

## **Russell Group response to the consultation on the Counter-Terrorism Bill draft statutory guidance**

### **1. Summary**

- We welcome this opportunity to contribute to the consultation on guidance for the Counter-Terrorism Bill. We understand the need to tackle terrorism and, where possible, to prevent individuals from being drawn into terrorism in the first place. Our universities are aware of the challenges and are already highly vigilant.
- We believe that the most effective solution is for universities to be able to adopt different approaches to addressing the risk of students being drawn into terrorism according to their particular circumstances. As such, the guidance should be proportionate and risk-based, and must not be overly prescriptive – recognising that the best universities already comply fully with their Prevent obligations.
- It is important that private providers will also be covered by the Bill and statutory guidance.
- As the statutory guidance is not subject to parliamentary scrutiny, we think it is important that the Government makes a commitment to a formal consultation with universities prior to any future changes in the guidance.
- An important issue that needs to be addressed is how universities should balance their duty to promote freedom of speech with the new statutory Prevent duty. Universities must be able to continue to provide an environment in which students and staff can engage in free debate within the boundaries of the law – and, indeed, open debate with the ability to challenge radical views is one of the keys to tackling terrorism.
- If the term ‘extremism’ is to be used, a clear legal definition should be provided to ensure universities are not exposed to legal challenge.
- On the sector specific guidance for higher education we highlight a number of particular issues to address:
  - Where there is no suspicion of illegal activity, we question how it could be appropriate or legal to refer individuals into the Channel process without their knowledge. A clear and reassuring statement is needed that any personal information disclosed in cases where neither criminality nor vulnerability is assessed to exist will not be used or retained.
  - The obligation concerning the active engagement of Vice-Chancellors and senior managers in the Prevent duty should be more risk-based.
  - Whilst it is reasonable to expect universities to appoint an identified single point of contact coordinator for Prevent, the guidance should provide

universities with flexibility to decide whether it is necessary to operate a Prevent working group or Channel referral contact group, with no default requirement to have a standing group meeting on a regular basis.

- The obligation to train staff should be focused more narrowly on those leading on the implementation and execution of the Prevent duty. This would enable all staff to access advice and support through a nucleus of staff trained and engaged directly in Prevent.
- The policies and procedures listed in relation to assessment of external speakers are overly prescriptive. We would like to see the guidance changed so that universities are only required to action procedures when speakers are assessed to be high risk.
- We are concerned that imposing IT policies which restrict access to harmful content could damage the ability of students and staff to undertake research freely. Again, we would wish to see a more proportionate approach.
- We would like to see clarification on which organisation (HEFCE or the Prevent infrastructure/Home Office) will have overall responsibility for compliance monitoring within universities. We would hope that any monitoring arrangements and reporting requirements which are put in place will also be risk-based, proportionate and aligned with the procedures of the Home Office's Prevent coordinator teams.
- The guidance should also provide more detail on the Government's proposed statutory intervention mechanisms and potential sanctions for non-compliance. Should HEFCE be in the lead on compliance, we would not wish to see connections being made to the wider regulatory architecture under their remit nor should funding be reallocated from their existing budgets to cover this new function.
- Finally, we are concerned that the Government's impact assessment significantly underestimates universities' potential costs of compliance with the new duty as the guidance currently stands and we hope this will be addressed.

## **2. Overview**

- 2.1 The Russell Group represents 24 leading UK universities which are committed to maintaining the very best research, an outstanding teaching and learning experience and unrivalled links with business and the public sector. We aim to ensure that policy development in a wide range of issues relating to higher education is underpinned by a robust evidence base and a commitment to civic responsibility, improving life chances, raising aspirations and contributing to economic prosperity and innovation.
- 2.2 We understand that the Government must act to deal with the present and growing threat of terrorism within the UK. Our universities treat security with the utmost importance and recognise the need to tackle terrorism and, where possible, to prevent individuals from being drawn into terrorism in the first place.
- 2.3 Some HEIs, such as Russell Group universities, already have a long track record of compliance that should be recognised in any new measures being introduced. Our universities maintain close liaison with students, staff and all relevant authorities to

reduce security risks. We do not believe that a standardised approach will be the most effective means of tackling this issue as universities vary in size, location and the composition of their student bodies and there is no one-size-fits-all solution which can be taken. Ultimately, universities must have the freedom to make decisions themselves in order to judge and deal with security risks as appropriate for the circumstances. **As such, the guidance should be proportionate and risk-based, and must not be overly prescriptive.**

