Department for Education

The Prevent duty in care and the wellbeing of staff and students in higher education (HE): notes for trainers

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These notes support the points in the The Prevent duty in care and the wellbeing of students and staff in higher education (HE) PowerPoint slides

Introduction

When delivering the training, you may wish to add in references to provider documents or processes to give additional clarity and guidance to your trainees.

Top tips for delivering this training

1. Apply the same principles you would do with all training activities - know your audience, know your venue, know your material. Pitch the training at the right level and ensure you've got staff with the knowledge and the purpose of the training, and why they should engage with it.
2. Be a learning environment - recognise that staff will have preconceptions and concerns about Prevent, please find out what concerns they are and then pitch your training to face sessions. This can work well as an icebreaker.
3. Be a safe environment - ground rules, mutual learning, mutual respecting, sensitivity to staff and student representatives. Use both existing mechanisms (committees, staff student liaison groups, departmental meetings, etc) and any Prevent-specific mechanisms.
4. Think how you can use the expertise of other specialists in Prevent delivery, policy protection and FGP officers. For example, bringing in equality and diversity officers can help staff understand how Prevent intersects with equality and diversity legislation.

Outline

The presentation will consider what the Prevent statutory guidance says about the Duty and what it means for staff and students in higher education providers. It will also consider when providers might see a duty of care - to students and staff and when and whether the Prevent Duty has changed the position significantly.

Outline

- What does the Prevent duty require of higher education providers?
- What do Prevent risks relate to? Is it safeguarding or students and what are seen to exist
- Identifying and supporting students at "risk"
- Where is duty of care in the mix and what does it mean in practice
- Has the Prevent statutory guidance changed much?
- Duty to students, staff and visitors

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What the Duty says

This responds to the guidance the specific requirements of the Prevent Statutory Duty that is placed upon providers in the Counter-Terrorism and Security Act 2015 (as amended). There is specific statutory guidance regarding the Duty for higher education and their units focus on SP September 2015.

The Duty in Section 26 of the Act is that authorities must "have due regard to the need to prevent people from being drawn into terrorism".

References to RHEBs in the slide refers to relevant higher education bodies. These fall under the Counter-Terrorism and Security Act 2015 (CTSA) and the Higher Education (Relevant Authority) Order 2015 (amended) and therefore the DfE website.

What the duty says (1/2)

Duty of care

The statutory obligation for specified authorities including relevant higher education bodies (RHEBs) to have due regard to the need to prevent people from being drawn into terrorism". Section 26 (1) CTS Act

"The duty has equal weight to the other duties that the authorities should discharge. It requires a proper amount of weight to the need to prevent people being drawn into terrorism when they consider all the other duties they discharge but they are not their overall mission." Paragraph 3, Prevent duty in HE guidance

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What the duty says (2/2)

Staff and student welfare

- Prevent duty is not a "stand alone" requirement
- 26. Relevant Higher Education Bodies (RHEB) have a clear role to play in the welfare of their students and will want to have in place pastoral support and welfare services, as part of their duty of care.
- 28. As part of this, we would expect the authorities to have and make available systems for the use of students and staff to report concerns about students who may be susceptible to being drawn into extremism or indeed, concerns about other students who may be engaged in extremism and/or radicalising other students, or staff who may be at risk of being drawn into terrorism. Paragraphs 26-28, guidance

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Students at risk

This slide sets the audience to consider the variety of ways in which students may become at risk during their journey through education and how they might be supported.

Discussion on the broader risks to students may provide a useful starting point to identify vulnerabilities, often a key aspect that is unpicked when individuals are drawn into supporting terrorist and extremist causes.

Students at risk

Staff and student wellbeing

- Students can become at risk for many reasons while they are in higher education
- We have many ways of supporting students to mitigate these risks
- Consider the 10 minutes when they consider their students may bring to your attention, and what your response would be

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Providing clarity

This is a useful point to offer the audience some reassurance of what is not required of them under the Prevent duty and what is expected of them under the Duty.

The transitions used are generic but in each case they reflect staff and other agencies not following prescribed reporting/referral pathways or inadequate staff Prevent training.

