive data, it lists: physical or mental health details, racial or ethnic origin, religious or other beliefs of a similar nature, trade union membership, political affiliation, political opinions, offences (including alleged offences), criminal proceedings, outcomes and sentences, and sexual orientation.

Local authorities’ widely varying approaches to data collection raise clear transparency concerns. Bury Council’s practice, as but one example, suggests that the data it collects is excessive and unnecessary, which is inconsistent with data protection principles. While information about the reason for a Prevent referral may be relevant, if it contains highly sensitive data about a child’s alleged political views or religious beliefs, for example, it is vital that data protection practices are thorough and open to scrutiny, and they are not.

Case study F: Collecting information from Muslim children for the Home Office¹⁴¹

In 2016, an organisation funded an art workshop in a Midlands suburb where the residents are predominantly Muslim. The teachers running the workshop were told that the purpose of the project was to highlight links between Islamic art and British culture. About 25 children aged 9–10 took part. Just before the workshop, a representative of the organisation gave the children questionnaires, without having informed the teachers beforehand, asking the children whether they agreed or disagreed with various statements, such as: “The UK is a good place to live for me and my family”; “I think most people respect my race or religion”; and “It would bother me if a family of a different race or religion moved next door.” It also asked, for example, how much they trusted people of their race or religion, people of another race or religion, school teachers, police officers, journalists and the government. Although the questionnaire was said to assess the effectiveness of the art workshop, it included only one question related to the workshop itself. And although the questionnaire stated that the answers would be anonymous and confidential, children were asked to write their names on it. It transpired that the

140 Bury Council, *Prevent and Channel Panel privacy notice*, accessed on 17 February 2022, available at: <https://www.bury.gov.uk/index.aspx?articleid=14808>.

141 Open Society Justice Initiative, *Eroding Trust: The UK’s Counter-Extremism Strategy in Health and Education*, 2016, pp. 65–67.

questionnaires were part of Prevent, and that the responses would be reported to the Home Office. The teachers also inferred that the children's parents had not been informed about the questionnaire.

The collection of the children's personal data (their names) and sensitive data (their political opinions), without the children's or their parents' informed consent, is a serious interference with their right to privacy. It does not seem to be either necessary or proportionate in a democratic society for any legitimate aim, including the protection of national security.

Who collects the data?

Any of the authorities subject to the Prevent duty may collect data for a referral: local government, criminal justice, education and child care, health and social care, and the police.¹⁴²

In the education sector in particular, the Prevent strategy has led to increased collection and monitoring of children's data by schools and colleges to detect putative signs of 'radicalisation'. The Department for Education's (DfE) statutory guidance¹⁴³ requires schools and colleges in England to have "appropriate filters and monitoring systems" in place, but has little to say on how to protect children's privacy.¹⁴⁴

Private companies are also involved in data collection, with schools often using commercial software providers to monitor students' computer activity.¹⁴⁵ The manner in which this software operates, the number of students it flags, and the location where data is stored (which may, for example, be abroad) remain opaque. The design choices made by companies - for example the key words that trigger flags - could infringe children's rights to privacy and non-discrimination.¹⁴⁶ Since the software is under a public-private partnership between the school and the

142 See Counter-Terrorism and Security Act 2015, Schedule 6, available at: <https://www.legislation.gov.uk/ukpga/2015/6/schedule/6>.

143 Department for Education, *Keeping Children Safe in Education 2021*, September 2021, p. 34, para. 128, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999348/Keeping_children_safe_in_education_2021.pdf.

144 defenddigitalme, *NGO submission for the List of Issues Prior to Reporting (LOIPR) for the 88th pre-session State Reporting Procedure on the Implementation of the UN Convention on the Rights of the Child in the United Kingdom of Great Britain and Northern Ireland (UK)*, 31 October 2020, p. 14, available at: <https://defenddigitalme.org/wp-content/uploads/2020/12/CRC-LOIPR-submission-from-defend-digital-me-v2.0.pdf>.

145 'Schools monitoring pupils' web use with "anti-radicalisation" software', *The Guardian*, 10 June 2015, available at: <https://www.theguardian.com/uk-news/2015/jun/10/schools-trial-anti-radicalisation-software-pupils-internet>.

146 defenddigitalme, *NGO submission for the List of Issues Prior to Reporting (LOIPR) for the 88th pre-session State Reporting Procedure on the Implementation of the UN Convention on the Rights of the Child in the United Kingdom of Great Britain and Northern Ireland (UK)*, 31 October 2020, p. 14.

company, it is not covered by the Freedom of Information Act. Companies are therefore not required to answer questions about the operation of their products. As the number of bodies collecting children's data increases, the possibilities for independent scrutiny are reduced.¹⁴⁷

Who is the data shared with?

