

RESPONDING TO THE “PREVENT DUTY”

Introduction

This factsheet sets out the principal features of the “Prevent Duty” within the Counter Terrorism and Security Act 2015, alongside key safeguards that carry potential conflicts with the duty. It then goes on to outline the important issues to raise in shaping local training and guidance on the application of the duty to ensure protections against abuse of the legislation and undue pressure being placed on staff in discharging the duty.

The factsheet expresses UNISON’s deep concerns at the vagueness of the duty and the quality of training available, alongside widespread potential for discriminatory behaviour and a breakdown in trust between staff and public service users. UNISON is asking for feedback on the application of the Prevent Duty in workplaces and the quality / extent of training provided.

Principal features of the Prevent Duty

The Counter Terrorism and Security Act 2015 that came into force in March 2015 includes a provision called the [Prevent Duty](#) which places a general requirement on specified authorities to “have due regard to the need to prevent people from being drawn into terrorism.”

The “specified authorities” include local authorities, the NHS, schools, further and higher education bodies, probation service providers and police forces across England, Wales and Scotland (the duty does not apply to Northern Ireland). The full listing of “specified authorities” is set out in [schedule 6](#) of the legislation.

Sub-contractors have to comply with the Prevent Duty, but it is the responsibility of the contracting authority to ensure that they do so.

The general requirements of the legislation are expanded on by government guidance produced for England and Wales, along with separate guidance for Scotland.

The guidance offers the following key points in its definition of terrorism:

- “The government has defined extremism in the Prevent strategy (the forerunner of the Prevent Duty) as: “vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces”.”
- “The Prevent strategy was explicitly changed in 2011 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.“

- “Our Prevent work is intended to deal with all kinds of terrorist threats to the UK. The most significant of these threats is currently from terrorist organisations in Syria and Iraq, and Al Qa’ida associated groups. But terrorists associated with the extreme right also pose a continued threat to our safety and security.”

The guidance also makes clear that specified authorities have to provide “appropriate training for staff involved in the implementation of this duty” which ensures that:

- “Frontline staff who engage with the public should understand what radicalisation means and why people may be vulnerable to being drawn into terrorism as a consequence of it. They need to be aware of what we mean by the term “extremism” and the relationship between extremism and terrorism.”
- Staff know “what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extremist ideology that can be associated with it. They need to understand how to obtain support for people who may be being exploited by radicalising influences.”

The general Home Office training on the Prevent Duty is entitled Workshop to Raise Awareness of Prevent (WRAP) though sector specific training is also available that details sector arrangements for assessing risks (frequently through existing safeguarding bodies) and procedures for referral to the “Channel programme” which is charged with assessing referrals and taking appropriate action.

Counterbalancing duties

In discharging the Prevent Duty, the specified authorities also have to comply with a number of legal requirements that clearly carry potential conflicts with the duty.

The key areas are set out below:

i) Freedom of speech

The Counter Terrorism and Security Act acknowledges that alongside the Prevent Duty “a specified authority must have particular regard to the duty to ensure freedom of speech.”

This right is enshrined under Article 10 of the European Convention on Human Rights as follows: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.” However, limits are allowed under the convention where they can be justified in the public interest.

The right to freedom of speech has particularly well enshrined provisions under education legislation, which includes the following key clauses:

Section 43(1) Education (No 2) Act 1986

“Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.”

Section 43(2) Education (No 2) Act 1986

“The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with – (a) the beliefs or views of that individual or any member of that body; or (b) the policy or objectives of that body.”

Section 202(2) Education Reform Act 1988

“In exercising those functions, the [University] Commissioners shall have regard to the need – (a) to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions.”

ii) Equality Act

Guidance on the Prevent Duty states that action taken under the duty “must not involve any covert activity against people or communities.” However, the 2010 Equality Act goes much wider in prohibiting discrimination on the grounds of protected characteristics, which include race, religion and belief.

The [Public Sector Equality Duty](#) places further requirements on public sector bodies in forcing them to have due regard to the need to:

- Eliminate discrimination, harassment, victimisation;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

iii) Data protection

The Counter Terrorism and Security Act states that its provisions do not “require or authorise the making of a disclosure that would contravene the Data Protection Act 1998” or “a disclosure of any sensitive information.”

Under the [Data Protection Act](#) particular protections are given to the processing of “sensitive data,” which includes information on ethnic background, political opinions and religious beliefs.

The processing and disclosure of this type of data can only be conducted when “the data subject has given his explicit consent to the processing of personal data” or it can be justified according to strict criteria such as when it “is necessary in order to protect the vital interests of the data subject or another.”

However, subsequent [legislation](#) has set out exemptions to these general rules, most notably when processing “is necessary for the purposes of the prevention or detection of any unlawful act.”