Providing clarity (1/2)

What we want to avoid

Transition 1:

- Students 'accused' of being a terrorist for reading a book on terrorism.
- Safeguarding or students Counter-Terrorism policy in place, staff are aware of reading that had been accepted in Westminster by the lecturer, which was also widely reported

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Providing clarity (2/2)

What we are not asking of you

- Requirements of the duty are on the institution, not the individual.
- We are not expecting you to make decisions about individuals yourself, without support.
- Prevent is not about spying on students.
- External speakers presentations are not about snooping or restricting student events.

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Key considerations

These are some important considerations to be remembered when implementing the Duty.

Key considerations

- Need to avoid stigmatising certain groups of students or minimising people with genuine vulnerabilities
- To prevent students becoming more isolated as a result of fear of being reported
- Genuine welfare concerns should be addressed, not ignored
- Chaplaincy services may come under additional scrutiny from students
- The Prevention Duty requires authorities should take an reasonable amount of weight on the need to prevent people being drawn into terrorism when they consider all the other duties they discharge but this is not their overall mission. (Paragraph 3, general guidance)

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Achieving compliance

These slides highlight quotes from the statutory guidance which demonstrate some specific requirements and duties that should be considered by RHEBs for them to be compliant with the Duty. The slides also clarify that compliance in this respect is judged by the Office for Students (OfS).

Prevent duty guidance: achieving compliance (1/3)

- Most of these activities already have a clear underpinning of Prevent-related purpose, for example, safeguarding students who are vulnerable to being drawn into terrorism.
- The aim is to manage the risks posed by large non-British cohorts of students who may be inexperienced in a predominantly urban residential setting.
- Ensure that staff are aware of the Prevent duty and of procedures set in place. (Also staff have clear procedures to follow if they have concerns)
- Bullet 1 - Compliance will only be assessed Prevent processes and policies are properly followed and applied. Paragraphs 26-28, guidance

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Prevent duty guidance: achieving compliance (2/3)

- Most of the governor/trustee attendees have been for RHEBs to have the necessary staff training, if policies and decision making are properly recorded, they can't demonstrate compliance with the Prevent duty.
- RHEBs have a clear role to play in the welfare of their students and we would expect them to be well-placed to meet our requirements in this respect. Paragraph 26, guidance
- Compliance with the Prevent Duty is regulated by the Office for Students.

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Prevent duty guidance: achieving compliance (3/3)

The Statutory Guidance directs RHEBs to consider their approach in a number of key areas:

- the provision and management of IT/WiFi (internet) support and proper facilities
- the requirement to promote and protect freedom of speech and academic freedom within changing potential risks and external operative events
- consideration of filtering and monitoring of internet use

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What is a provider's duty of care?

Many slides throughout the discussion that follow form the remainder of the presentation - they are to reinforce that Prevent is not the only area where a legal duty of care to students, staff and visitors - and how the Prevent Duty interacts with any duties that exist.

What is a providers duty of care?

- The responsibility for safeguarding in higher education is materially different from that in schools and colleges. Students are not children and the nature of the Prevent guidance for higher education and further education provides.
- But a duty of care does arise in certain circumstances - to students, staff and visitors.
- Let us look at what these are and assess how the Prevent duty interacts with these.

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When can a duty of care arise?

Firstly, where there is a contract in place and where in the student contract the RHEB provides services such as accommodation, there is a contractual obligation to take reasonable care of a duty. If the provider fails to provide that level of care, which can be shown to lead to injury, it may face claims in negligence.

The Prevent statutory guidance is less explicit with regards to an institution's duty of care. Provided they pay due regard to the Duty as set out in the guidance and can evidence that they have taken reasonable steps to prevent students being drawn into terrorist activities, they should be convinced to have exercised the appropriate level of duty of care.

Thirdly, the duty for foreseeability, or put another way, 'is it fair and reasonable to expect the higher education provider to safeguard a person's interests rather than expect their persons to keep him or herself free from harm?' In respect of Prevent duties (or staff and student welfare) it may be argued that if a student is being drawn into terrorist activities, we are likely to be able to foresee injury more clearly, in respect of those vulnerabilities.

We therefore need to act reasonably to prevent such injury occurring. It is feasible that failing to intervene to support a student who shows signs that they are being radicalised may make the university susceptible to a claim that they have been negligent, but it is unlikely that this would be a strong claim in practice.