- 2.4 It is important that the standards, quality and reputation of the UK higher education sector can be maintained and **it is right that private providers should have to meet the same requirements as other universities.**
- 2.5 **We welcome the opportunity to provide our views as part of this consultation. As the statutory guidance is not subject to parliamentary scrutiny, we would like to see the Government make a commitment to a formal consultation with universities prior to any future changes in the guidance.**

### 3. Overarching issues

#### *Freedom of expression and academic freedom*

- 3.1 Enabling free debate within the law is a key function which universities perform in our democratic society. Imposing restrictions on non-violent extremism or radical views would risk limiting freedom of speech on campus and may potentially drive those with radical views off campus and 'underground', where those views cannot be challenged in an open environment. Closing down challenge and debate could foster extremism and dissent within communities.
- 3.2 Universities are required by the Education (No. 2) Act 1986 to ensure freedom of speech within the law on campus. However, the draft guidance relates not only to terrorism, but also to stopping people 'moving from extremist (albeit legal) groups into terrorist-related activity'. We would wish to see the conflict between the new duty and universities' legal obligation to protect freedom of speech resolved, preferably in the Counter Terrorism Bill itself, or at least, in the statutory guidance.
- 3.3 Clarification is needed concerning how universities will be expected to place limits on free speech which in itself does not risk breaking the law; otherwise universities may be open to legal challenge. The intention to include non-violent extremism within the scope of Prevent work in universities is a particular problem as it conflicts with the obligation to protect free speech. **Given the existing legal duty to which they are subject, universities should retain the freedom to encourage free discussion of ideas, however radical, within the law.**

#### *Appropriate institutional responses*

- 3.4 Whilst our universities currently engage with Government in tackling security risks through the Prevent and Channel processes, there is concern about introducing a statutory obligation on universities to report students who are displaying unusual behaviour. Students often undergo a developmental period in their lives whilst at university and their time there can prove to be a transformational experience. It is not at all unusual for students to display changing behaviours which are a natural part of their development. **We believe that the best solution is for universities to be able to adopt different approaches to addressing the risk of students being drawn into terrorism according to their particular circumstances.**

### *The definition of 'extremism' and other terms*

- 3.5 The government has defined extremism in the Prevent strategy 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.' However, whilst a definition of terrorism exists in English law, there is no widely agreed definition of 'extremism' or other key concepts and phrases such as 'vulnerable individuals' or 'an atmosphere conducive to terrorism'.
- 3.6 We share the concerns of the Joint Committee on Human Rights that broad terms such as 'extremist' are not capable of being defined with sufficient precision to enable universities to determine whether they risk being found to be in breach of the new duty.<sup>1</sup> The definition of an extremist organisation is open to speculation for example, as presumably it would include organisations which are not on the proscribed list of terror groups or organisations banned under UK law.
- 3.7 **If the term 'extremism' is to be used, a clear legal definition should be provided to ensure that universities are not exposed to legal challenge.**

## **4. Issues relating to specific obligations**

### *Information sharing (paragraph 19 and 61)*

- 4.1 We would welcome greater clarification concerning the obligation on universities to refer individuals into the Channel process for an initial assessment by the police without their knowledge. There appears to be a potential contradiction between this obligation and the need to abide by data protection and related legislation. Paragraph 19 of the guidance states that Prevent 'must not involve any covert activity against people or communities'. **Where there is no suspicion of illegal activity, we question how it could be appropriate or legal to refer individuals into Channel without their knowledge.**
- 4.2 It would also be useful to provide more detail on the expected nature of 'information sharing agreements' which universities are being urged to draw up. Any expectation or requirement to report students which universities judge may be at risk of radicalisation without their knowledge to the police risks damaging students' future careers and potential to travel if their details are kept on file. There is likely to be considerable opposition to this within universities' faculties and student bodies.
- 4.3 **A clear and reassuring statement that any personal information disclosed in cases where neither criminality nor vulnerability is assessed to exist will not be used or retained for other purposes could significantly help acceptance of Prevent and Channel work among relevant communities.**