Government guidance advises authorities acting under the Prevent duty that they "may need to share personal information", but specifies that the decision to share data should be assessed on a case-by-case basis, taking into account necessity and proportionality and, wherever possible, the consent of the person concerned.¹⁴⁸ The guidance also states that information sharing should comply with the law, including regarding confidentiality obligations.¹⁴⁹

The practice on the ground appears to be less restrained in at least three respects: the range of agencies that might receive data under Prevent is extensive; there is widespread confusion over the place of consent in data sharing under Prevent; and there is a clear risk that practitioners are breaching their legal obligations regarding confidentiality in pursuit of their Prevent duty.

1. Prevent data sharing and the range of authorities given access to data

Bury Council, for example, provides an extensive, but still not exhaustive, list of individuals and organisations from which it may source and with which it may share data:¹⁵⁰ family, associates or representatives of the person referred to Prevent; healthcare, social and welfare organisations; educators and examining bodies; local and central government; professional bodies; police forces, non-home office police forces; registered providers of housing; private sector landlords; voluntary and charitable organisations; faith organisations; students and pupils including their parents, guardians, carers or representatives; courts, prisons; partner agencies, approved organisations and individuals working with the police, the Youth Justice Board.

147 CRIN submitted 61 requests to schools across a London Borough to ask what filtering and monitoring programs were installed on school ICT (information and communications technology) equipment in order to detect signs of 'radicalisation', information about how the software worked and how many students had been flagged up by the software. See CRIN's submission for OHCHR's report on the right to privacy in the digital age, 9 April 2018, available at: <https://www.ohchr.org/Documents/Issues/DigitalAge/ReportPrivacyinDigitalAge/CRIN%20.pdf>. See further: defenddigitalme, *Briefing on web monitoring and keyword logging software in schools*. 'Safeguarding of children and of individuals at risk' government proposed amendment in the DP Bill, March 2018, pp. 9-10, available at: <https://defenddigitalme.org/wp-content/uploads/2018/05/Web-Monitoring-Briefing-defenddigitalme.pdf>.

148 Home Office, *Revised Prevent duty guidance: for England and Wales*, last updated on 1 April 2021, para. 21.

149 Ibid.

150 Bury Council, *Prevent and Channel Panel privacy notice*, accessed on 17 February 2022.

It has become apparent that some Prevent referrals are also shared with immigration enforcement agencies, which might lead to the detention and/or deportation of those referred.¹⁵¹ It has also been reported that Channel mentors routinely share information about their mentees with the police.¹⁵² These uses of children's information undermine the claims that the Prevent programme is centred on safeguarding rather than intelligence-gathering, and are in violation of their right for their best interests to be taken as a primary consideration in all actions concerning them.¹⁵³

2. Prevent data sharing and consent

There is widespread confusion over the role of consent in data sharing under Prevent.

Home Office guidance makes only limited and vague reference to consent, stating that "wherever possible, [authorities under the Prevent duty should obtain] the consent of the person concerned before sharing any information about them."¹⁵⁴ The guidance avoids stating plainly that consent is required for a Prevent referral to be made, or indeed that any engagement with the person concerned is needed as the referral progresses towards Channel. The words "wherever possible" seem to allow authorities wide discretion to act without consent, because they are broad enough to cover a number of situations, from the person's actual capacity to consent, to whether it would make any practical sense to seek consent, or whether this would be conducive to policing priorities.

In practice, for example, research by Medact has shown disagreement between health professionals regarding consent. The organisation found that, "while most health workers agree that informed consent should in principle be obtained to make a Prevent referral as a form of safeguarding, they doubt whether in practice this is realistic or even possible. [Some] were incredulous that anyone would give their informed consent to be referred to Prevent."¹⁵⁵ Some health professionals "voiced concerns that knowing so little about the Prevent pathway themselves would make truly informed consent unachievable for their patients".¹⁵⁶

151 Medact, *False Positives: the Prevent counter-extremism policy in healthcare*, June 2020, p. 60.

152 'Anti-extremism mentors inform on clients to police', *The Times*, 11 August 2019, available at: <https://www.thetimes.co.uk/article/anti-extremism-mentors-inform-on-clients-to-police-jlqdhhl3d>.

