

Delivering the Prevent duty in a proportionate and fair way

A guide for higher education
providers in England on how to
use equality and human rights
law in the context of Prevent

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1. About this guide

Since 2015, higher education providers have had to comply with the Prevent duty. Under this duty they are required to put systems in place to identify, challenge and address extremism¹ in order to help prevent vulnerable staff and students from being drawn into terrorism.

Concerns have been raised that the Prevent duty is sometimes being implemented in ways which could:

- undermine the fundamental rights and freedoms of staff and students
- stifle free speech and academic freedom
- lead to discrimination and other conduct prohibited by the Equality Act 2010, and
- stigmatise or alienate segments of staff and student populations.

The UK Government's intention is for the Prevent duty to be discharged in a sensitive and proportionate way that takes account of the Public Sector Equality Duty (PSED) and the need to maintain open and free speech.²

Most higher education providers will already have put in place arrangements to comply with the Prevent duty and we know that the sector has a strong commitment to equality, human rights, free speech and academic freedom. Complying with equality and human rights law in the context of the Prevent duty is not only a matter of legal compliance and avoiding discriminatory practice, it should help higher education providers:

- create and strengthen a culture where people feel confident expressing who they are and what they believe in
 - maintain trust with staff, students and wider communities, and obtain their support for the decisions made to meet the requirements of the Prevent duty, and
 - attract and retain the most talented staff and students at national and international levels.³
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1.1. Who is this guide for?

The Prevent duty applies to ‘relevant higher education bodies’.⁴ Most higher education providers will also have responsibilities under duties contained in equality and human rights law.⁵ However, because these responsibilities apply in slightly different ways across Britain and across the sector, we restricted the scope of this guide to higher education providers in England. All relevant higher education bodies across Great Britain should however find this guide useful to inform the work they do to comply with the Prevent duty. Students, students’ unions or members of staff with an interest in this area across Great Britain might also find it helpful.

This guide will be particularly relevant if you are:

- a **governor** with responsibility for ensuring that your institution complies with all its obligations under the law, or
- a **Prevent lead** with responsibility for identifying risks relevant to the Prevent duty and for developing an action plan to mitigate against those risks.

1.2. What does it cover?

This guide provides general information on relevant equality and human rights requirements and guidelines to help governors and Prevent leads use these in practice to inform their Prevent work.

It complements existing resources available on the [Safe Campus Communities](#) website and focuses solely on equality and human rights law. As such, it does not:

- reproduce information on the Prevent duty itself, or
- provide information on the duty that higher education providers have to take steps to secure free speech and to ensure academic freedom within the law.⁶

For more information on this, see relevant resources listed in the ‘Further information’ section.

2. Equality, human rights and the Prevent duty

There are requirements in the Equality Act 2010 and in the Human Rights Act 1998 that higher education providers should use to ensure that they deliver the Prevent duty in an appropriate, proportionate and fair way.

The Equality Act 2010⁷ requires that higher education providers operate in ways that do not unlawfully discriminate, harass or victimise actual, prospective and former students with protected characteristics.⁸ It also contains additional requirements under the PSED⁹ for public authorities, such as higher education providers, to integrate consideration of equality and good relations into their day-to-day business. The PSED and the Prevent duty are both 'due regard' duties. As such, higher education providers can learn from the approach and processes they developed to comply with the PSED to better assess risks relevant to preventing terrorism and extremism on campus and to identify proportionate actions to remove or reduce such risks.

Equality Act 2010 - The Public Sector Equality Duty

Under the PSED, higher education providers must have 'due regard' to the following aims when exercising their functions:

- Eliminate unlawful discrimination and other conducts prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.



As set out in section 1, there is a concern that actions taken to comply with the Prevent duty could pose risks to advancing equality, tackling prejudice and fostering good relations. A key way in which providers can show 'due regard' would be to assess the impact of their Prevent policies or practices against the requirements of the PSED, including the potential or actual impact on staff and students who share protected characteristics.

Section 6 of the Human Rights Act 1998 requires that all public authorities, when carrying out their functions, respect and protect the rights and freedoms sets out in the Act.¹⁰ In practice, this means that higher education providers need to ensure that actions they take to comply with the Prevent duty are compatible with human rights. Thus, it would be good practice for public authorities to assess the potential impact their proposed policies could have on human rights before implementation and their actual impact thereafter.