Negotiating with employers

In order to ensure that the Prevent Duty is applied in a way that does not trample on the protections set out above, branch input to the shaping of workplace training and guidance can be invaluable to ensure that staff are not subject to undue pressures.

A clear starting point is to ensure that appropriate staff receive training that provides clarity about what requirements the legislation places on employees in the conduct of their specific work.

Further clarity can be provided through specific guidance on the application of the duty in the workplace.

However, both training and agreements on the application of the Prevent Duty in the workplace should highlight the safeguards outlined above under freedom of speech, equality and data protection legislation which limit the scope for abuse of the Prevent Duty

In particular, application of the Prevent Duty should not be so widely drawn that it puts staff under pressure to report as suspect absolutely legitimate participation in protests about government policy, including opposition to government foreign policy.

Equally, application of the Prevent Duty should not encourage staff to single out any group on the basis of race, religion or belief.

The dangers of the legislation have been highlighted by a number of recent news stories, one of which led to a university stating that the duty was “underpinned by guidance ... [that] contains insufficient detail to provide clear practical direction in an environment such as the university’s.”

It is this lack of clarity which emphasises the importance of getting involved in local training arrangements and agreements on the application of the duty that clearly set boundaries and prevent vagueness in the general guidance leading to unjustifiably wide interpretations of the duty.

Sharing your experiences

If you have any experience of the application of the Prevent Duty in your workplace, we would very much value any feedback you can provide that would assist in the development of this factsheet and the advice that it provides.

In particular, if you can provide information on the topics below, please email Bargaining Support at bsg@unison.co.uk

- The extent to which training has been provided and its adequacy in providing clarity to staff;
- Copies of any workplace guidance on the application of the duty
- The breadth of activities covered by the duty in practice and any inappropriate use of the legislation
- Any agreements reached that effectively limit the scope of the duty to take into account freedom of speech, equality and data protection legislation

Education sector specific aspects of the duty

In the education sector, the Prevent Duty's requirement to "have due regard to the need to prevent people from being drawn into terrorism" is based on the premise that "schools can help protect children from extremism and violent views in the same way they help safeguard children from drugs, gang violence and alcohol."

Guidance indicates that "due regard" requires educational establishments to:

- Have robust safeguarding policies that identify children and young people at risk and intervene where appropriate
- Provide staff with training so they understand the Prevent Duty and have the confidence to identify children and young people at risk
- Ensure children are safe from terrorist or extremist material while accessing the internet at the college or school.

In discharging these points, it is valuable for branches to get involved in shaping safeguarding policies that make clear the importance of designated safeguarding leads and senior management in providing support to any member of staff who has concerns about a pupil or student, as well as specifying clear responsibility with safeguarding leads and/or senior management for acting on concerns raised.

Education specific training on the Prevent Duty has been developed by The Education and Training Foundation through [free online training modules](#) for practitioners, support staff, leaders / managers and board members

The extensive legislation for protecting freedom of speech in education that has been set out earlier in this factsheet provides a vital dimension to implementation of the Prevent Duty in education. UNISON members are committed to the well-being of their pupils / students and it is imperative that the Prevent Duty does not stifle the opportunity for safe and educational debate. Students must have the opportunity, within appropriate subjects, to express views, seek advice and ask controversial questions without fear of reprimand.

School and college leaders have additional responsibilities, making it incumbent on them to:

- Take a proactive approach to demonstrate the school or college is compliant with the duty, such as seeking partnerships with relevant external bodies;
- Consider apportioning a lead figure for the duty, who should come from the senior management team;
- Review all policies to ensure that the agenda is embedded across all aspects of the organisation's work;
- Ensure staff are trained and confident about what is expected of them in order to ensure the school or college is compliant.

The extent to which educational institutions are complying with the Prevent Duty now forms one further factor in OFSTED inspections.

Reference documents

The links below provide further detail on the issues raised in this factsheet

[Counter Terrorism and Security Act 2015](#)

[Counter Terrorism and Security Act 2015 - Risk of being drawn into terrorism provisions](#)

[Government Prevent Duty Guidance for England and Wales](#)

[Government Prevent Duty Guidance for Scotland](#)

[Government Prevent Duty Guidance for Further Education Institutions in England and Wales](#)

[Government Prevent Duty Guidance for Higher Education Institutions in England and Wales](#)

[Government Prevent Duty Guidance for Further Education Institutions in Scotland](#)

[Government Prevent Duty Guidance for Higher Education Institutions in Scotland](#)

[Department for Education Prevent Duty Guidance for Schools and Childcare Providers](#)

[UNISON outline of equality duties](#)

[UNISON outline of data protection rights](#)

[Equality and Human Rights Commission outline of Human Rights Act](#)