Religion and Terrorism - The Prevent Duty

REBECCA RIEDEL[1]
Doctoral Student and Convenor, Interfaith Legal Advisers' Network
The School of Law and Politics, Cardiff University

Keywords: Prevent Duty, radicalisation, freedom of religion

The value of religion to society is axiomatic. The Minister for Faith stated in 2015: 'We all need to recognise that faith groups are a tremendous force for good; serving and supporting the downtrodden and marginalised in society, and bringing communities together'; it is essential, therefore, 'to ensure it remains at the heart of our shared national life…supporting the grassroots work of churches, mosques, synagogues, and temples'.[2] In turn, law provides a network of facilities enabling religious groups and their members to contribute in their many ways to the common good. However, under Article 9 of the European Convention on Human Right (ECHR), whilst the freedom to manifest religion in worship, teaching, practice and observance is protected, its exercise may be subject to limitations. The courts accept, therefore, that 'although religion may be beneficial both to individuals and to the community, it is capable also of being divisive and, sometimes, of becoming dangerously so. No one who lives in a country such as ours, with a community of diverse ethnic and racial origins and of diverse cultures and religions, can be unaware of this'; moreover: 'Religion can bind communities together' but 'secrecy in religious practices provides the soil in which suspicions and unfounded prejudices can take root and grow; openness in religious practices, on the other hand, can dispel suspicions and contradict prejudices'.[3] That a religion may be a force for bad is recognised in the Terrorism Act 2000 definition of 'terrorism': 'the use or threat of action...designed to influence a government or to intimidate the public or a section of the public…for the purpose of advancing a political, *religious* or ideological cause'.[4] The Prevent Duty is designed to prevent people from being

[1] I am grateful to Mark Hill QC, Roxanna Fatemi-Dehaghani, and Norman Doe for their comments on an earlier draft of this comment.
[2] E Pickles, 'Recognising the role of faith in Britain', 26 Feb 2015, available at <https://www.gov.uk/government/speeches/recognising-the-role-of-faith-in-britain>, accessed 20 Feb 2021.
[3] *Gallagher (Valuation Officer) v Church of Jesus Christ Of Latter-Day Saints* [2008] UKHL 56 at para 51.
[4] Terrorism Act 2000, s 1(1). Whilst this Comment is on religion, the Prevent Duty covers other types of extremism. See footnote 27 below.

'drawn into terrorism'. It also has much to say about religion.[5] The first section of this comment sets out the Prevent Duty, in statute and guidance, and its treatment of religion and the second evaluates how the Prevent Duty deals with religion.

THE PREVENT DUTY AND ITS TREATMENT OF RELIGION

The 'Prevent Strategy' was presented to the UK Government in July 2011, by the then Home Secretary (Theresa May), as part of the counter-terrorism strategy (known as CONTEST), in response to the 'highly likely' threat of a terrorist attack – and 'the greatest threat comes from Al Qa'ida, its affiliates and like-minded groups'.[6] The Strategy was one of four components of CONTEST (prevent, pursue, protect, and prepare),[7] 'to reduce the risk' of terrorism, to 'stop terrorist attacks', and to prevent 'people becoming terrorists or supporting terrorism'.[8]

Combatting 'radicalisation' was a key feature of the Prevent Strategy: 'the process by which a person comes to support terrorism and forms of extremism leading to terrorism'. A 'radicaliser' is one who encourages others to develop or adopt beliefs and views supportive of terrorism and extremism leading to it. The radicaliser does so at 'radicalising locations' (public, eg 'university campuses and mosques', and private, eg 'homes, cafes and bookstores') using 'radicalising materials' (e.g. videos).[9] The strategy explicitly associated one form of radicalisation with the 'single narrative' of 'Islamist' extremism, a 'particular interpretation of religion, history and politics'. This 'connects "grievances" at a local and/or global level, reinforces the portrayal of Muslims as victims of Western injustice and thereby purports to legitimise terrorism'. It also 'combines fact, fiction, emotion and religion, and manipulates discontent about local and international issues'.[10] Radicalisation may also involve a 'rejection of a cohesive, integrated, multi-faith society' and combatting it requires

---

[5] Yet, the Prevent Duty is not treated in most standard law and religion texts. But on the connection between religion, law, and terrorism more widely, see eg, M Idriss, 'Religion and the Anti-Terrorism Crime and Security Act 2001', (2002) Crim LR 890; R Ahdar, ed, *Research Handbook on Law and Religion* (Cheltenham, 2018) 351-354; and R Bottoni and S Ferrari, eds, *Routledge Handbook of Religious Laws* (Abingdon, 2019) pp 184, 190, 330, 332. See also M Kiviorg, ed, *Securitisation of Religion Freedom: Religion and Limits of State Control* (Granada, 2020).

