

The Prevent duty

A guide for branches and members

Policy and Campaigns

July 2015

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INTRODUCTION

- 1 When people talk about the 'Prevent duty' they are referring to Section 26 of the Counter-Terrorism and Security Act 2015¹ which contains a duty on specified authorities including colleges and universities to have '*due regard to the need to prevent people from being drawn into terrorism*'.
- 2 This duty will be applied and policed in different ways in FE and HE respectively, as this briefing describes below. There is also distinct guidance for England and Wales,² and for Scotland.³ The duty does not apply at all in Northern Ireland.
- 3 Final arrangements for who will ensure compliance with the duty remain uncertain. It is though very likely that for HE in England, HEFCE will be the monitoring body and will link to the Home office. For HE in Scotland, the governing body of each institution is responsible for monitoring compliance supported by a Scottish HE Prevent network made up of representatives of both institutions and government agencies. In FE, compliance with the duty will be monitored by Ofsted in England. In Wales, the monitoring body has still not been formally identified for either FE or HE.
- 4 Original advice was that the duty was to become effective on 1 July 2015 for FE, with English and Welsh HE having a later start date of 1 September. However, government has still not finalised guidance on external speakers which needs to be agreed by the Westminster parliament. As a result the press are now reporting that 'the new Prevent counter-extremism policy for universities and further education colleges to ensure students are not drawn into terrorism will not apply until the issue of managing external speakers is settled.'⁴ UCU has been in close contact with departmental officials at BIS and as yet there is no updated guidance or timetable for its discussion in parliament, or implementation. We will update members and branches as soon as further information becomes available.
- 5 As can be seen, there are many aspects of the Prevent duty which remain unclear, and this briefing will be updated as things develop. However, many colleges and universities are already developing guidance and this briefing is designed to allow branches to engage with that process.

WHERE HAS PREVENT COME FROM?

- 6 The Prevent strategy was first published by the Government in 2011⁵ and is part of their overall counter-terrorism strategy, CONTEST. The stated aim of the Prevent

The government states that the Prevent duty is designed to:

‘Deal with all forms of terrorism and with non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists then exploit...’

strategy is to *‘reduce the threat to the UK from terrorism by stopping people becoming terrorists or supporting terrorism’*.

- 7 The 2011 Prevent strategy had three specific stated objectives:
 - *‘respond to the ideological challenge of terrorism and the threat faced from those who promote it’*
 - *‘prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support’*
 - *‘work with sectors and institutions where there are risks of radicalisation’*.
- 8 The government states that the Prevent duty is designed to:

‘Deal with all forms of terrorism and with non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists then exploit. It also made clear that preventing people becoming terrorists or supporting terrorism requires challenge to extremist ideas where they are used to legitimise terrorism and are shared by terrorist groups. And the strategy also means intervening to stop people moving from extremist (albeit legal) groups into terrorist-related activity.’
- 9 In this context, it is important that branches become familiar with how the government defines ‘extremism’, which is as follows:

‘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.’
- 10 Branches should note the somewhat nebulous nature of so described ‘British values’ and the potentially very broad range of individuals and groups who may at some point fall foul of such a negatively constructed definition.⁶
- 11 The next section of the briefing sets out the main duties that will apply in each sector.

FURTHER EDUCATION

- 12 The duty applies to further education colleges, adult education providers and sub-contractors in England and Wales whether public or private.
- 13 In FE, the guidance⁷ sets out the following main things that institutions are expected to do:
 - Have clear and visible policies and procedures for managing whistle-blowing and complaints.
 - Ensure policies are in place for students using IT equipment to research terrorism and counter terrorism in the course of their studies.
 - Conduct a risk assessment of the physical management of the institution's estate, including policies and procedures for events held by staff, students or visitors, and relationships with external bodies and community groups who may use premises, and/or work in partnership with the institution.
 - Create robust procedures to ensure that sub-contractors are aware of the Prevent duty and not inadvertently funding extremist organisations.

In HE, the duty will apply not only to publicly funded institutions but also to so called alternative providers and any other private institutions who have at least 250 students. In general, the guidance is lighter touch in HE than in FE.

- Ensure that if a risk is identified, staff notify their co-ordinator and others as necessary and develop a Prevent action plan.
 - Demonstrate that they undertake appropriate training and development for governors, board members, leaders and staff
 - Ensure that staff exemplify British values in their management, teaching and through general behaviours in institutions and that the further education curriculum and pastoral care are also used to promote British values to learners.
 - Have robust procedures both internally and externally for sharing information about vulnerable individuals. This should include information sharing agreements where possible.
 - Have a clear Prevent referral process with a single point of contact which is known to all staff and students. This will usually be the same as the existing safeguarding process.
- 14** As can be seen the duty is very wide-ranging in FE and has significant implications not just for college life but also for the curriculum and for pastoral care.