However, such the possible possibility reinforces the requirement for providers on student welfare and arrangements for supporting students who are a cause for concern to be well-embedded and proportionate. Staff need to be confident that the processes are proportionate to know what to do where someone appears to be vulnerable to being drawn into terrorism.

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What level of duty?

This is important. A duty of care does not mean that a provider has to guard against every conceivable harm that might arise. It does mean that a provider has to think about what it could do to prevent harm, and what it could reasonably be expected to do in circumstances. This accords with the requirement for risk assessment and action planning in implementing the Prevent Duty.

The provider must enhance staff providing care and support understand the Prevent Duty and can recognise vulnerability to radicalisation - training is important, as is the need to know what to do if concerned. Staff need to be confident that their concerns will be taken up and in particular, referrals to Channel - expertise should not sit with a single member of staff. The majority of staff need to understand the procedures for raising concerns about students who may be susceptible to being drawn into terrorism, and know if someone is being drawn into terrorism or extremism, as it should apply to other circumstances - for example students whose mental health has become a cause for concern.

What level of duty?

- Making sure that Prevent/mental health/other/non/support worker is "reasonable" competent
- What is reasonable varies with the circumstances
- Need to keep up to date/refresher courses
- Be aware of your limitations and know when to refer to the specialist team within the provider

The duty of care means that the institution has to think about what the wellbeing of students and staff is, and what is reasonable in the circumstances. It minimises the risks it has identified.

It does not mean that the institution must be a good agent and very vulnerable from their origin.

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Duty 1 - freedom of speech and external speakers

This slide sets out the duty to students in ensuring freedom of speech and academic freedom. This is not new. For most providers it has existed for a considerable time (this was already a requirement resulting from the Education (No.2) Act 1986) and remains unaffected by Prevent.

The introduction of the Prevent statutory duty has reinforced that with a duty placed on the institutions of the Prevent Duty Board, providers are now subject to monitoring by the OfS to ensure that they are compliant (Schedule 3, Section 25 Higher Education and Research Act 2017), which was not previously the case.

Duty 1 - freedom of speech and external speakers

- To ensure that freedom of speech and academic freedom within the law is maintained on campus and outside premises of students
- To ensure the safety of staff, students and visitors as events from on campus or invited outside speakers take place
- To plan and deal with any risk assessments of events
- To follow policies
- To ensure our regards to the need to prevent people from being drawn into terrorism
- To take reasonable measures and an event is proven discriminatory, harassment and intimidation of students

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Duty 2 - towards staff

The Prevent Duty guidance requires that providers will have in place properly thought through process and procedures, which in their formulation will have considered the reasonably foreseeable risks, and put in place mitigations to reduce these. Issues may arise if these policies are not embedded within the organisation, and the procedures are not followed.

This increases the possibility that injury or loss may occur (which had been mitigated within the policy), such as discrimination, breach of the Data Protection Act or failure to properly balance the competing duties placed on RHEBs.

Appropriate training and support is essential for all those who may be engaged with Prevent duties, including Duty of care to students, staff and visitors, and the responsibility to prevent people from being drawn into terrorism, including those who may be vulnerable.

It's important that providers review their training programmes and ensure that they are sufficient to meet the Prevent Duty. Training should be proportionate and should be tailored to recognise and know what to do where there is a concern that someone may potentially be open to being drawn into terrorism. There is an expectation that staff are competent to deal with these issues and clear structures and procedures in place to help them.

Providers will need to carefully consider the scope of their Prevent training programmes and how it fits with other training and support for students and staff in their institution.

In light of the difficulties in balancing the competing duties, and the complex nature of any decision, for example to refer an individual to the Channel programme for support, it is important that there is a clear process for making decisions in such cases. Channel is the RHEB. It's good practice that decision-makers are referred to Channel through a multi-agency panel, which has more than one or three people. They can bring to the decision-making process a range of expertise and bring their student services, as planners, perspective, and providing a legal perspective.

What is Channel?

Channel is a multi-agency criteria that such authorities are legally obliged to oversee and considers individuals referred for support in cases of potential radicalisation and vulnerability to being drawn into terrorism. Channel is voluntary for the individual, individual must be sought by the Channel panel for supportive intervention.