[6] HM Government, 'Prevent Strategy', June 2011, p 1. For this and the other Prevent Strategy and Prevent Duty documents cited in this Comment, see: <https://www.gov.uk/government/publications/prevent-duty-guidance> accessed 20 January 2021.

[7] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism', July 2011, p 6.

[8] HM Government, 'Prevent Strategy', June 2011, pp 7-8.

[9] Ibid, p 108.

[10] Ibid, p 108: 'The single narrative is also sometimes known as the Al Qa'ida Narrative, the Grand Narrative or the Global Extremist Narrative'. Other definitions include 'Islamism'.

'developing a sense of belonging to this country and support for our core values', and working with faith groups. The strategy, therefore, placed 'faith…at the forefront of work to tackle radicalisation', and it called for 'counter-radicalisation', an 'activity aimed at a group of people intended to dissuade them from engaging in terrorism-related activity' and 'de-radicalisation' to effect 'cognitive and/or behavioural change leading to a new outlook on terrorism and/or disengagement from it'.[11]

The Prevent Strategy recognised that previous work had 'sometimes given the impression that Muslim communities as a whole are more "vulnerable" to radicalisation than other faith or ethnic groups'. This needed remedying – and so, Prevent 'must not seem to pass judgment on faith or to suggest only a particular kind of faith is appropriate or acceptable'.[12] In turn, the Carlile Review of the Prevent Strategy recognised that it 'must be delivered in an atmosphere and legal setting strongly compliant with civil liberties'. Importantly, therefore:

> This must be achieved without in any way undermining the value and proper values of British Muslims or their religion, or of any other group of people identifiable by a shared faith or other connection. Policy must be free from allegations of snooping, targeting communities or any other form of discrimination. It is a given that Muslims are no less law-abiding and no less British than any other citizens. Terrorism, as well as a crime, is an aberration disliked by the vast majority, whatever their faith or none.[13]

To this end, the Carlile Review considered it essential to develop 'a dialogue with faith institutions which are under threat from extremist and terrorist organisations, irrespective of the faith concerned'. This would include 'encouragement of faith groups and organisations to play a full role in local Prevent coordination groups'; taking law enforcement action when faith groups or other organisations support terrorism; and 'challenging any faith groups regarded as extremist'.[14] In other words, the Prevent Strategy applies to *all* faith groups, not simply Muslims.

---

[11] Ibid, pp 5, 8, 80, 107 and 108. See p 35 for 'core values': 'democracy, rule of law, equality of opportunity, freedom of speech and the rights of all men and women to live free from persecution of any kind'.
[12] Ibid, p 7.
[13] HM Government, 'Report to the Home Secretary of Independent Oversight of Prevent Review and Strategy' (2011), para 8.
[14] Ibid, para 54: 'Islamic faith groups range far more widely than mosques: there is evidence that many young people who are radicalised regard the mosques attended by their parents as not relevant to their radical ideas, which they may share and develop in groups outside the mosque'.

Following the roll-out of the Prevent Strategy, and in response to the growing threat from terrorism highlighted in parliamentary debate,[15] a statutory 'general duty' was introduced by the Counter-Terrorism and Extremism Act 2015: 'A specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism'.[16] The statutory Prevent Duty is imposed on those 'specified authorities' which are listed in Schedule 6 to the 2015 Act, including authorities in local government (eg a county or district council), criminal justice (eg a prison governor), education and child care (eg the proprietor of various categories of school), health and social care (eg an NHS trust), and the police (eg chief officer of police and police and crime commissioners). The Secretary of State has a power to specify other authorities to which the duty attaches but it may not extend the duty to, *inter alia*, the General Synod of the Church of England.[17]