153 Convention on the Rights of the Child, Article 3(1), available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

154 Home Office, *Revised Prevent duty guidance: for England and Wales*, last updated on 1 April 2021, para. 21.

155 Medact, *False Positives: the Prevent counter-extremism policy in healthcare*, June 2020, p. 56.

156 Ibid.

Case study G: Manchester colleges agree to share data of students referred to Prevent

In 2019, Prevent officers from the Greater Manchester Police entered into an agreement with several further education and higher education institutions (University of Manchester, University of Salford, Manchester Metropolitan University, the University of Chester, and the Manchester College) and the Department for Education to share data about students who have been referred to Prevent. The agreement provided for informing students that their data would be shared, but not for seeking their consent. Correspondence and draft documents from 2018 suggest that the police and the Information Commissioner's Office were initially sceptical about the lawful basis for this agreement under data protection legislation.¹⁵⁷ The Department for Education denied in at least one instance that such an agreement existed involving the Department,¹⁵⁸ although it was listed as a partner.¹⁵⁹

While the data sharing agreement stated that it was intended to “allow students with vulnerability to be supported more effectively through their education pathway [...], not to inform the HE University's decision to make or withdraw an offer to a student”,¹⁶⁰ in practice, sharing that a young person had been referred to Prevent could clearly affect their experience at university.

3. Prevent data sharing and confidentiality obligations

Some authorities subject to the Prevent duty, such as health bodies, are also subject to a common law duty of confidentiality, meaning that only in exceptional circumstances may they share information about a person without that person's consent. Although, in theory, the Prevent and confidentiality duties are meant to coexist,¹⁶¹ in practice research has found that Prevent is eroding the expectation of confidentiality, because it operates at a much lower standard for disclosure. For instance, the confidentiality duty, set out in the NHS Code of Practice¹⁶² and

157 ‘Manchester colleges agreed to share data of students referred to counter-terror scheme’, *The Guardian*, 19 July 2020, available at: <https://www.theguardian.com/uk-news/2020/jul/19/manchester-colleges-agreed-to-share-data-of-students-referred-to-counter-terror-scheme>.

158 defenddigitalme, *NGO submission for the List of Issues Prior to Reporting (LOIPR) for the 88th pre-session State Reporting Procedure on the Implementation of the UN Convention on the Rights of the Child in the United Kingdom of Great Britain and Northern Ireland (UK)*, 31 October 2020, p. 16.

159 Data sharing agreement available at: <https://defenddigitalme.org/wp-content/uploads/2020/11/200415-Data-sharing-agreement.pdf>.

160 Ibid.

161 Home Office, *Revised Prevent duty guidance: for England and Wales*, last updated on 1 April 2021, para. 21. See also Medact, *False Positives: the Prevent counter-extremism policy in healthcare*, June 2020, p. 54.

162 Department of Health, *Confidentiality: NHS Code of Practice*, November 2003, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/200146/Confidentiality_-_NHS_Code_of_Practice.pdf.

the General Medical Council's guidance,¹⁶³ requires that disclosure be made only where there is "risk of death or serious harm".¹⁶⁴ In contrast, Prevent is concerned not with these immediate risks, but with the imprecise 'risk of radicalisation'.¹⁶⁵ NHS guidance on Prevent suggests that confidentiality can be circumvented by vaguely and succinctly stating that "case law established that exceptions can exist 'in the public interest'; and confidentiality can also be overridden, or set aside by, legislation."¹⁶⁶ Official training materials also appear to encourage the disclosure of confidential information under the Prevent duty, with some even implying that seeking consent before sharing information should be avoided altogether.¹⁶⁷ As such, the Prevent duty may readily lead health professionals to breach their legal duty of confidentiality.

The Prevent database

This secret database isn't about keeping us safe. It's about keeping tabs on and controlling people – particularly minority communities and political activists. It is utterly chilling that potentially thousands of people, including children, are on a secret Government database because of what they're perceived to think or believe.

—Gracie Bradley, former Director, Liberty¹⁶⁸

The existence of a secretive database of Prevent referrals was uncovered by the human rights group Liberty in October 2019.¹⁶⁹ Freedom of Information (FOI) requests revealed that a National Police Prevent Case Management Tracker (PCMT) database¹⁷⁰ is "managed centrally by the national counter-terrorism policing headquarters",¹⁷¹ is "accessible to all police forces across England, Wales, Scotland and Northern Ireland",¹⁷² and "external agencies, including the Home Office [...], are able to request information from [it]."¹⁷³

163 General Medical Council, *Confidentiality: good practice in handling patient information*, last updated on 25 May 2018, available at: <https://www.gmc-uk.org/-/media/documents/gmc-guidance-for-doctors---confidentiality-good-practice-in-handling-patient-information----70080105.pdf>.