### *Active engagement at a senior level (paragraph 54)*

- 4.4 **The obligation concerning the active engagement of Vice-Chancellors and senior managers in the Prevent duty should be more risk-based.** Some universities which are categorised as low risk by police and local authority officers have a low level of engagement with these partners. The legislation could have the unintended consequence of diverting police and local authorities away from instances of real concern.

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<sup>1</sup> Human Rights Joint Committee 'Fifth Report Legislative Scrutiny: Counter-Terrorism and Security Bill' (January 2015)

*Cross-department groups/ internal staff Channel panels (paragraphs 55 and 61)*

- 4.5 We are concerned that expectations for universities to implement an internal cross-department group and an internal staff Channel panel is too prescriptive. It would be more effective if universities could decide how best to share information across their faculties and to decide the best way in which to make decisions about sharing that information externally. A one-size-fits-all model will not work for all institutions and risks introducing an unnecessary compliance burden.
- 4.6 Care should be taken not to build a Prevent infrastructure that becomes a 'free standing operation' actively encouraging departments and faculties to pass on information routinely. The focus should be on conduct and behaviour which is relevant in the context of the Prevent duty. Considering some issues under a Prevent agenda may actually be counterproductive – decreasing engagement with and effectiveness of initiatives, and potentially having a negative impact on community cohesion.
- 4.7 **It is reasonable to expect universities to appoint an identified single point of contact coordinator for Prevent. However, the guidance should provide universities with adequate flexibility to decide whether it is necessary to operate a Prevent working group or Channel referral contact group, with no default requirement to have a standing group meeting on a regular basis.**

*Risk assessment and Prevent action plans (paragraphs 57, 58 and 59)*

- 4.8 We would welcome more detail concerning the frequency of required risk assessments and the format which these should take. Greater clarity would be helpful, especially in terms of what could reasonably be expected of an HEI in challenging non-violent extremism, examples of what work might need to be undertaken, and how such work would be assessed as evidence of compliance.
- 4.9 Clarification should also be provided concerning the duty to develop a Prevent action plan when an institution has identified a risk. We would expect that an action plan should be developed as an overarching strategy or framework explaining how the duty will be implemented within an institution. A requirement to produce issue-specific plans whenever a particular risk emerges would be overly burdensome.

*Staff training (paragraphs 60-62)*

- 4.10 As currently drafted, the requirements around staff training and awareness of Prevent are overly onerous and would be extremely difficult for universities to implement. There are currently around 150,000 staff employed at Russell Group universities alone; it would not be appropriate or practical to provide all university staff with Prevent awareness training. The provision of such training would be both expensive and time-consuming.
- 4.11 Furthermore, given the limited number of accredited Workshop to Raise Awareness of Prevent (WRAP) trainers, the operational delivery of such a substantial training programme would be very difficult across all institutions. There are also questions about the suitability of the current WRAP products which are generic rather than sector specific.
- 4.12 **The obligation to train staff should be focused more narrowly on those leading on the implementation and execution of the Prevent duty – as we have been assured recently is the intention by the Immigration and Security Minister. The rest of**

**an institution's staff can then access advice and support through a nucleus of staff trained and engaged directly in Prevent as required.**

*Welfare and pastoral care/chaplaincy support (paragraph 63)*

- 4.13 Paragraph 63 appears to conflate pastoral and chaplaincy support; whilst universities offer pastoral support through professional services staff to all students, currently there is no requirement for them to provide chaplaincy services for students of faith. As secular institutions, it should be a matter for universities to decide whether or not to offer chaplaincy services, or whether to do so through a sponsoring body. We do not believe that the level of resource provided by a university in these areas is an appropriate matter for formal monitoring or linkage to a statutory duty.