Needless to say, religious organisations with status as voluntary associations under private law, are not listed in the statutory schedule of specified (public) authorities and so are not subject to the statutory Prevent Duty. However, faith schools (educational institutions designated as having a religious character) are understood as specified authorities under the 2015 Act and so subject to the statutory Prevent Duty.[18] By way of contrast, places of religious worship are not. Indeed, in 2015 it was debated whether places of worship were to be considered as educational institutions for the purposes of the Prevent Duty but this was rejected for the very reason that religious faith and worship are private, not public, matters.[19] Nevertheless, some religious associations voluntarily adopt the principle of the Prevent Duty, within for example provision for safeguarding the vulnerable more widely. For instance, within Judaism, the Finchley Reform Synagogue has its Safeguarding Children and Child Protection Policy (2016) which seeks, *inter alia*, to implement 'the statutory Prevent duty to keep children safe from the dangers of radicalisation and extremism'.[20] Similarly, Palmers Green Mosque Community and Education Centre provides in its Guidelines on Speakers and Imams that, amongst other things, a visiting speaker must not discuss highly sensitive areas of Islam or promote or propagate any illegal activities, discrimination or hate crime.[21] The

[15] HC Debate 7 January 2015, vol 590.
[16] Counter-Terrorism and Security Act 2015, s 26.
[17] Counter-Terrorism and Security Act 2015, s 27(2)(f).
[18] For faith schools in England, see M Hill, R Sandberg, N Doe and C Grout, *Religion and Law in the United Kingdom* (Netherlands, 3rd edition, 2021) paras 468-490.
[19] HL Debate 28 January 2015, vol 759, col 258 and col 291.
[20] See N Doe, *Comparative Religious Law: Judaism, Christianity, Islam* (Cambridge, 2018), p 308.
[21] Ibid, p 217.

Office for Standards in Education, Children's Services and Skills (Ofsted) has also raised concerns about radicalisation of children in unregistered religious schools, like madrassas.[22]

Under the 2015 Act, the Secretary of State may issue guidance to specified authorities about the discharge of the Prevent Duty and they must have regard to the guidance in carrying out that duty.[23] The Prevent Duty Guidance provides that the duty means that 'the authorities should place an appropriate amount of weight on the need to prevent people being drawn into terrorism when they consider all the other factors relevant to how they carry out their usual functions'. The guidance seeks 'to assist authorities to decide what this means in practice'.[24] It expects them, for instance: to understand 'the risk of radicalisation' and 'challenge the extremist ideology that can be associated with it'; to engage in training and 'productive co-operation, in particular with local Prevent co-ordinators, the police and local authorities'; and to ensure their front-line staff understand radicalisation and why people may be vulnerable to being drawn into terrorism as a consequence of it. They should also share personal information so that a person at risk of radicalisation is given support (eg on the Channel programme: see below), but protecting their 'rights' (eg under the Data Protection Act 1998, as amended 2018, and Human Rights Act 1998); to maintain appropriate records to show compliance with the duty and provide reports when requested; and to engage with support from and monitoring by the Home Office, as well as inspection. The Prevent Duty Guidance also provides 'sector-specific' guidance for eg local authorities, schools and registered child-care providers, the health sector, police, and prisons – where initial reception and induction interviews should 'establish concerns in relation to any form of extremism' including 'faith based' extremism.[25]

Further work has been done on radicalisation. For example, a report of 2015, relied on in court proceedings that year (see below),[26] provided 'a review of relevant scientific evidence on radicalisation'. Hayden J found the report 'helpful' and that 'the information should be more widely available within the profession and beyond': 'These generic descriptions, within the report, are strikingly reflective of what I have seen in this Court'.[27] Once again, religion has a part to play: 'Radicalisation is a complex and dynamic process which results in

[22] 'Ofsted warning over thousands of children in danger of radicalisation', *The Telegraph*, 16 May 2016.
[23] Counter-Terrorism and Security Act 2015, s 29.
[24] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (updated 10 April 2019), paras 1-4: counter terrorism is the responsibility of the UK Government, but 'many of the local delivery mechanisms in Wales and Scotland, such as health, education and local government, are devolved'; 'close cooperation' is required. There is separate guidance for Scotland.
[25] Ibid, paras 14-146.
[26] *London Borough of Tower Hamlets v B* [2016] EWHC 1707 (Fam).
[27] Ibid, paras 9 and 24.

