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## Background

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In 2015, the Counter Terrorism and Security Act introduced a new statutory duty for higher education providers to comply with, regarding the role that they have in preventing radicalisation and extremism:

### *26 - General duty on specified authorities*

*(1) A specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism.*

This Duty refers to all childcare providers, and most public facing bodies, including universities. The Office for Students (OfS) monitors the implementation of this Duty throughout the sector. In order to be assured of compliance, the OfS employs a risk based approach, including higher engagement with those universities they judge be at a higher risk. Within this framework, providers will be expected to submit annual returns, and engage in Prevent review meetings. As the initial year-long transition into the OfS regime concludes, this briefing note summarises the expectations that have been set over the last year.

Outside the immediate logistical changes, anyone engaged with higher education will be keenly aware that the Prevent Duty has been subject to multiple controversies. Some student unions, under the direction of the NUS, have refused to support the Duty and parts of the legislation have been directly challenged in the courts.<sup>1</sup>

The government announced in August 2019 that Lord Carlile has been appointed as the Independent Reviewer of the Prevent programme. The review will focus on the current delivery of the Prevent programme and make recommendations for the future and is expected to report to Parliament by August 2020.

## 1. Responsibilities of the Providers and the OfS

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The OfS has built upon the monitoring framework undertaken by HEFCE, albeit with a stance that is more risk based in its approach. The OfS's responsibility as a 'monitoring authority' has been described in the Secretary of State's delegation letter, with effect from April 2018.<sup>2</sup>

The Counter Terrorism and Security Act (CTSA) places statutory duties on specified authorities, including higher education providers.<sup>3</sup> The most notable is that they should give 'due regard' to the need for the prevention of terrorism.

The OfS has offered examples of how 'due regard' could be demonstrated:

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<sup>1</sup> See the application of *Dr Salman Butt V. the Secretary of State*. The Court of Appeal found that the Secretary of State had breached his duty to promulgate guidance that was sufficiently balanced and accurate to inform the decision-maker in a regulated higher education body of their competing obligations both to ensure free speech and to prevent people being drawn into terrorism and to assist them to a proper conclusion. This guidance must now be redrafted by the government in the light of the judgment; the redrafted guidance will need to be approved by Parliament.

<sup>2</sup> <https://www.officeforstudents.org.uk/media/1301/prevent-ofs-delegation-letter.pdf>

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2015/6/contents/enacted>



- Map any risks associated with the Prevent Duty and plan appropriate mitigation.
- Effective Welfare Support systems, linking to DfE Prevent co-ordinators, local authorities, or the police, as appropriate.
- IT usage policies and (where relevant) research policies should acknowledge the Prevent Duty.
- Engagement with students and Students' Unions should ensure that there is awareness of policies for relevant activities.

To inform its risk based approach, the OfS has powers to request actions of a provider under both CTSA and HERA (Higher Education and Research Act, 2017).<sup>4</sup> These powers were delegated under a legislative framework through the CTSA, and as such, are different from those provided by the OfS regulatory framework.

The OfS has outlined four core monitoring mechanisms it will use to assess institutional compliance with the Prevent Duty:

- Annual accountability and data returns, completed and submitted in a similar fashion to financial reporting. These will include:
  - Signed declarations and explanatory accountability statements
    - Outcomes based data returns supported by a short qualitative narrative covering core aspects e.g. staff training, welfare concerns and external speakers, detailing what aspects of data have helped the institution in attaining effective compliance.
- Prevent review meetings with institutions (targeted and tailored based on the risk associated with the institutions). These will focus on:
  - Stress testing core principles and procedures to review their effectiveness of providers at higher risk.
  - Random sampling of all other institutions to understand individual approaches to implementation.
- Reporting of serious incidents and material changes.
- Thematic review and supporting continuous improvement.

The OfS has stated that there will be different monitoring requirements for new providers to the sector to ensure they meet a baseline compliance level in the first instance. To aid with identification and monitoring under the new risk based approach, data will be used to a greater extent than before. While the initial question here is what data should be provided, the OfS advocates that the approach should largely be similar to compliance with the core monitoring framework. For instance, granular data, published at an aggregate level, with contextual background, supported by accountability statements.

## 2. Prevent, Free Speech, and No Platforming

The delegation letter to the OfS encourages them to support institutions balancing their responsibilities under the Prevent Duty, while also ensuring that they fulfil their responsibilities regarding freedom of speech. This is an area of contested debate in the sector – how can the sector balance free speech and eliminate or 'fully mitigate' the risks of radicalisation on campus? Where these risks have been identified and addressed, whether via control measures or other safeguards, certain media outlets have categorised this simply as censorship, designed to restrict free speech and discussion. Student Unions have also received direct criticism for the implementation of safe space policies, or no platforming, without an opportunity to posit why such policies have been brought forward and the limited circumstances in which they are invoked.

<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2017/29/contents/enacted>



Looking further into this, the instances where institutions, have actually cancelled or unduly restricted a public speaker's visit are extremely limited. Where this has happened, the speaker has either been deemed to be too large a risk from a security perspective, or the proposed topic was out of line with the University's relevant public speaker policies. Though this could be met by allegations that other reasons for cancellation e.g. security costs, have been used as a proxy for compliance with the Prevent Duty. We acknowledge here that there is a difficult line for universities to take between ensuring effective control, and restricting the freedom of invited speakers, but for the most part, the sector seems to be balancing these responsibilities appropriately. In addition to this, it's important to remember that security costs may be divert public funds or be disproportionate in terms of the universities aims. It is therefore important to ensure that these additional costs remain appropriate.