164 *Ibid.*, p. 33. See also Department of Health, *Confidentiality: NHS Code of Practice*, November 2003, especially pp. 34-35.

165 HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, 2018, p. 31.

166 NHS England, *Practical Guidance on the sharing of information and information governance for all NHS organisations specifically for Prevent and the Channel process*, July 2017, p. 10, available at: <https://www.england.nhs.uk/wp-content/uploads/2017/09/information-sharing-information-governance-prevent.pdf>.

167 Medact, *False Positives: the Prevent counter-extremism policy in healthcare*, June 2020, p. 54.

168 Liberty, *Liberty uncovers secret Prevent database*, 7 October 2019, available at: <https://www.libertyhumanrights.org.uk/issue/liberty-uncovers-secret-prevent-database/>.

169 *Ibid.*

170 Home Office News Team, *Prevent and Channel Factsheet*, 19 December 2019, available at: <https://homeofficemedia.blog.gov.uk/2019/12/19/prevent-and-channel-factsheet/>.

171 'Counter-terror police running secret Prevent database', *The Guardian*, 6 October 2019, available at: <https://www.theguardian.com/uk-news/2019/oct/06/counter-terror-police-are-running-secret-prevent-database>.

172 *Ibid.*

173 'Family wins fight to delete child from Met's anti-radicalisation records', *The Guardian*, 19 December 2019, available at: <https://www.theguardian.com/uk-news/2019/dec/19/family-wins-fight-to-delete-child-from-met-prevent-anti-radicalisation-records>.

The records are said to be accessible only to a “relatively small number of trained Prevent police practitioners”, with details “shared with the mainstream police or other [unnamed] agencies on request and in exceptional circumstances”.¹⁷⁴ Prevent police professionals also have access to the database of Channel cases, the Channel Management Information System (CMIS), which is owned and managed by the Home Office.¹⁷⁵ The counter-terrorism policing headquarters declined requests for information on the number of the individuals on the Prevent database and how many Prevent practitioners are able to access it. The Home Office similarly declined to say how many times it had requested information from the database.¹⁷⁶

The Prevent database includes people’s “biographical information, nature of vulnerability, and counter-terror/domestic extremism risks” as well as “any intervention or action by police or a partner”.¹⁷⁷ Crucially, people are not notified that they have been added to the database, therefore they are not in a position to ask what data is held or to challenge authorities’ right to hold it. The database illustrates why digital privacy advocates have characterised data sharing under Prevent as a “black box”: a system whose implementation is opaque and inner workings unknown.¹⁷⁸ It is unclear what decisions could be influenced by someone’s inclusion onto the database - for example, whether the inclusion would appear on an enhanced criminal record check.¹⁷⁹ Although the Government maintains that “all Prevent referrals are confidential and do not result in a criminal record or any other form of sanction,”¹⁸⁰ practice suggests otherwise. In a case from 2019 discussed below, the Metropolitan police initially refused to guarantee that a child’s Prevent data would not appear in Disclosure and Barring Service (DBS) criminal record checks in the future.¹⁸¹

174 ‘Prevent database is secure but not secret’ - Chief Constable Simon Cole’s letter, *The Guardian*, 8 October 2019, available at: <https://www.theguardian.com/uk-news/2019/oct/08/prevent-database-is-secure-but-not-secret>.

175 ‘Counter-terror police running secret Prevent database’, *The Guardian*, 6 October 2019.

176 ‘Family wins fight to delete child from Met’s anti-radicalisation records’, *The Guardian*, 19 December 2019.

177 ‘Revealed: how teachers could unwittingly trigger counter-terror inquiries’, *The Guardian*, 21 February 2020, available at: <https://www.theguardian.com/uk-news/2020/feb/21/public-sector-teachers-doctors-prevent-inquiries-trigger-referrals>.

178 See the diagram of estimated Prevent data flows about a school child: defenddigitalme, *NGO submission for the List of Issues Prior to Reporting (LOIPR) for the 88th pre-session State Reporting Procedure on the Implementation of the UN Convention on the Rights of the Child in the United Kingdom of Great Britain and Northern Ireland (UK)*, 31 October 2020, p. 13.

179 Liberty, *Liberty uncovers secret Prevent database*, 7 October 2019.

180 Home Office, *Individuals referred to and supported through the Prevent programme – England and Wales, April 2020 to March 2021*, 18 November 2021.

181 ‘Family wins fight to delete child from Met’s anti-radicalisation records’, *The Guardian*, 19 December 2019.