Human Rights Act 1998 - Rights and freedoms most relevant to Prevent

- The right to respect for private and family life, home and correspondence (article 8)
- Freedom of thought, conscience and religion (article 9)
- Freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas which may shock, offend or disturb others (article 10)
- Freedom of assembly and association (article 11)
- Non-discrimination in the enjoyment of rights (article 14)
- The right to education, including access to existing educational institutions and official recognition of completed studies (article 2 of protocol 1)



All of these rights and freedoms are 'limited' or 'qualified', which means that they can be restricted under specific circumstances.¹¹ For example, higher education providers may restrict a person's right to freedom of expression to protect the rights and freedoms of others, if this person is inciting racial hatred. They may also limit freedom of assembly and association if they have reliable intelligence that violence is likely to occur and, after careful consideration of the situation and options, they conclude that effective steps cannot be taken to prevent that from happening. They must have no other viable option than to restrict those rights.

3. Guidelines for governors

The Committee of University Chairs published a note (see ‘Further information’ section) clearly stating that governors are ultimately responsible for compliance with the Prevent duty. In addition to this, governors are also responsible for making sure that equality and human rights obligations are integrated across the work their institution does to comply with the Prevent duty.

In practice, we would expect that you:

- promote the requirements under the Equality Act 2010 and the Human Rights Act 1998 as useful tools to ensure compliance with the Prevent duty in a proportionate and fair way
- ensure that staff receive training on the Prevent duty that covers relevant and applicable equality and human rights obligations, raises awareness of different cultural and religious practices and beliefs, and addresses the bases of prejudices and stereotyping
- ensure that your Prevent lead conducts a thorough assessment of the impact their proposed action plan could have on equality, human rights and good relations, and has made every effort to consult with interested parties in the process (see section 4 for more details)
- consider such an assessment before you make a decision on whether an action should be implemented
- check that actions taken to comply with the Prevent duty are adequately monitored for their actual impact on equality, human rights and good relations, and
- make sure that staff and students’ complaints about actions taken under the Prevent duty are dealt with in a timely and effective manner, that lessons are learned across the institution and the Prevent action plan is amended where appropriate.



4. Guidelines for Prevent leads

As a Prevent lead, you are responsible for identifying risks relevant to the Prevent duty and for creating a plan setting out the actions your institution will take to mitigate against these risks. The guidelines below should help you ensure that you assess the impact of your proposed actions in a robust and proportionate way.

However, we encourage you to **consult with equality and diversity staff** who might have already put systems in place to help you conduct a thorough assessment. They could also act as a 'critical friend' to provide independent scrutiny on the work you do to comply with equality and human rights law in the context of the Prevent duty.

4.1. Assessing the potential impact of your Prevent action plan

We suggest that you assess your proposed Prevent action plan for its impact on equality and good relations at the same time as assessing its impact on human rights.

We also suggest that you consider the overall impact of your action plan, looking at the **cumulative impact** of your proposed actions rather than their individual impact in isolation. The questions below may help you to do this:

- Could some of your proposed actions lead to unlawful conduct prohibited by the Equality Act 2010?
- Could your plan affect how people with particular protected characteristics access the courses your institution delivers or how they participate in extra-curricular activities on university premises? Could it affect their academic success? Could it affect how comfortable students feel studying certain subjects or how comfortable staff feel developing certain courses (for example, the study of terrorism)?
- Could your proposed action plan affect how people with particular protected characteristics perceive or interact with others? Could it lead to community tensions, isolation or segregation?
- Could your proposed action plan interfere with individuals' rights and freedoms? If so, is it proportionate and necessary?



Remember



- It is important not to base your assessment simply on how many people are impacted by a proposed action. Consideration should also be given to groups of people who may be small in number, but for whom the impact of an action may be particularly severe.
- It will **never** be acceptable for your actions to lead to unlawful discrimination or any other conduct prohibited by the Equality Act 2010 (such as harassment or victimisation).

A good assessment will be informed by **robust evidence** such as:

- **quantitative evidence**, including: relevant statistical results of surveys such as the National Student Survey or others conducted at the institutional level; data on hate crimes and incidents including those motivated by race and religion on campus or in the area, and
- **qualitative evidence**, including: information gathered through consulting with staff, students and other interested parties, particularly those likely to be affected by your proposed action plan.

