



Briefing on the Shawcross Report on the UK Government's Prevent strategy and the Higher Education (Academic Freedom) Bill 2023

An Independent Review of Prevent was set up by the government in February 2019 as part of the passage of the Counter Terrorism and Border Security Act. Its report – the [Shawcross Report](#) – was finally published on 8th February 2023. [The response](#) by the People's Review of Prevent was published on 20th March, following an [earlier report](#) published in February 2022.

The Shawcross Report made 32 recommendations. They were [all accepted by government](#). None require primary legislation for their implementation and about a third of them [have already been put in place](#).

In this briefing, we set out a brief summary of the main thrust of the Shawcross Report and identify those recommendations which are likely to have particular relevance to the further and higher education sectors.

The Report argues that the Prevent Duty should be directed more at 'public safety' than at the 'vulnerabilities' of individuals. This represents a significant modification of the safeguarding focus through which the duty was introduced in 2015. The proposal is that Prevent should address an individual's 'susceptibility' to commit terrorism, rather than their 'vulnerability' to being drawn into terrorism. Emphasis is to be placed upon extremist ideologies, rather than personal difficulties and mental health issues. [Note: we show that were this argument to be taken seriously, it would imply the withdrawal of Prevent from

schools and health services, with the latter having implications for students and any concern that they may have about presenting to counselling services]

The Report adopts a broadly neo-conservative framing in which ‘Islamism’ is seen as a primary threat to liberal democracies. In this context, it criticises Prevent for a disproportionate emphasis on right-wing extremism and seeks a rebalance toward ‘Islamist extremism’. It argues that there is a fear of being accused of being ‘racist’ – or Islamophobic – that makes some people wary of reporting individuals to Prevent.

The Report argues that this re-focus can be done on the basis of existing definitions of extremism within Prevent and can be achieved by better training under a more focused political direction and by increased involvement of counter-terrorism police. It should be stressed that Prevent is directed at speech and behaviour which is lawful.

The recent events in Israel/Palestine and the expression of support for Palestine online and demonstrations has led to arguments that there is a gap in legislation against incitement to hatred, or support for terrorism. This points to the failure to find an agreed definition of extremism in law in 2015 when the Prevent duty was introduced. Shawcross refers to this as a failure to provide a ‘legislative backbone’, but he proposed instead that there should be a ‘political backbone’; that is a directorate within the Home Office responsible for directing Prevent policy across government departments and nationally in England. This new directorate was determined by Shawcross to be the Commission for Countering Extremism. Robin Simcox took over as Commissioner from Sarah Khan in 2021, and had been acting outside his charter until July 2023 when [his role as an ‘independent adviser’ ceased](#) (though he and the media continue to describe him in this way).

[Our response shows that the recommendations of the Shawcross Report are not supported by the evidence cited in the report]

The recommendations include:

- Centralisation of political control of Prevent within the Home Office under a re-defined Commission for Countering Extremism. It will have responsibility across government departments, as well as directing Prevent in its implementation in England.
- Prevent Priority Areas to be abolished and local Prevent Panels to be brought under the responsibility of Regional Commissioners. The latter will be in contact with Regional DfE Directors of Education, and potentially with Universities in their area.
- The central unit within the Home Office – the Commission for Countering Extremism – will also be responsible for ensuring that due diligence is carried out with regard to the engagement with individuals and civil society organisations by all levels of government and by bodies in receipt of public funds (likely also including those with charitable status and including Universities).
 - This will involve the identification of many Muslim civil society organisations as ‘extremist’. The Report mentions two – MEND and CAGE – following an earlier [report by Policy Exchange](#).
 - Organisations will face two risks – one is being categorised as ‘extremist’; the second is in relation to members and office-holders being designated as ‘extremist (and potentially a requirement that the organisation should be able to show that checks have been made).
- There are two specific recommendations directed at Universities. One aimed at countering the “anti-Prevent agenda” in Higher Education (including the NUS ‘Preventing Prevent’ campaign , which proposes revised training for those overseeing events (recommendation 28); and the creation of a network of advisors in the DfE who can be invited to speak at Universities to promote Prevent (recommendation 33).

The government introduced new prevent guidelines in September 2023 in pursuit of these aims.

[Prevent duty guidance: Guidance for specified authorities in England and Wales](#) (September 2023), and:

[Managing Risk of Radicalisation in your Education Setting](#) (September 2023)

Expanded monitoring:

Formal Prevent referrals represent the tip of an iceberg of scrutiny of individuals.

- The first step of consideration for a referral does not enter into official Home Office data, but it does involve possible interview of a child or young person by Counter Terrorism police.
- But this data will be recorded by public bodies and monitored by agencies like Ofsted and the Office for Students for indications of compliance.
- Para 88 of the new guidance states: “To ensure consistency and proportionate delivery, each authority should maintain appropriate records to show compliance with the Prevent duty. This should include keeping track of any Prevent training being undertaken by staff. Specified authorities should consider their record-keeping arrangements for Prevent referrals to ensure they are proportionate and appropriate.”
- The CCE will run a complaints process, not designed to express concerns about the harms to children and young people, but to report failures of implementation: “Where Prevent activity has fallen short of the standards set out in this guidance, practitioners and the public may raise concerns through an independent complaints function. Ministers also have the power to instruct investigations through this function, including in the event of a reported failure of statutory partners to uphold the Prevent duty.”