Case study H: Child's personal data held across 10 databases

In a 2020 case before the High Court, it was revealed that the personal data of a child who had been referred to Prevent was held across 10 databases, as follows:¹⁸²

- i) The London PCM Excel spreadsheet, accessible to Metropolitan Police Service (MPS) Counter Terrorism (CT) officers;
- ii) The Merlin Report, CRIMINT, DevPlan and the MPS's Computer Aided Despatch System, all of which are accessible to Metropolitan Police officers, including those without counter-terrorism roles;
- iii) The Multi-Agency Safeguarding Hub, accessible to Metropolitan Police officers and local authorities;
- iv) The Prevent Case Management Tracker application, the National Master PCM Excel spreadsheet, and the National Counter Terrorism Policing Headquarters system (NCIA/NSBIS), all of which are accessible to CT officers nationwide; and
- v) The Channel Management Intelligence System, a Home Office database accessible to CT officers nationwide, "some Home Office colleagues and 10 local authorities".

For children referred to Prevent, and their families, such wide access to their personal information poses significant risks, particularly in any contact they may have with state authorities as children and into adulthood. While the programme is branded as a safeguarding tool, its associations with so-called 'extremism' and with 'terrorism' are likely to attach stigma and suspicion to those whose details are accessed, with potential implications for access to education, healthcare, housing, and public sector employment. It also appears that children's data, collected under Prevent and Channel ostensibly to safeguard them, is being shared for other purposes of interest to the state, for example to support immigration enforcement.

¹⁸² *R (II) v Commissioner of Police for the Metropolis* [2020] EWHC 2528 (Admin), para. 46, available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2020/2528.html>.

How long is the data kept for?

Much remains unclear about the duration for which children’s data is retained under Prevent.

The Home Office states that, under Channel, personal data is stored for six years from the date each case is fully stood down from the programme and has been reviewed again after a year. Hence, information is held for at least seven years after each case has been closed.¹⁸³

In the absence of clear guidance on data retention in Prevent cases not adopted to Channel, local authorities have established their own policies, which vary widely. Hull City Council, for example, retains information for seven years from the date the Prevent referral was closed.¹⁸⁴ Kirklees Council, by contrast, stores data for just four weeks if no Channel support is needed, 12 months if support is deemed necessary but the person declines to receive it, or 6 years if the person accepts the support.¹⁸⁵ Bury Council stores children’s Prevent information until they turn 25.¹⁸⁶

It appears that Prevent records were retained for at least six years under the police’s Authorised Professional Practice¹⁸⁷ and the national retention assessment criteria (NRAC), a set of criteria designed to assess whether the risk posed by an individual means that retention of their data is necessary and proportionate. Concerns have been raised that the use of these policies to determine data retention under Prevent fails to “recognise the non-criminal nature of Prevent referrals” and does not “distinguish records relating to very young children” in particular from those relating to adults.¹⁸⁸ In any case, the High Court has since recognised that a blanket policy of retaining children’s data for six years infringes their rights (see below).¹⁸⁹

183 Home Office, *Channel data privacy information notice*, last updated on 19 April 2021.

184 Hull City Council, *Prevent Privacy Notice*, accessed on 17 February 2022, available at: <https://www.hull.gov.uk/children-and-families/advice-and-support-young-people/prevent-privacy-notice>.

185 Kirklees Council, *Privacy Notice (How we use your information). Channel Programme – Communities Service*, accessed on 17 February 2022, available at: <https://www.kirklees.gov.uk/beta/information-and-data/pdf/privacy-notice-channel-programme.pdf>.

186 Bury Council, *Prevent and Channel Panel privacy notice*, accessed on 17 February 2022. This long retention period seems to be in line with the retention period for child protection records, see for example: <https://support.safeguardingschools.co.uk/article/8-faqs-about-child-protection-records>.

187 College of Policing, *Authorised Professional Practice - Management of Police Information: Retention, review and disposal*, accessed on 17 February 2022, available at: <https://www.app.college.police.uk/app-content/information-management/management-of-police-information/retention-review-and-disposal-of-police-information/>.

188 ‘Family wins fight to delete child from Met’s anti-radicalisation records’, *The Guardian*, 19 December 2019.

189 *R (II) v Commissioner of Police for the Metropolis* [2020] EWHC 2528 (Admin).

Children and their families challenge Prevent data practices

Recently, children referred to Prevent and their families have begun to take successful action against its data practices. In particular, they have challenged the arbitrary retention of children's data across several databases.