individuals coming to embrace a violent ideology in support of a political or religious cause'. The process is not linear but 'an often erratic experience'. Crucially: 'There is no single root cause of radicalisation' – over 200 factors may contribute to it. These include: the interaction of personal factors (eg individual susceptibility) and environmental factors (eg social relationships, community attitudes); static elements such as demographic factors (those aged 15-24 are most at risk, and males are usually more so than females); dynamic factors such as social relationships (and a sense of belonging can be a powerful incentive for becoming and staying involved with a radical group); latching on to an extremist ideology (and incorporating elements of it into self-identity); psychological vulnerability (not to be confused with mental illness or psychological problems) including issues of grievance, perceived injustice, identity, anger, revenge and a quest for significance. In short: 'radicalisation is not simply the sum of different factors, but rather that the different factors seem to play a role at different stages in the process'.[28]

The Prevent Duty Guidance too specifically links terrorism to Islamist extremism. Like the Strategy, it 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'.[29] According to the guidance, most significant threat 'is currently from terrorist organisations in Syria and Iraq, and Al Qa'ida associated groups'.[30] Islamist extremists regard Western intervention in Muslim-majority countries as a "war with Islam", creating a narrative of "them" and "us". Their ideology includes 'the uncompromising belief that people cannot be both Muslim and British, and that Muslims living here should not participate in our democracy'. Islamist extremists specifically attack the principles of civic participation and social cohesion. These extremists purport to identify grievances to which terrorist organisations then claim to have a solution.[31] CONTEST too recognises that 'the threat from Islamist terrorism remains the foremost and most significant'; namely, 'acts of terrorism perpetrated or inspired by politico-religiously motivated groups or individuals who support and use violence as a means to establish their interpretation of an Islamic Society'.[32]

---

[28] *London Borough of Tower Hamlets v B* [2016] EWHC 1707 (Fam) relied on A Silke, K Brown, 'Issues Relating to Radicalisation', 6 November 2015.
[29] HM Government, 'Revised Prevent Duty Guidance for England and Wales' (updated 10 April 2019), para 7.
[30] Ibid, para 9: 'But terrorists associated with the extreme right also pose a continued threat'.
[31] Ibid, para 10; see also para 11: 'white supremacist ideology'; 'right-wing' terrorism which is not categorised as religious terror.
[32] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism', June 2018, p 8.

The 2015 Act requires each local authority to have a panel in place to assess 'the extent to which identified individuals are vulnerable to being drawn into terrorism'. A chief officer of police may refer a person to the panel 'only if there are reasonable grounds to believe that the individual is vulnerable to being drawn into terrorism'. The panel must prepare a plan for such persons if it considers they should be offered support to reduce this vulnerability. Once the necessary consent is given in relation to those persons, the panel must arrange to support them in accordance with the plan which the panel is to keep under review and, as appropriate, revise or withdraw. The panel is to make further assessments of an individual's vulnerability where, either the necessary consent is refused or withdrawn to the giving of support under a plan, or the panel has determined that support under a plan should be withdrawn, and prepare a further support plan if appropriate. A support plan must include: how, when and by whom a request for the necessary consent is to be made; the nature of the support; the persons to provide it; and how and when support is provided. Where a panel determines that support should not be given, the panel must consider whether to refer the individual to a provider of any health or social care services and make such arrangements for the referral. In exercising these functions a panel must have regard to any guidance given by the Secretary of State.[33]

These so-called Channel panels also impact on religion.[34] In the past year, referrals have increased and 30% of them were for Islamist extremism.[35] However, as of March 2020, 11% of those referred were deemed at risk of radicalisation following assessment by a panel. One possible interpretation is that those vulnerable to radicalisation are either not being identified and referred or else they are withdrawing from the voluntary (or consensual) support plan.[36]