Duty 2 - towards staff

- To be relevant staff
- To decide what can "remain" staff
- What kind of training - "appropriate" is the unconvinced
- Training not appropriate and relevant staff
- Properly target through policies and procedures. Paragraph 3, OfS statement
- Ensure they are, and remain competent - with clear lines of authority for decision making
- Appropriate allocation of decision-making responsibilities

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Duty 3 - student support

There is an expectation that welfare and chaplaincy support is available to all students but the guidance is not prescriptive about how this should be delivered. Care for the individual institution to decide based on local circumstances - including student numbers, and the nature of the student population. Chaplaincy services are highly valuable and appreciated and that relevant staff have the necessary training and support.

Duty 3 - student support

- Prevent guidance highlights an expectation to provide sufficient welfare and chaplaincy support to students
- But not prescriptive in how
- Impacts on all students and staff in the campuses, on the walk, transitions, relevant student/staff interfaces

- Must meet expectations set out in contract and staff must use reasonable skill and care in carrying out support.

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Duty 4 – to students under GDPR

The need for compliance with General Data Protection Regulations (GDPR) is referenced in the Prevent statutory guidance – RHEBs must ensure that their arrangements to implement Prevent are consistent with their procedures for compliance with data protection legislation.

Duty 4 - to students under GDPR (an existing statutory obligation)

- Prevent guidance highlights the need for compliance with the General Data Protection Regulations. [Paragraph 21, general guidance]
- Training for staff working with students on the restrictions concerning release of information
- Creation of fair and transparent data sharing agreements with police, NHS, local authorities
- Students informed when data will be shared
- None of this is new.

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Duty 5 – equality law

All specified authorities must be mindful in implementing the Prevent Duty of their existing duties to comply with equality legislation and in particular the Equality Act (2010) (as amended) – for publicly funded providers this includes the public duty to promote equality – for private providers the other requirements relating to non-discrimination, harassment, victimisation etc.

Duty 5 - equality law

- The revised Prevent guidance for all specified authorities explains the need to implement Prevent in the context of other existing statutory duties
- It states: "The duty is likely to be relevant to fulfilling other responsibilities such as the duty arising from section 149 of the Equality Act 2010." [Paragraph 12, general guidance]
- Implementation of the Prevent Duty requires careful consideration of a variety of duties and responsibilities – balance and proportionality

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When does a breach of duty arise?

This slide summarises the circumstances where a breach of duty may arise.

When does a breach of duty arise?

- Where there is a clear duty of care – health and safety
- Where there is a failure to have in place and implement policies and procedures to comply with a statutory duty
- Where there is a failure to provide levels of support stipulated in the student contract – for example support to students with a disability or other known vulnerability
- When the potential harm is foreseeable and the RHEB has failed to meet a reasonable standard of care in those circumstances

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Risk of litigation

The slide acknowledges that there is a theoretical risk of litigation should someone be drawn into terrorism because of something that is claimed to have happened on campus. But the risk is low – however, the risk would be greater if it were shown that the institution had failed significantly to implement the Duty.

Risk of litigation

- Theoretically, a RHEB could face litigation from an individual or family of an individual who was drawn into terrorism because of what happened to them on campus
- But to be successful there would need to be strong evidence that the institution had failed significantly to implement the Prevent duty
- And evidence that radicalisation was the result either of action or inaction on the part of the RHEB that caused the loss or injury
- And that the individual was drawn into terrorism mainly due to influences at the RHEB and over which the RHEB had control

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In summary – student support

This slide summarises that staff and students should use existing channels to raise welfare (including Prevent) concerns and that an institution's response should be proportionate.

In summary - student support

- Utilise the same channels you would normally use to raise a welfare concern about a student
- Take a proportionate approach
- Offer support to students in relation to their engagement.

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In summary – duty of care

This slide summarises that there is a duty of care in certain circumstances to students, staff and visitors. This pre-dates the Prevent Duty and its introduction does not greatly increase the duty of care owed.

In summary - duty of care

- There are circumstances where a duty of care to students, staff and visitors exists
- These pre-date the Prevent duty and come within the "usual functions" of the RHEB
- They are mostly referenced in the Prevent statutory guidance – either the guidance to all specified authorities or the specific guidance to HE providers
- The Prevent duty is a statutory duty but provided it is implemented properly and as set out in the guidance, it does not greatly increase the duty of care owed
- There is, though, a need to ensure that risk assessments take the risk of litigation into account, however small
- And it should be noted that this is a matter of legal opinion and ultimately a matter for the courts

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