At the end of 2019, it was reported that the Metropolitan police reached a confidential settlement and agreed to delete a primary school-aged child's Prevent data, after it was threatened with legal action for refusing to guarantee that the records would not be used again with regard to the child or be included in any Disclosure and Barring Service (DBS) criminal record checks of the child once they reached adulthood.¹⁹⁰

Case study D (Part 2)

In this case, which concerns a six-year-old child and was also discussed earlier, a request¹⁹¹ was submitted on the child's behalf to the police, to give effect to the child's right to access the personal data held about them.¹⁹² The request asked for copies of the information the police held on the child, and the names of the agencies with which the information had been shared.

The request was not fulfilled until seven months later, after the child's family complained to the Information Commissioner's Office (the UK's independent supervisory authority on data protection) about the lack of a response from the police.

It was revealed that the child's information was shared with "partners who attended Channel: [local] Council (children social care, adult social care, Prevent team), the [local] Council (community safety unit, social care, youth offending service), Police Prevent Team, Prevent in Place, NHS (Forensic Child and Adolescent Mental Health Service), [council] Homes and probation". The purpose of the continued retention of the information was said to be "children's safeguarding legislation, including the Children Act 1989 etc". No specific timeframe for the deletion of the data was given – instead, data was said to be stored "until it is deemed inappropriate and deemed suitable for deletion".

190 'Family wins fight to delete child from Met's anti-radicalisation records', *The Guardian*, 19 December 2019.

191 This is a so-called "Subject Access Request", see for example: <https://ico.org.uk/your-data-matters/your-right-to-get-copies-of-your-data/>.

192 UK GDPR, Article 15, available at: <https://www.legislation.gov.uk/eur/2016/679/article/15> and Data Protection Act 2018, Part 3, Chapter 3, section 45, available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/45>.

The child's parent submitted a request for the data to be deleted according to the legal right to erasure.¹⁹³ The police refused, stating that they were "obliged to retain records of calls for service *for a policing purpose* [emphasis added] which includes the prevention, investigation, detection or prosecution of criminal penalties; safeguarding against and the prevention of threats to public security".

In response, the parent argued that no clear grounds had been offered in favour of retaining the data: their child had not committed, been alleged to have committed, or been reasonably suspected of being involved in, any criminal offence.

Only once these detailed arguments had been made, the local police confirmed, three months later, that it would remove the child's data from its database. However, they revealed that another police force also held data on the child under Prevent. At the time of writing, the family's battle to have their child's Prevent records deleted continues.

This case illustrates the many practical obstacles that families face in enforcing their right to have a child's data removed from all databases connected with counter-terrorism policy. In this case, the right to erasure is extremely difficult to access, despite the apparent absence of any security risk posed by the child concerned.

In the High Court's first judgment on Prevent and data, in September 2020,¹⁹⁴ it found that the Metropolitan police had infringed a child's right to private life under the European Convention on Human Rights and his rights under the Data Protection Act.¹⁹⁵ The child in question had been referred to Prevent in 2015, aged 11, and the case was closed by the local Prevent panel a year later due to the absence of any security concerns about the child. The police had nonetheless refused requests to delete the child's personal data, arguing that "radicalisation is a process, not an event."¹⁹⁶ It cited the College of Policing's Authorised Professional Practice (since updated),¹⁹⁷ which provided that the data should be retained for

193 UK GDPR, Article 17, available at: <https://www.legislation.gov.uk/eur/2016/679/article/17> and Data Protection Act 2018, Part 3, Chapter 3, section 47, available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/47>.

194 *R (II) v Commissioner of Police for the Metropolis* [2020] EWHC 2528 (Admin).

195 Specifically, European Convention on Human Rights, Article 8 (right to respect for private and family life), available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf and Data Protection Act 2018, Part 3, Chapter 2, section 35(2)(b) (the processing is based on law and is necessary for the performance of a task carried out for a law enforcement purpose by a competent authority) and Part 3, Chapter 2, section 39(1) (the personal data processed for any law enforcement purpose must be kept for no longer than is necessary for the purpose for which it is processed), available at: <https://www.legislation.gov.uk/ukpga/2018/12/part/3/chapter/2>.

196 *R (II) v Commissioner of Police for the Metropolis* [2020] EWHC 2528 (Admin), para. 59.

197 College of Policing, *Authorised Professional Practice - Management of Police Information: Retention, review and disposal*, accessed on 17 February 2022.

a minimum of six years.¹⁹⁸ This resulted in data being held across 10 separate databases (see case study H above) and remaining accessible not only to the police, but also to several local authorities and the Home Office.