*External speakers (paragraphs 64-67)*

- 4.14 **The policies and procedures listed in relation to assessment of external speakers are overly prescriptive.** For example:

- (a) The obligation on universities to have advanced sight of the topics which all external speakers will discuss and sight of any presentations is not proportionate to the risk represented, and would be impractical to implement.
- (b) The obligation to introduce a 'mechanism for managing incidents or instances where off-campus events are promoted on campus' would be very difficult to police, particularly with the advent of social media. The onus must be on other agencies to raise concerns relating to off-campus events directly with universities.
- (c) The 14 day time frame for notice of bookings of external speakers to allow for checks to be made may be unreasonable in many circumstances.

- 4.15 **We would like to see the guidance changed so that universities are only required to action procedures when speakers are assessed to be high risk.**

*Safety online (paragraphs 68 and 69)*

- 4.16 The guidance implies that universities should monitor IT activity on campus, a substantial change to current practice. Any obligation to search routinely and proactively for illegal material would not be practicable or proportionate and would likely have to involve widespread and indiscriminate intrusion into staff and students' ICT accounts.
- 4.17 There will be issues around what individual universities can reasonably do in practice in relation to the use of IT filters as opposed to the broader responsibility of commercial ISP providers. There will always be limits to the effectiveness of filtering tools for on-campus and residential internet connections. It would be impractical to implement monitoring across Wi-Fi networks in halls of residences, for example.
- 4.18 Universities have an obligation to ensure that research can be conducted freely and fairly on their campuses. **We are concerned that an obligation to restrict access to content could damage the ability of students and staff to undertake research freely. Again, we would wish to see a more proportionate approach.**

*Student unions (paragraphs 70 and 71)*

- 4.19 It is not clear whether it is intended that student unions are covered by the legislation. Student unions are not included in the list of specified authorities within the Bill;

however, the guidance states that ‘institutions should have regard to the duty in the context of their relationship and interactions with student unions and societies’. It would not be appropriate for universities to bear a legal responsibility to ensure that unions comply with the new duty as it would be extremely difficult to reconcile this with the autonomous status of unions.

## 5. Monitoring and enforcement

- 5.1 We would appreciate greater clarification concerning the nature of the action which would be taken if institutions are assessed to be non-compliant with the statutory Prevent duty. **The guidance should provide more detail on the Government’s proposed statutory intervention mechanisms and potential sanctions for non-compliance.**
- 5.2 **Clarification would also be helpful to outline which organisation (HEFCE or the Prevent infrastructure/Home Office) will have overall responsibility for compliance monitoring within universities.** Efforts should be made to remove any duplication in monitoring between bodies with responsibility in this area which may result in an additional administrative burden for universities.
- 5.3 Whichever body becomes responsible for monitoring compliance, the difficult issues which the duty raises for universities should be carefully navigated. **We would hope that any monitoring arrangements and reporting requirements which are put in place will be risk-based, proportionate and aligned with the procedures of the Home Office’s Prevent coordinator teams.**
- 5.4 **Should HEFCE become the lead on compliance, we would not wish to see sanctions for non-compliance with the new duty connected to the wider regulatory architecture under HEFCE’s remit (for example, the designation of HE providers and the financial memorandum) nor should funding be reallocated from their existing budgets to cover this new function.** The top-slicing of HEFCE budgets for research, education, and knowledge exchange activities in order for the agency to deliver this new function, would be very damaging for our universities and would risk impairing their ability to compete internationally.

## 6. Impact assessment

- 6.1 **The Government has separately published an impact assessment alongside the draft statutory guidance which significantly underestimates universities’ costs of compliance with the new duty.**<sup>2</sup> In interpreting the guidance as it stands, universities would be required to set aside a significant amount of senior management time to comply with the duty, including carrying out gap analyses and reviewing existing policies and procedures. Furthermore, the requirement for frontline staff to be trained would mean universities would incur very significant opportunity costs in terms of staff time.

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<sup>2</sup> The impact assessment estimates that in order to coordinate a response to the duties detailed in the legislation each institution would require one week of a junior officer’s time (costing £573). See at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/379766/Prevent\\_IA.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/379766/Prevent_IA.pdf)