An important religious aspect of the regulatory regime is the impact the Prevent Duty may have on the work of university chaplains. The 2015 Act lists 'Relevant Higher Education Bodies (RHEBs)' as specified authorities which must have 'due regard to the need to prevent people from being drawn into terrorism'.[37] The Prevent Duty provides that all RHEBs should provide 'sufficient chaplaincy and pastoral support available to all students'. It is expected, for instance, that RHEBs have 'clear and widely available policies for the use of prayer rooms and other faith related activities'. Such policies 'should outline arrangements for

[33] Counter-Terrorism and Extremism Act 2015, s 36; s 37: panel membership and proceedings; s 38: cooperation with partners; see also HM Government, 'Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism' (2020), p 10.
[34] Home Office, 'Individuals referred to and supported through the Prevent programme, England and Wales, April 2018 to March 2019', p 14.
[35] 'Largest number of Prevent referrals relating to far-right extremism', *The Guardian,* 26 Nov 2020.
[36] Commission for Countering Extremism, 'COVID-19: How hateful extremists are exploiting the pandemic', July 2020.
[37] Counter-Terrorism and Extremism Act 2015, s 26(1). That is, their governing body or proprietor.

managing prayer and faith facilities…and for dealing with any issues arising from the use of the facilities'.[38] In Wales, for instance,[39] at the University of South Wales 'the Chaplaincy will offer support to the individual through the referral process and the Channel programme and liaise with other support services to coordinate a holistic support network for the student'. Moreover: 'Chaplaincy will offer a comfortable and safe environment within which students and apprentices going through the Channel programme may be supported'.[40]

The government also operates a Desistance and Disengagement Programme which seeks to rehabilitate persons subject to 'court approved conditions' including 'all terrorism and terrorism-related offenders on probation licence…those on Terrorism Prevention and Investigation Measures (TPIMs) and those who have returned from contact zones in Syria or Iraq and are subject to Temporary Exclusion Orders (TEO)'; non-compliance 'could lead to the possibility of being charged for breach of conditions or being recalled to prison'.[41] The programme may involve a process of 'deradicalisation' which is described in the Prevent Strategy as 'an activity aimed at a person who supports terrorism and in some cases has engaged in terrorist related activity, which is intended to effect cognitive and/or behavioural change leading to a new outlook on terrorism and disengagement from it'.[42] The programme has been criticised recently on the basis that some on it have since engaged in terrorism.[43]

There are also rules in the Act on freedom of speech and compliance with the Prevent Duty.[44] For example, the Higher Education Prevent Duty Guidance states that RHEBs 'need' to 'balance' the 'legal duties in terms of both ensuring freedom of speech and academic freedom [whilst] also protecting student and staff welfare'. As 'encouragement of terrorism and inviting support for a proscribed terrorist organisation are both criminal offences', RHEBs are expected not to 'provide a platform for these offences to be committed'. Therefore, under paragraph 11 of the Guidance, 'when deciding whether or not to host a particular speaker, RHEBs should consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups'. Moreover: 'In these circumstances the event should not be

[38] Home Office, 'Prevent duty guidance: for higher education institutions in England and Wales' (updated 10 April 2019), paras 25 and 26.
[39] HEFCW, 'Prevent duty: Framework for monitoring higher education in Wales – 2019/20 onwards', 1 August 2019, 1.
[40] University of South Wales, 'Prevent Protocol', June 2019.
[41] HM Government, 'CONTEST: The United Kingdom's Strategy for Countering Terrorism', June 2018, p 40.
[42] HM Government, Prevent Strategy, June 2011, 107.
[43] '24 people have been killed by terrorists who went through government "deradicalization" programs, showing why these efforts are crucially flawed', *Business Insider*, 7 December 2019.
[44] Counter-Terrorism and Extremism Act 2015, s 32.

allowed to proceed except where RHEBs are entirely convinced that such risk can be fully mitigated without cancellation of the event. This includes ensuring that, where any event is being allowed to proceed, speakers with extremist views that could draw people into terrorism are challenged with opposing views as part of that same event, rather than in a separate forum. Where RHEBs are in any doubt that the risk cannot be fully mitigated they should exercise caution and not allow the event to proceed'.[45] In 2019, the Court of Appeal ruled paragraph 11 unlawful because of its 'unconditional phrasing' and its failure 'to inform RHEBs of those competing obligations, which include the duty to ensure freedom of speech'.[46] In turn, universities have their own Prevent Duty norms, on the basis that, typically: 'The University recognises the risk that members…may be targets for radicalisation and we will take appropriate measures the minimise this risk, working in partnership with relevant agencies through appropriate measures, such as [the] Channel' programme; and: 'Where a specific risk is identified the University Prevent Group will assess [it] and advise on action accordingly'.[47]