The Court found that the continued retention of the child’s data was disproportionate, while also being unnecessary for law enforcement purposes.¹⁹⁹ As long as the data was retained, the child would legitimately fear that it could be shared with third parties, for example universities to which he may apply.²⁰⁰ The judge commented that the police had “underestimated the impact of the interference with the [child’s] privacy rights entailed in retaining data about his alleged views and statements when he was 11 years old”²⁰¹ and that the practice had “engender[ed] fear in a 16-year-old boy that he may be tagged – wrongly – as a supporter of terrorism”.²⁰² If the retention of the data was no longer required for policing purposes, the information had to be deleted, even if it had not yet been kept for six years. In effect, the Court held that the duration of data retention under the law should be determined by the facts of each case, not by a blanket policy or arbitrary police discretion.²⁰³

To constantly live, not knowing whether false information about your child, accessible by public bodies, would be shared, hampering his chance to live freely in a country you have always known to be home, is beyond heart-breaking. For us, this cloud passed, because we knew where and who to seek advice from, we were guided by a brilliant legal team, but what about those who don’t know?²⁰⁴

—Mother of a child who won a case against the Metropolitan police over data retention under Prevent

As this mother notes, the avenues to legally challenge Prevent data practices are not, in practice, open to everyone. Legal action can be a long, drawn-out process, stressful and possibly traumatic for families, particularly children, and requiring the substantial financial resources to pay for legal representation or the knowledge and contacts to secure pro-bono legal support.

198 Subject to earlier deletion following a “triggered” review. See *R (II) v Commissioner of Police for the Metropolis* [2020] EWHC 2528 (Admin), para. 56.

199 Ibid., paras. 75, 85.

200 Ibid., para. 78.

201 Ibid., para. 77.

202 Ibid., para. 78.

203 For more detail, see for example: Rachael Gourley, *Radicalisation and retention: how long can the police hold data about a person allegedly vulnerable to radicalisation?*, 28 January 2021, available at: <https://ukpolicelawblog.com/index.php/9-blog/283-radicalisation-and-retention-how-long-can-the-police-hold-data-about-a-person-allegedly-vulnerable-to-radicalisation>.

204 Deighton Pierce Glynn, *Court finds data retention by the Metropolitan Police Service under the Prevent strategy unlawful*, 24 September 2020, available at: <https://dpglaw.co.uk/court-finds-data-retention-by-the-metropolitan-police-service-under-the-prevent-strategy-unlawful/>.

Conclusion

Research into Prevent data practices in relation to referred children reveals a chronic, widespread lack of transparency regarding the nature of the data collected, who holds it, who it is shared with, and how long it is kept for. Information sharing under Prevent, in particular, raises concerns about the range of authorities with access to data, the widespread confusion over the role of consent, and the erosion of the common law duty of confidentiality.

Some children and their families have successfully challenged these practices, showing that their privacy and data protection rights are being infringed by official action that meets neither the test of necessity nor of proportionality. But Prevent keeps the overwhelming majority of children in the dark, with little notion of how their personal data may be used, whether it be for their best interests or against them.



Conclusion and recommendations

Few doubt the importance of safeguarding children from harm, but the Prevent strategy is failing to do so and indeed, in several respects outlined in this document, frequently operates against their best interests. Since 2015, at least 17,818 children have been referred to Prevent as part of the Government's targeting of 'radicalisation' and 'non-violent extremism'. As these concepts are ill-defined and undersupported by evidence, referrals have led to manifestly unjustified, materially harmful infringements of children's fundamental rights. Muslim children, children of Asian ethnicity, and those children with mental health problems have been found to be disproportionately targeted by the policy.

Prevent fails to uphold the Government's responsibilities to children with regard to preventing their recruitment by armed groups, in turn interfering with their rights to non-discrimination, to privacy, and to freedom of expression, religion and assembly. As Prevent operates in the "pre-criminal space", it has resulted in the suppression and chilling of children's lawful thought, expression and behaviour. Such interference not only lacks sound evidence for it as an effective response to a genuine risk to children or others - and may indeed be counterproductive - but it also falls short of the necessity and proportionality tests required by human rights law.

It remains contested that safeguarding is Prevent's main goal at all. On the contrary, this report suggests that Prevent mixes the language of safeguarding with policing and national security objectives, frequently eclipsing children's welfare and best interests. This approach has a pervasive impact on children's right to be heard and to have their best interests taken into account as a primary consideration. Police involvement in Prevent, even though referred children are not accused or suspected of committing any crime, shows that national security considerations trump children's best interests when the two principles appear, to the authorities concerned, to conflict.

The counter-terrorism functions of the Prevent duty also conflict with the purposes and functions of essential public services, to which children have a right of access, including education, healthcare, and social services. The effect has been to undermine access in practice and foster mistrust, complicating the duty of professionals to meet their child safeguarding duties.