Expanded surveillance:

Prevent is directed at ideas which, despite being judged ‘extreme’ are nonetheless lawful.

New guidelines extend the surveillance of students and the expression of their ideas.

- Designated authorities are asked to distinguish between ‘low risk’, ‘at risk’, ‘medium risk’ and ‘high risk’ ideas and behaviours. “A learner can move very quickly between the risk categories. You should deal with any escalation of risk immediately and record this in their file.”
- There should be intervention – ‘challenging’ – of low-risk ideas and behaviours. Examples of ‘low risk’ are: “holding strong opinions or values (non-violent or non-extremist); criticising government policies; adopting visible signs, for example wearing clothing (non-violent or non-extremist), to express identity or sense of belonging; being active on social media; taking a keen interest in national and international affairs; demonstrating support and supporting causes, for example animal rights (non-violent); showing new interest in a political ideology or religion; holding or expressing conservative values or practices, whether traditional, cultural or religious (unless they cause harm to a child or others, for example female genital mutilation).”
- While these would not warrant starting a Prevent process, they indicate how far scrutiny and recording will extend. At the same time, all information can be shared with other agencies.

Shawcross expressed concern about compliance with Prevent in HE settings and the low numbers of referrals. The latter is associated with age of students and voluntary nature of Prevent process for those identified at risk. Expect a re-drafting of ‘student contracts’ to ensure compliance with Prevent if reported (and, possibly, in staff contracts).

Possible impact of Higher Education (Freedom of Speech) Act 2023

The Act is directed at opposing ‘cancel culture’ and the normalisation of far right speech (eg replacement theory). In this respect it follows the general thrust of the re-focusing of Prevent. The latter reinforces normative Islam as extreme, along with other forms of

activism and, therefore, operates as a form of government ‘cancel culture’ under the direction of the Commissioner for Countering Extremism.

The [Higher Education \(Freedom of Speech\) Act 2023](#) received the Royal Assent in May 2023. Its provisions seem to be strong, unequivocal and binding on governing bodies of higher education institutions, their constituent bodies (including halls of residence) and student unions.

Clause A3 states that institutions have a “Duty to promote the importance of freedom of speech and academic freedom The governing body of a registered higher education provider must promote the importance of— (a) freedom of speech within the law, and (b) academic freedom for academic staff of registered higher education providers and their constituent institutions, in the provision of higher education.”

While students will face potential sanction for disrupting speakers, the right to protest will be included within the provisions for free speech, albeit restricted by the provisions of the [Public Order Bill \(2023\)](#) currently on passage through Parliament, [but judged by Amnesty International](#) to be ‘draconian’.

There is also provision for anyone denied their freedom of speech under this law to seek civil remedy as a tort, for losses both pecuniary and non-pecuniary.

In addition, there is a new Free Speech Director at the Office for Students where complaints must be made in the first instance (there is no presumption that anybody bringing a complaint must first proceed through their university institution). The complaint process at the OfS is set out at Section 6.

The Act creates modifications in existing legislation which are detailed in Section II of the Bill on Minor and Consequential Amendments. This includes amendments to the Counter Terrorism and Security Act 2015, but they make protection of Freedom of Speech within the law the primary duty.

The Shawcross recommendations are now highly problematic within higher education – there can be no requirement for example that any views, including anti-Prevent views, be countered for ‘balance’. Given that he describes extremism in terms of ‘ideology’, that means that the Prevent duty to report individuals is directly in breach of a student’s right to freedom of speech – that applies to any individual identified for a possible Prevent referral as well as student organisations arranging a meeting.

There may even be a case to argue that the monitoring of external speakers within university external speaker policies is now in breach of the law, except where it monitors for breaches of the law – hate speech, etc.

The Office for Students is supposed to prepare guidelines relating the implementation of the Act and its possible clash with the Equality Act and the Prevent Duty, but it has yet to do so.

The recently appointed Director of Freedom of Speech and Academic Freedom [published a very robust statement](#) on October 9th 2023: “We will protect the lawful speech rights of speakers at universities – students, staff, visiting speakers – independently of the viewpoint that they are expressing. It makes no difference at all whether you are in favour of Brexit or against it. It makes no difference at all what side you take on statues or pronouns or colonialism, or abortion or animal rights, or ULEZ. You can castigate the monarchy or defend it. You can argue that Britain is fundamentally racist – or that it never was. You can speak or write as a Marxist, a post-colonial theorist, a gender-critical feminist, or anything else – if you do it within the law.”

The statement did not mention the Prevent duty.