Consulting with staff and students is crucial. It will enable you to:

- **check** that the **evidence** you have used to assess the potential impact of your proposed action plan is **robust and relevant**, and
- **identify potential adjustments** you could make to your plan or **appropriate and proportionate** actions your institution could take to avoid undermining equality, human rights and good relations when the plan is implemented.

You may need to spend time and resources to persuade staff, students and their representatives to engage with this process. Being clear about why you want to engage with them and how you will take on board their comments and suggestions should help you.

Example

A **proposed Prevent action plan** requires students who want to organise any event on university premises to provide the Events Team/Campus Coordinator with relevant information (such as date, agenda and proposed speakers) well in advance of the event taking place. When external speakers are invited, students are also expected to provide information about them by completing a freedom of speech form.

Under the proposed plan the Events Team/Campus Coordinator is responsible for reviewing the information provided through freedom of speech forms and for assessing whether an event is likely to pose a risk relevant to the Prevent duty. If so, the Events Team/Campus Coordinator is required to liaise with the Prevent lead so he/she can decide on the best course of action.

After discussing the proposed Prevent action plan with staff and students (including students' union and society representatives), the Prevent lead **amends it to include additional actions** which should be taken where potential equality and human rights issues are identified in relation to a planned event. The actions include:

- The Prevent lead holds an Event Review Meeting with the following stakeholders: Equality and Diversity Manager; Events Team/Campus Coordinator; a representative of the students' union/society; the event organiser; and a member of the Campus Security Team.
 - Where appropriate, interested parties discuss the situation including steps that could be taken to enable the event to go ahead without leading to unlawful acts (for example, incitement of racial hatred), tensions or violence on campus.
 - Members who attended the Event Review Meeting receive clear guidance on how the information provided in relation to a proposed event will be used, stored and potentially shared with external agencies.
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4.2. Sharing information with governors and monitoring actual impact

To ensure that governors take an informed decision on which actions should be implemented to comply with the Prevent duty in a proportionate and fair way, you should provide them with all the information they need to scrutinise and be confident including:

- the proposed Prevent action plan
- the work done to assess its potential impact on equality, human rights and good relations
- when and how your action plans will be monitored for their impact on equality, good relations and human rights, and
- how any equality and human rights issues will be escalated to them.

You will want to consider a range of indicators to monitor the impact of your Prevent action plan.

Possible performance indicators

- Ratio and protected characteristics of students referred to the Channel Programme¹² by the university compared with those taken on by the Programme, and if possible how these in turn compare with statistics from other specified authorities covered by the Prevent duty.¹³
- Results from institutional surveys on how confident staff and students feel about expressing who they are and what they believe in, and how safe they feel about interacting with others.
- Information disaggregated by protected characteristics on complaints raised by staff and students relevant to Prevent and the outcomes of these complaints.
- Information on events cancelled/speakers 'no-platformed' (together with reasons for this, partners involved in taking these decisions, mitigating actions considered and discarded, and protected characteristics of the speakers).
- Ratio and protected characteristics of speakers who are required to provide information under the Prevent duty and analysis of the reasons for this.
- Statistics disaggregated by protected characteristics on the take-up and drop-out rates for different courses and activities, and analysis of the reasons for this.



Example

After introducing its Prevent action plan, a university conducts **research to assess its actual impact**. The research reveals that since the plan was introduced:

- verbal abuse and physical assault against Muslim and Sikh students on campus has increased
- a growing number of students from these backgrounds feel uncomfortable expressing their religion on campus, and
- some students have dropped-out of activities organised by the university Islamic and Sikh Societies for fear of being attacked, becoming isolated, being under surveillance or referred to the Channel Programme.

The evidence analysis shows that the increase in religiously-motivated incidents is linked to external events rather than the actions taken under the Prevent duty. It also shows that since the plan was introduced, no student had been referred to the Channel Programme. However, some students had been reported to the Prevent lead as 'potentially vulnerable to terrorism' by staff and students, suggesting that there is an **issue with unjustified reporting**.

The Prevent lead discusses the situation with the university Equality and Diversity Manager and both decide that it is necessary to **meet with representatives of Muslim and Sikh students to consider whether there is a need to amend the Prevent action plan**. To encourage participation, they also agree for the meeting to be organised and chaired by the Equality and Diversity Manager who is perceived by students as neutral and independent.