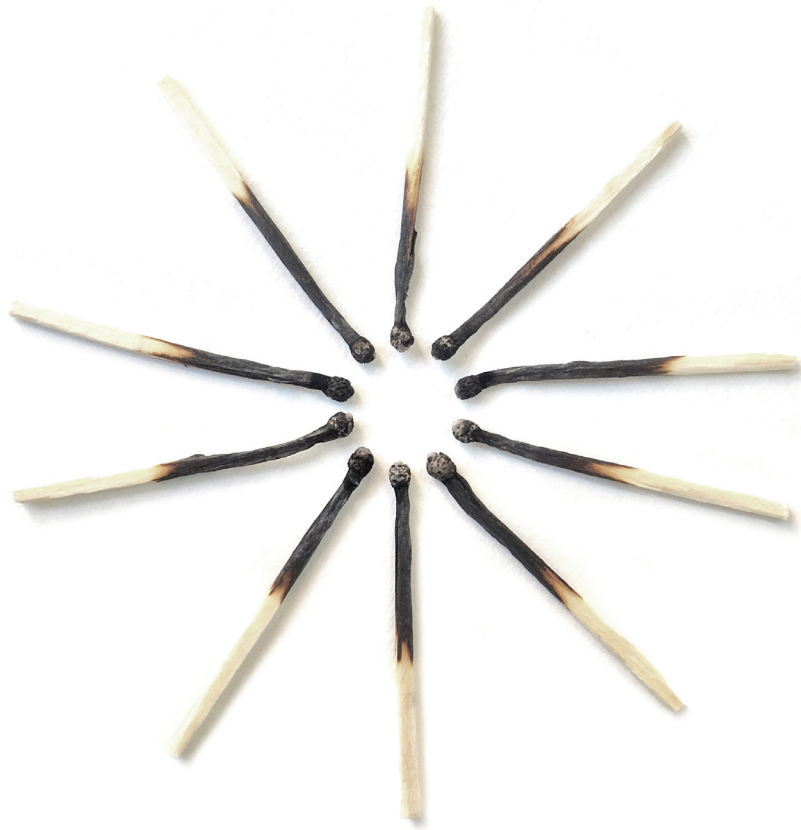
Prevent data practices point to a policy of pervasive surveillance without meaningful oversight. Research shows a persistent lack of transparency regarding the kinds of children's data collected, who holds it, who it is shared with, and the duration of its retention. It is consequently difficult for children referred to Prevent to understand and challenge the processing of their personal information. It has also become significantly harder for children's rights and digital privacy advocates to scrutinise the extent to which Prevent data practices respect data protection and human rights law, and to campaign for better practices.

Despite the many well-evidenced concerns, authorities have tended to resist requests for greater transparency in the public interest.

In light of these findings, this report makes the following recommendations:

- *Repeal the Prevent duty and Channel programme, and allow public services to safeguard children from recruitment and use through the other safeguarding processes available to them.*
- *Develop a policy on the prevention of child recruitment and use by non-state armed groups that:*
 - *Retires the conceptually flawed terms 'radicalisation' and 'non-violent extremism' and focuses instead on safeguarding children.*
 - *Addresses the structural conditions that contribute to children's vulnerability to such grave human rights violations, including poverty, marginalisation and displacement.*
 - *Takes children's best interests as a primary consideration, including by keeping children out of the policing and criminal justice systems wherever possible, and always when they are not suspected of having committed an offence.*
- *All children should be supported through education to develop political literacy, critical thinking skills, and awareness of how to stay safe online. Such education should be:*
 - *Well-resourced and provided to all children, not only those selected according to their identity or social position.*
 - *Based on internationally agreed standards, rather than the exclusionary and ill-defined notion of 'fundamental British values'. For example, the Convention on the Rights of the Child's statement that the education of children should be directed to "the development of respect for human rights and fundamental freedoms...[and] the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin".*

- *Adopt clear, uniform, and transparent data processing policies regarding the prevention of child recruitment and use. Ensure that they comply with human rights law, in particular the right to privacy, and with data protection law and common law duties.*
 - *In particular, ensure that children's personal data is not retained by authorities for longer than is necessary and proportionate.*
- *The Information Commissioner's Office should play an active role in upholding children's data protection rights when they are engaged by counter-terrorism policies. It should offer guidance, promote good practice, monitor compliance, and take enforcement action where appropriate.*
- *The Home Office should routinely publish statistics regarding the application of all of its counter-terrorism policies to children, including ethnicity and religion data, and ensure that evaluations of said policies and their methods are placed in the public domain.*



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