EVALUATIONS OF THE PREVENT DUTY AS IT APPLIES TO RELIGION

In 2011, the Prevent Strategy was considered by the Secretary of State at the time as 'absolutely fundamental to tackling terrorism in the UK', and, by the end of its first year, the Prevent Duty had helped to prevent 150 people, including 50 children, from entering ISIS-controlled areas in Iraq and Syria.[48] However, the Prevent Duty, as it deals with religion has also been the subject of numerous criticisms. They may be categorised as follows.

First, the Prevent Duty has been criticised on the basis of arguments from the perspective of fairness and human rights. For instance, the duty is: 'not only unjust but also unproductive'; it has an 'overly broad definition of extremism' (see above); it 'creates a systematic risk of violations of the right to freedom of expression, the right against discrimination and the right to privacy'; and it should be replaced by a more liberal approach - for instance: 'Doctors fear that their obligation to report patients to the authorities is in conflict with their duty of confidentiality and will undermine the doctor-patient

[45] Home Office, 'Prevent duty guidance: for higher education institutions in England and Wales' (updated 1 April 2021) paras 8, 10, 11.
[46] *Butt v Secretary of State for the Home Department* [2019] EWCA Civ 256, para 177.
[47] Cardiff University, 'Prevent Policy' (undated), p 2.
[48] Secretary of State, 'Counter-terrorism: written question – 51248', 31 October 2016.

relationship'.[49] According to the Justice Initiative report, 'the current Prevent strategy suffers from multiple, mutually reinforcing structural flaws, the foreseeable consequence [of] which is a serious risk of human rights violations'. These flaws include what is claimed as the unfair 'targeting of "pre-criminality", "non-violent extremism", and opposition to "British values"'. Moreover, it is said that 'tackling non-violent extremism and "indicators" of risk of being drawn into terrorism lack a scientific basis...the belief that non-violent extremism – including "radical" or religious ideology – is the precursor to terrorism has been widely discredited by the British government itself'.[50]

Secondly, there are difficulties inherent in identifying the causes and nature of radicalisation. For instance, the case of *Tower Hamlets v B* involved a 16-year-old girl, *B*, who was prevented from trying to travel to Syria and who, with her parents, had been arrested but not charged on suspicion of preparation of acts of terrorism.[51] Terrorist material was found in her family home, including 'sinister polemics designed to rally "good Muslims" to the cause of jihad'.[52] Her siblings had been through a Prevent programme, and as a result she was removed from the home by the court. However, a foster placement not having been found for her, following assessment, B returned to her family home. The observations of Hayden J are worth presenting *in extenso*:

> There is no correlation between strict or very high levels of commitment to a rigorous interpretation of Islam and a susceptibility to radicalised beliefs. The children of highly devout Muslims are neither more nor less likely to be attracted to Isis ideology. In so far as that may be a popular perception, it is entirely misconceived. It runs counter to the research…and contrary to my own experience in these cases. In *Re A v London Borough Enfield*…A appeared to have been attracted to extremist ideology, in part, by way of rebellion to her highly anxious parents whom she considered to be insufficiently Islamic in their lifestyle. All this illustrates the complexity of the

[49] A Singh, 'Instead of fighting terror, Prevent is creating a climate of fear', *The Guardian*, 19 Oct 2016. This document does not give a religious example; however, there will certainly be analogous issues in the religion sphere. For example, surrounding the seal of confession in roman Catholicism and Anglicism. See: R Bursell, 'The Seal of the Confessional' (1990) 2 Ecc LJ, 84-109; see also C Grout, 'The Seal of the Confessional and the Criminal Law of England and Wales' (2020) 22 Ecc LJ, 138-155. However, these deal with safeguarding and not the Prevent duty.
[50] Open Society Justice Initiative, 'Eroding Trust: the UK's Prevent Counter-Extremism Strategy in Health and Education', October 2016.
[51] *London Borough of Tower Hamlets v B* [2016] EWHC 1707 (Fam).
[52] Ibid, para 6.