Participants agree that unjustified reporting to the Prevent lead may be a key contributing factor to Muslim and Sikh students feeling fearful of expressing their religion on campus. They suggest for the **'reporting policy' in the Prevent plan** to be amended so any unjustified reporting:

- is investigated by an independent panel to determine its cause, and
- leads to: additional mandatory training to address prejudices and stereotyping of those concerned; or other measures deemed appropriate under the university's Code of Conduct.

The Prevent lead decides to revise the Prevent action plan to implement these suggestions. In addition to this, the Equality and Diversity Manager proposes to launch a campaign to reiterate: the university's commitment to equality and human rights; its position on dealing with religiously-motivated hate crime and unjustified reporting of students under the Prevent duty; and its support of the activities delivered by all societies on campus including those of a religious nature, providing that they also respect the freedoms and rights of all staff and students.

Both proposals are accepted by the university governing body and implemented. A plan to monitor the actual impact of these new actions and of the campaign is also put in place.

5. Ensuring transparency and accountability

We suggest that your institution:

- feeds back to staff and students involved in the consultation process for developing the Prevent action plan on how their comments and suggestions were taken on board in the decision-making process
 - keeps a written record of the equality, good relations and human rights considerations¹⁴ made by governors in relation to your proposed Prevent action plan (this should include the decisions they arrived at and the evidence behind these)
 - keeps a record of the work done to assess the actual impact of the action plan, including any issues of concern escalated to governors and how these may have informed any review of your action plan, and
 - puts a system in place for people to easily access information in relation to the work you have done to comply with the Prevent duty and with your equality and human rights obligations (this could include publishing relevant documents on your website or enabling people to request and access such information in a timely manner).
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6. Further information

1. Committee of University Chairs (2016), 'Illustrative Practice Note 2: Prevent Strategy Governing Body Responsibility for Counter-Terrorism and Prevent Agenda'. Available at: <http://www.universitychairs.ac.uk/wp-content/uploads/2016/05/IPN2-Counter-Terrorism-and-Prevent-Agenda4.pdf> [accessed: 24 January 2017]
 2. David Ruebain (2016), Module 3 – The Prevent duty in the context of other legislation and legal duties. Available at: <http://www.safecampuscommunities.ac.uk/training/module-3-the-prevent-duty-in-the-context-of-other-legislation-and-legal-duties> [accessed: 24 January 2017]. Please note you will need to subscribe to the Safe Campus Communities platform to access this resource.
 3. Equality Challenge Unit (2013), 'Promoting good relations on campus: a guide for higher and further education'. Available at: <http://www.ecu.ac.uk/publications/promoting-good-relations/> [accessed: 24 January 2017]
 4. Equality and Human Rights Commission (2010), 'Technical Guidance on the Public Sector Equality Duty: England'. Available at: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england> [accessed: 24 January 2017]
 5. Equality and Human Rights Commission (2014), 'Equality Act 2010 Technical Guidance on Further and Higher Education'. Available at: <https://www.equalityhumanrights.com/en/publication-download/equality-act-2010-technical-guidance-further-and-higher-education> [accessed: 24 January 2017]
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 7. Equality and Human Rights Commission (2015), 'Freedom of expression legal framework'. Available at: <https://www.equalityhumanrights.com/en/publication-download/freedom-expression-legal-framework> [accessed: 24 January 2017]
 8. HEFCE (2016), 'The Prevent duty in higher education in England: updated advice note for institutions'. Available at: <http://www.hefce.ac.uk/pubs/year/2016/201624/> [accessed: 24 January 2017]
 9. HEFCE (2016), 'The Prevent duty: monitoring framework for the higher education sector'. Available at: <http://www.hefce.ac.uk/pubs/year/2015/201532/> [accessed: 24 January 2017]
 10. HM Government (2015), 'Prevent Duty Guidance: for higher education institutions in England and Wales'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445916/Prevent_Duty_Guidance_For_Higher_Education_England_Wales_.pdf [accessed: 24 January 2017]
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11. HM Government (2015), 'Revised Prevent Duty Guidance for England and Wales: Guidance for specified authorities in England and Wales on the duty in the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance__England_Wales_V2-Interactive.pdf [accessed: 24 January 2017]
 12. HM Government (2015), 'Channel Duty Guidance: Protecting vulnerable people from being drawn into terrorism: Statutory guidance for Channel panel members and partners of local panels'. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf [accessed: 24 January 2017]
 13. Universities UK (2013), 'External speakers in higher education institutions'. Available at: <http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/external-speakers-in-higher-education-institutions.aspx> [accessed: 24 January 2017]
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7. Endnotes