HIGHER EDUCATION

- 15** In HE, the duty will apply not only to publicly funded institutions but also to so called alternative providers and any other private institutions who have at least 250 students. In general, the guidance is lighter touch in HE than in FE.
- 16** At face value there are two significant differences between FE and HE. The first is that HE institutions are also tasked with balancing their Prevent duty against a duty also set out in the Section 31 of the Act⁸ which requires universities to have *'particular regard to the duty to ensure freedom of speech' and 'to the importance of academic freedom'*. This area will form part of the final guidance which will be considered by the UK parliament in the coming months before final approval of the prevent duty.
- 17** The second difference is that while the definition of extremism used in paragraph 8 above is central to the duty there is no specific requirement on higher education institutions to promote British values through the curriculum.
- 18** As the guidance stands,⁹ universities in England and Wales will be expected to do the following (note the list does not yet include arrangements for speakers):
- Carry out a risk assessment for their institution which assesses where and how their students might be at risk of being drawn into terrorism, including non-violent extremism. Any institution that identifies a risk should develop a Prevent action plan to set out the actions they will take to mitigate this risk.
 - Demonstrate a willingness to undertake Prevent awareness training and other training that could help the relevant staff prevent people from being drawn into terrorism and challenge extremist ideas
 - Have robust procedures for sharing information about vulnerable individuals (where appropriate to do so). This should include appropriate internal mechanisms and external information sharing agreements where possible.
 - Ensure sufficient chaplaincy and pastoral support available for all students.

At Congress, policy was passed which called for a 'national boycott' of the Prevent duty. Congress was advised that such a boycott would be likely to be unlawful given that the Prevent duty is statutory and that its implementation is at institution level.

- Have policies relating to the use of university IT equipment which contain specific reference to the Prevent duty and which enable the university to identify and address issues where online materials are accessed for non-research purposes.
 - Have clear policies and procedures for students and staff working on sensitive or extremism-related research.
 - Have clear policies setting out the activities that are or are not allowed to take place on campus and any online activity directly related to the university. The policies should set out what is expected from the student unions and societies in relation to Prevent.
- 19** The Scottish government's policy for universities is largely identical to the above list,¹⁰ and as with the policy for England and Wales notes that further advice regarding so called extremist speakers will be forthcoming, before being debated and allowing the full duty to come into force.

UCU POLICY

20 At its 2015 Congress, UCU passed policy¹¹ which set out the following objections to the Prevent duty:

- [it] seriously threatens academic freedom and freedom of speech
 - the broad definition of terrorism will stifle campus activism
 - the intention to force our members to be involved in the racist labelling of students is unacceptable
 - the Prevent Agenda will force our members to spy on our learners, is discriminatory towards Muslims, and legitimises Islamophobia and xenophobia, encouraging racist views to be publicised and normalised within society
 - the monitoring of Muslim students will destroy the trust needed for a safe and supportive learning environment and encourage discrimination against BME and Muslim staff and students
 - the Prevent agenda will help racist parties such as UKIP to flourish.
- 21** At Congress, policy was also passed which called for a 'national boycott' of the Prevent duty. Congress was advised that such a boycott would be likely to be unlawful given that the Prevent duty is statutory and that its implementation is at institution level. However a commitment was given that the feasibility of branch boycotts where requested would be investigated as would the possibility that any legally constituted boycotts be coordinated.
- 22** The union's legal advice is that a boycott of the Prevent duty would constitute continuous industrial action. In order to formally boycott the duty as implemented in their institution, a branch will need to: establish that a legal dispute exists, seek and gain authorisation for a statutory industrial action ballot and then to win that ballot. As with all forms of industrial action, a boycott will constitute a breach of contract and the employer is entitled not to accept partial performance for each day on which the action takes place. In the case of a boycott of Prevent our advice is that the action would be continuous. Members should be made aware that many employers in FE and HE operate a policy to the effect that they will not accept partial performance and do reserve the right to deduct full pay from staff taking such action.

Establish branch policy on the Prevent duty. If you use the model policy above make sure it reflects your local and sector circumstances as well as the union's national position. Make sure members are also aware of UCU's fundamental opposition to the Prevent duty.

- 23** The National Executive Committee considered Prevent at its meeting of June 2015 and agreed to circulate a model policy statement which branches would be encouraged to pass and take up with their managements. The model statement is set out below:

Model statement

As a college/university and union we are proud of our commitment to, and record of, challenging any expression of prejudice or discrimination directed against any group or individual (whether in form of racism, Islamophobia, anti-Semitism; attitudes to sexuality, gender or disability. Where any safeguarding or more general duty of care concern is raised that may put a student or other persons at risk of harm, there are established procedures of prompt referral which every member of staff should be aware of and should be able to act on accordingly. In addition:

It is essential that in order to explore views and opinions and where necessary, challenge them, we actively promote a climate of free discussion and debate. There should be no fear that this will incur suspicion, or limit on free expression within the boundaries of our equality and diversity policy and disciplinary codes on harassment or abuse.