> challenge to the Police, the Social Services and the Courts in understanding the process of radicalisation. Every child is different, every radicalised child is different.[53]

The Prevent Duty has been criticised as inadequately dealing with radicalisation by failing to recognise that the precise nature and causes of radicalisation are unknown.

Thirdly, as set out in a briefing paper to the Labour Party by the Muslim Council of Britain, the Prevent Duty has been criticised as unduly targeting the Muslim community;[54] for this reason some claim that the Prevent Duty fosters religious discrimination,[55] or at least raises concerns about discrimination against Muslims.[56] There has also been debate about the impact of Prevent on Muslims at universities. Two recent studies suggest that Muslim students (and university staff) 'tend to self-censor their discussions to avoid becoming the object of suspicion and are sometimes discouraged from exploring, researching, or teaching about Islam, especially when linked to terrorism, fundamentalism, or military conflict'. So: 'Prevent has the doubly damaging effect of sustaining negative stereotypes *and* disabling the mechanisms universities have for subjecting such stereotypes to critical scrutiny'.[57]

Fourthly, not all radical religious beliefs and their manifestation in radical action are covered by the Prevent Duty, which fails to distinguish clearly between permissible radical religion and impermissible harmful religion. Needless to say, the aim of the Prevent Duty is to address radicalising which is carried out with the purpose of drawing people into terrorism. The Prevent Duty does not apply, it is submitted, to religious radicalising which does not have this purpose. That is, inculcating radical religious beliefs and promoting radical religious practice are not of themselves forbidden by the Prevent Duty. There is some support for this view from Strasbourg: radical religion is protected by Article 9(1) ECHR unless its exercise is limited by Article 9(2) – namely, on grounds of public safety, public order, health or morals, or the rights and freedoms of others. For the European Court of Human Rights,

---

[53] Ibid, para 126. The case he cites is *Re A v London Borough Enfield* [2016] EWHC 567 (Admin). Research presented by expert witnesses included: M King and D Taylor, 'The Radicalization of Homegrown Jihadists: A Review of Theoretical Models and Social Psychological Evidence' (2011) *Terrorism and Political Violence* 23:4, pp 602-622.

[54] F Qurashi, 'The Prevent strategy and the UK "war on terror": embedding infrastructures of surveillance in Muslim communities' (2018) 2 *Journal of Humanities and Social Sciences Communications* < https://www.nature.com/articles/s41599-017-0061-9> accessed 4 January 2021.

[55] D Barrett, 'Tackling radicalisation: the limitations of the anti-radicalisation prevent duty' (2018) 12 *European Human Rights Law Review*, p 536; L Blackwood, *et al,* 'From Theorising Radicalisation to Surveillance Practices: Muslims in the Cross Hairs of Scrutiny' (2015) 37 *Political Psychology*, p 8.

[56] Muslim Council of Britain, 'Meeting between David Anderson QC and the MCB: Concerns on Prevent', 2015; Muslim Council of Britain, 'The Impact of Prevent on Muslim Communities', 2016.

[57] M Guest *et al, Islam and Muslims on UK University Campuses* (Durham; London; Coventry; Lancaster, 2020) p 6.

'freedom to manifest one's religion comprises, in principle, the right to attempt to convince and convert other people'. Moreover, 'it is a known fact that a religious way of life requires of its followers both abidance by religious rules and self-dedication to religious work' which can 'sometimes assume such *extreme forms* as monasticism'. Such manifestation is 'fully covered by the safeguards of Article 9' providing that 'the adoption of such a way of life is the result of a free and independent decision by an adult', and it is not 'incompatible with the rules of democracy'.[58] In other words, a distinction must be made between legitimate radical religion (which does not draw people into terrorism) and harmful radical religion (which does). Lady Hale sums up, commenting on the *Tower Hamlets* case: 'if "radicalising" means no more than a set of Muslim beliefs and practices is being strongly instilled in these children, that cannot be regarded as in any way objectionable or inappropriate'.[59]