1. The UK Government defines extremism 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. It includes violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views that terrorists exploit.
 2. See: <https://www.elearning.prevent.homeoffice.gov.uk/screen23> [accessed: 24 January 2017]
 3. For instance, recent research shows that international students increasingly value 'personal safety' and 'multiculturalism', which they see as intertwined, when selecting a university. See: <https://www.britishcouncil.org/sites/default/files/oth-integration-report-september-14.pdf> [accessed: 24 January 2017]
 4. This includes **higher education institutions** that are funded directly by the Higher Education Funding Council for England; alternative providers with specific-course designation by the UK Government for the purposes of English student support funding; other providers that provide higher education to more than 250 students by headcount; and the **autonomous colleges, schools and halls** of the universities of Cambridge, Durham and Oxford.
 5. Most governing bodies or proprietors of higher education providers will have responsibilities under the Prevent duty and under duties contained in equality and human rights law. The Equality Act 2010 and the Prevent duty define **higher education courses** in England and Wales by reference to those listed in Schedule 6 of the Education Reform Act 1988. Equality law duties apply to universities, university colleges and a college, school or hall of a university. Other **higher education institutions** to which equality law applies are institutions conducted by higher education corporations and those designated by the Secretary of State as eligible to receive funding from higher education funding councils (section 91 of the Further and Higher Education Act 1992). The Prevent duty applies to higher education corporations, designated institutions and to universities (including a university college, school or hall) entitled to grant academic awards by an Act of Parliament, Royal Charter or Privy Council order – regardless of whether or not the institution receives funding from funding councils (section 11 of the Higher Education Act 2004). In addition, the Prevent duty covers institutions (not otherwise listed) at which more than 250 students – excluding students undertaking distance learning courses – are undertaking higher education courses mentioned in Schedule 6 to the Education Reform Act 1988.
 6. A requirement under section 43 of the Education (No.2) Act 1986 and section 202 (2) of the Education Reform Act 1988.
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7. Under Chapter 2, Part 6, Sections 91 and 92.
 8. The protected characteristics are: age; disability including physical and mental impairment; gender reassignment; race including colour, nationality, ethnic or national origins; religion or belief; sex; sexual orientation; pregnancy and maternity; and marriage and civil partnership. The protected characteristic of marriage and civil partnership is not covered by the anti-discrimination and anti-harassment requirements in Chapter 2, Part 6 of the Equality Act 2010. It is also not covered by the PSED aims of advancing equality or fostering good relations.
 9. Under Chapter 1, Part 11, Section 149.
 10. The Human Rights Act 1998 incorporates most of the fundamental rights and freedoms set out in the European Convention on Human Rights into domestic British law.
 11. Only if public authorities can demonstrate that it is proportionate to do so in a given situation because it pursues a legitimate aim, it is done in accordance with law, and that it is necessary in a democratic society. For more information on this, see the resources listed in the 'Further information' section.
 12. This is a multi-agency programme to identify and provide support to people at risk of radicalisation. For more information, see HM Government (2015). For more information, see HM Government (2015) (in the 'Further information' section)
 13. For example, statistics for local authorities, schools, colleges, police forces and NHS organisations.
 14. The requirement is on authorities to consciously address the PSED requirements when developing policies and before any decisions are taken. Records showing that this has been done will be beneficial to authorities in the event there are queries or claims of non-compliance with those legal obligations.
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Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

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Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com.

The Commission welcomes your feedback.

Equality Challenge Unit

Telephone: [020 7438 1010](tel:02074381010)

Email: ecu@ecu.ac.uk

Post: [First Floor, Westminster Tower, 3 Albert Embankment, London, SE1 7SP](#)

Universities UK

Telephone: [020 7419 4111](tel:02074194111)

Email: info@universitiesuk.ac.uk

Post: [Woburn House, 20 Tavistock Square, London, WC1H 9HQ](#)

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