While the application of no platforming policies by student unions isn't common enough in reality to be deemed a significant risk for all institutions, where it does occur, it can cause reputational damage to the affiliated university.

The Higher Education Policy Institute (Hepi) have discussed this area in some detail in a recent paper, and concluded that while institutions do have a right to censor certain speakers/topics, the primary purpose of higher education is to facilitate debate, and to do this by allowing free speech, and letting multiple voices be heard in the conversation.<sup>5</sup> This is a sentiment that we would support. In practical terms, universities should begin from the premise that requested speaker events will take place, however controversial, and systematically work through the Prevent Duty obligations and other requirements (e.g. Education Act, Article 10 of the Human Rights Act etc), to ensure that all relevant considerations are addressed and only those controls and restrictions deemed appropriate for the circumstances, are introduced.

### 3. Problems with the Prevent Duty and Islamophobia.

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One of the strongest criticisms of the Duty is that it has normalised or contributed to 'islamophobia'. Though this is undoubtedly quite a bold statement, if we look into the reporting and data relating to the Duty, there is some evidence that Islamic speakers or students have been disproportionately affected by its implementation.

For instance, in January, the Henry Jackson Society (a conservative think tank, much of whose content falls right of centre) published a paper in which they claimed that 'extremists, pro-jihadists and avowed anti-semites have 'near-unfettered' access to students'.<sup>6</sup> The report concludes that universities aren't doing enough to prevent the risk of Islamic radicalisation. While the report raises valid concerns and examples of universities failing to act on warnings regarding controversial speakers, the report problematically conflates moderate Islamic speakers and organisations, with the smaller number of speakers that might be described as 'extremist'

On the other side of the spectrum, the Guardian recently published an article detailing the rise of far-right extremism.<sup>7</sup> This article suggests there is an increasing risk of radicalisation on the extremes of the far right, driven by increasing focus on movements such as cultural nationalism, that requires a rapidly increasing resource to manage. It identified that the demographic at the greatest risk of being drawn into this movement, and potentially radicalised is 'bright intelligent young men'.

Looking in more detail at the Prevent Duty in practice, there appears to be an institutional bias towards referrals for 'Islamist extremism' activity. Looking at the figure below (from data provided by the ONS for the academic year 2017-18), it is evident that although 'Islamist extremism' faced by far the most initial referrals, fewer of

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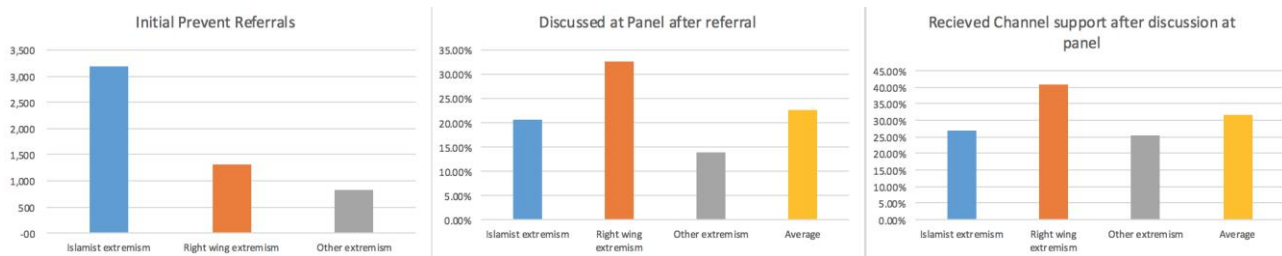
<sup>5</sup> <https://www.hepi.ac.uk/2019/06/27/why-it-is-so-important-to-protect-free-speech-in-universities/>

<sup>6</sup> <https://henryjacksonsociety.org/publications/university-extreme-speakers-2017-18-edition/>

<sup>7</sup> <https://www.theguardian.com/uk-news/2019/sep/19/rise-of-the-far-right-a-disturbing-mix-of-hateful-ideologies>



these are deemed serious or credible enough to be discussed at Panel and receive further support. This would imply that there is a disproportionate tendency to report this type of extremism rather than others, possibly driven by arguments and language, such as that used in the HJS report. The extent of this over-referral is made all the more remarkable when considering that Islamic students only account for 2.2% of the student population, but almost 66% of referrals under the Prevent Duty in 2017/18 related to 'Islamist extremism'.



This could initially be taken to reveal a slight sector tendency towards islamophobia, or perhaps a potential blind spot towards extremist activity on the far right. There is also a risk that the OfS may begin to compensate for any tendency to over report activity and move too far the other way.

## Conclusion

It will remain to be seen over the coming years how effective this new approach to monitoring, and associated compliance, is, and how effectively non-compliance will be dealt with. Initially, the OfS proposes that its approach offers the potential for stronger assurance and better support, due to freed resource. Problems in navigating free speech and islamophobia may remain. Adding to this are the questions around Dr Butt's legal challenge as to what extent universities can fully mitigate the risk of extremism. Although there is hope that these will be addressed in the upcoming review, questions have been raised in some quarters about Lord Carlile's independence. Some are also concerned that the review is more likely to confirm the government's position rather than identify opportunities for improvement.

## How can Uniac Help?

We can offer a range of services to provide assurance that Prevent Duty preparation and compliance is robust including:

- Risk mapping reviews
- Data preparation and management reviews
- Student engagement + welfare system management reviews
- Networking and benchmarking of sector preparation, gathering best practice
- Policy review (including freedom of speech and IT regulations)
- Provider submission review
- Mock PRM exercises.

If you would like us to help you digest and explore this review, and its implications for you, we would be delighted to hear from you. Similarly, for further information on Uniac's internal audit and assurance service please do get in touch.





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