Fifthly, deradicalisation programmes may be problematic on two counts. For Strasbourg, the State must not indoctrinate its citizens by way of religious education.[60] First, if the process of deradicalisation is considered a form of religious education, it may be considered a form of indoctrination and forcing an individual to change their belief violates their absolute right under Article 9(1) ECHR. Second, although deradicalisation programmes such as Channel require consent, others, such as the Desistance and Disengagement Programme, are compulsory 'where mandated for individuals subject to TEOs, TPIMs or probation requirements'. In such circumstances, 'non-compliance could lead to the possibility of being charged for breach of conditions or being recalled to prison'.[61] In practice, it is unclear whether an individual can decline to give consent to a deradicalisation programme. This is concerning because 95% of deradicalisation programmes have been deemed ineffective.[62]

The effect of counter-terrorism measures on religious freedom was commented upon by the government in October 2015 in relation to plans to update the counter-extremism strategy.[63] Plans were announced that the Department for Communities and Local Government would be 'commissioning a new programme of support to help faith institutions to establish strong governance'; in particular: 'The programme aims to strengthen and support places of worship of all faiths in order to improve governance, increase their capacity

[58] European Court of Human Rights, 'Guide on Article 9 of the European Convention on Human Rights: Freedom of thought, conscience and religion' (updated 31 August 2020) pp 3, 42, 43-44, 54, 83. emphasis added).
[59] Lady Hale, 'Freedom of religion and freedom from religion' (2017) 19 Ecc LJ, p 9.
[60] *Papageorgiou and Others v Greece* App nos 4762/18 and 6140/18 (ECtHR, 31 October 2019).
[61] Home Office, Fact sheet: Desistance and Disengagement Programme, HO News Team, 5 November 2019.
[62] C Brader, 'Extremism in prisons: Are UK deradicalization programmes working?' 11 June 2020 (House of Lords Library).
[63] Home Office, 'Counter-Extremism Strategy', October 2015.

to engage with women and young people, challenge intolerance and develop resilience to extremism'.[64] Also, it was proposed to institute a 'partnership with faith groups to review the training provided to those who work as faith leaders in public institutions'.[65] This vital collaborative work is ongoing.

CONCLUSION

In spite of the lack of explicit and systematic reference to religion in the Counter-Terrorism and Extremism Act 2015, religion is absolutely at the centre of the Prevent Duty as it is treated in government guidance on this subject. It is therefore suggested that any study of Prevent must give a prominent place to religion. The statutory Prevent Duty, and the complex soft-law which seeks to implement it, then, are very worthy of study from within the law and religion community. The Prevent Duty has much to say about religion – as a force for good, and as a force for bad; the earlier assumption that the Muslim community was more vulnerable to extremism has been superseded by a more balanced approach which recognises its contribution to social cohesion and the applicability of the Prevent Duty to all faith groups. But there are five criticisms that may be made. First, 'religious causes' form an integral part of the statutory definition of terrorism. Second, the formulation of the Prevent Duty was stimulated in part by religion, namely, Islamist extremism and radicalisation drawing people into terrorism. Therefore, religion plays a part in the understanding of extremism and radicalisation as faith groups have a part in combatting these through dialogue with government. Third, the Prevent Duty is imposed on specified authorities in the public sphere – these include faith schools but not places of worship (though some religious organisations have their own prevent strategies). Fourth, the Channel panels deal with radicalisation and the Prevent Duty has a direct impact on the work of, for example, university chaplaincy. Fifth, the Prevent Duty may be criticised because: its precise impact on human rights has not been systematically thought through; it is perceived to target Muslims and as such may be considered discriminatory; it is difficult to determine precisely the nature and causes of radicalisation; it fails to distinguish clearly between permissible radical religion and impermissible harmful religion; and there are questions over whether deradicalisation

[64] HM Government, 'Prevent Strategy', June 2011, 'resilience' 'in the context of this document means the capability of people, groups and communities to rebut and reject proponents of terrorism and the ideology they promote'.
[65] F Cranmer, 'Parliamentary Report: Counter-Extremism', (2016) 18 Ecc LJ, 223-4.

programmes (which do not have a wholly successful track record) are consistent with the absolute right under ECHR Article 9 to hold any religious belief.