It is essential that legitimate political opinions expressed by staff or students are not in any way regarded as 'extreme' or legitimising 'extremism'. In the context of 'Prevent', it is perfectly legitimate for example, to criticise government foreign policy; to criticise the wars in the Middle East and Afghanistan; to express support for Palestinian rights or to express either support for or opposition to Israel. Neither is it extreme or illegitimate to hold that the rise of terrorism or hostility to western governments is a direct result of these policies. One may agree or disagree with such views, however they form part of legitimate discussion and debate; they are widespread in the political and academic sphere and in society at large. They are neither 'extreme', nor should they be presented as 'excusing' or providing cover for 'extremism' or acts of violence or terror.

Finally, the insistence on freedom of expression and free debate, within the boundaries of established policies and codes of behaviour, is paramount. Therefore sufficient time for discussion, debate and respectful exchange of views is essential in any forum in which 'Prevent' is discussed or presented. Everyone is entitled to their own political view or opinion but no-one should privilege one view over that of others, or present one political explanation as 'expert' or not subject to challenge.

All presenters in 'Prevent' forums, whether internal or external, should be made aware of these principles and be expected to abide by them

XXXX UCU resolves to present the above to the Senior Leadership team and at our negotiating forum, as an agreed set of principles by which any discussion or training on Prevent be conducted.

WHAT BRANCHES SHOULD DO

- 24** Branches are asked to do three things now:

- Establish branch policy on the Prevent duty. If you use the model policy above make sure it reflects your local and sector circumstances as well as

the union's national position. Make sure members are also aware of UCU's fundamental opposition to the Prevent duty. If you need advice on this contact your regional official.

- Write to your management seeking information on how they intend to implement the Prevent duty, and establish the issue as an item for ongoing consultation/negotiation.
- Review the answers given and consult with members and your regional official as to whether you should seek to ballot on a boycott as discussed by UCU Congress.

25 A template letter is set out overleaf which you can amend to suit local circumstance and send to your management. Branches should note that sending the model letter or a close variant is likely to be the critical first step in establishing the basis for a lawful boycott, should this be something that members vote to do having considered any response from your management:

Model letter

Dear x,

I am writing to seek some information on how you intend to implement your responsibilities under the so called 'Prevent duty' which will shortly fall upon the college/university as a result of the passing of the Counter Terrorism and Security Act, 2015.

In the first instance I would be grateful if you would share with UCU:

A copy of any risk assessments you have done as required by the guidance

A copy of any reviews of policies or procedures including disciplinary, grievance, employment contract and data protection policies you have undertaken with respect to the Prevent duty and any conclusions thereby drawn

An understanding of any training or other personal development you see staff as requiring arising from the duty

An understanding of any proposed curricular changes you intend to make in response to the duty

A timetable for how you intend to consult with students and staff about the duty and your response to it

I would also take the opportunity to place on record UCU's opposition to the duty which this branch believes has the potential to damage relations between staff, students and the college/university and also impinge upon freedom of speech. However, notwithstanding this opposition, UCU wishes to be fully consulted with on the implementation of the duty in order that we can keep our members fully advised and also advise you of any issues that members raise.

Please also take this letter as a formal request to place this item on the agenda for the next and subsequent negotiating meetings.

- 26 It is very early days in terms of implementation. Many branches have reported that their managements at this stage envisage little change to established safeguarding or duty of care procedures. Others seem to be at the beginning of more fundamental reviews of their policies. Whatever the approach, UCU branches should insist on being fully consulted about something which has profound implications for the institution.

WHERE TO GET HELP

27. The policy and campaigns department is overseeing the implementation of UCU's policy on the Prevent duty. We will be updating this guidance as new advice emerges. For advice in the first instance on local negotiation, please contact your Regional Official. For advice on any policy aspect of the duty contact Matt at mwaddup@ucu.org.uk

NOTES

¹<http://www.legislation.gov.uk/ukpga/2015/6/contents/enacted>

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417943/Prevent_Duty_Guidance_England_Wales.pdf

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417941/Prevent_Duty_Guidance_for_Scotland.pdf

⁴<http://www.theguardian.com/education/2015/jun/30/campus-ban-on-extremist-speakers-delayed>

⁵<https://www.gov.uk/government/publications/prevent-strategy-2011>

⁶In schools, more detailed guidance on 'British values' with regard to the curriculum was published in November 2014 and can be found here

<https://www.gov.uk/government/news/guidance-on-promoting-british-values-in-schools-published>

⁷https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417943/Prevent_Duty_Guidance_England_Wales.pdf

⁸<http://www.legislation.gov.uk/ukpga/2015/6/section/31/enacted>

⁹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417943/Prevent_Duty_Guidance_England_Wales.pdf

¹⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417941/Prevent_Duty_Guidance_for_Scotland.pdf

¹¹<http://www.ucu.org.uk/7523>