

2 July 2021

**Protect Duty Consultation
Office for Security & Counter Terrorism
Home Office**

By email to ProtectDuty@homeoffice.gov.uk

Dear Sirs,

Protect Duty Consultation - Making the public safer at publicly accessible locations

About BIBA

The British Insurance Brokers' Association (BIBA) is the UK's leading general insurance intermediary organisation representing the interests of insurance brokers, intermediaries and their customers.

BIBA membership includes around 1800 regulated firms, employing more than 100,000 staff. General insurance brokers contribute 1% of GDP to the UK economy; they arrange 67% of all general insurance with a premium totalling £65.1bn and 81% of all commercial insurance business. Insurance brokers put their customers' interests first, providing advice, access to suitable insurance protection and risk management.

BIBA receives hundreds of thousands of enquiries per year to its Find Insurance Services, online and via the telephone, which are directed to insurance broking firms.

BIBA is the voice of the sector advising members, Government, regulators, consumer bodies and other stakeholders on key insurance issues.

Consultation response

BIBA is very aware of the threats that terrorism brings to the safety and wellbeing of ordinary people as they go about their daily lives. The constantly changing nature of terrorism brings about many complications in how to deal with the threats as they occur and how they can, as far as possible, be prevented in the first place. We appreciate that this brings about additional strains on the organisations and resources tasked in dealing with such threats.

We have canvassed the views of our members in respect of this consultation. Many of our members look after the insurance arrangements for the organisations, venues and places that would fall under the proposed scope of the new measures. They in turn have attained feedback from their clients in this regard.

It is in everyone's interest that measures are taken to make public venues as safe and secure as they can be. We therefore welcome the consultation and the intentions of the Duty.

However, we have concerns about the wide scope of the Duty and how it may be implemented. By setting the capacity level at 100 this would bring into scope virtually every venue from places of worship, public houses, many restaurants, community halls, wedding venues, many retail outlets and offices. Implementation of the requirements would add a not insignificant burden to such premises. The Duty is likely to lead to additional staff and/or training costs as it is unlikely they will presently have staff dedicated to risk assessments and the requirements presented by the Duty.

We would therefore propose that the venue capacity be raised to 500 plus to come into scope. Such venues are likely to already have staff dedicated to such matters and therefore the requirements to comply with the Duty would largely be centred around additional training and guidance within existing resources.

With regards to the additional training required we consider that this should be Government funded, or at least subsidised. This would encourage wide take up. We also consider that this should be a formal process which is done via a Government backed and accredited provider. By doing this through a single accredited provider this would ensure consistency and continuity. This may be key in any terrorist incident where various organisations may be affected and have to work together and rely on each other.

Whilst we believe that take up should be strongly encouraged, by funding and subsidies, we do not consider that such measures should be passed into legislation, certainly not from the outset. Cooperation and embedding it into the culture amongst all stakeholders is key to mitigating threats and dealing with them as they occur. We think this would be best achieved by strong guidance. Many, many businesses, organisations and venues are reeling from the effects of the Covid19 pandemic and will be struggling financially for several years to come. Adding to their costs and legislative burden at this time is likely to lead to dissatisfaction, possible business closures and non-compliance.

We also have concerns on how this new Duty may have unintended consequences on the insurance landscapes for such venues, places and organisations. The proposed Duty will add an extra layer of risk management not dissimilar to the risk assessment duty to that of Health and Safety and will result in additional liabilities for those coming into scope.

If a Duty to protect the public from terrorist attack becomes law then it will expose companies to claims arising from terrorist (ie unconnected third party) activities which are almost impossible to predict and difficult to prevent. A failure to 'protect' members of the public who suffer terrorist invoked injury/death will inevitably result in claims against the business or local authority which has failed in its duty.

As new liabilities are added it is somewhat inevitable that insurers will seek to underwrite or even exclude such additional liabilities. By way of example we have seen in recent times since the pandemic the widespread exclusion of Covid19 cover from many insurances prompting industry wide stakeholder engagements on how such risks may be managed in the future. We believe the Duty in particular could have effects on Terrorism, Reinsurance, Employers and Public Liability, Professional Indemnity and Directors and Officers insurance. Insurers may charge more or seek to restrict/exclude certain coverage, lower indemnity limits and may choose not to take the risk on at all. The consequence of this is that there may be less capacity in the market to insure such venues, organisations and places, all at a time when the effects of the pandemic are still being strongly felt financially. This may lead to slower economic recovery.

Finally, we do not consider that the consultation provides sufficient detail as to how the Duty will operate under certain circumstances and therefore will require clarification. These are outlined below: -

a) How will the Protect Duty deal with and where would security risk management responsibilities (and therefore liability) ultimately lie with multi-party venues where a number of parties may have some responsibility for either safety, security or access/egress? For example, a typical arena holding a pop concert could involve multiple parties who might be subject to the duty, which could include the owner of the arena, the tenant/operator, the hirer, promoter (who would hire the venue for the concert), key contractors who have ongoing access (stage, lighting, sound, seating etc), security contractor, concessionaires inside arena and the act, if not covered by the promoter - which should be the case.

b) Where a number of businesses have access to a shared public area for seating, drinking, eating or standing how will the Protect Duty apply? Will this change if the area is owned by the public authority? Will there be some requirement to co-operate given access to the area is highly complicated? Has the HSG consulted with such businesses and local authorities concerning such environments?

c) In respect of shared or covered areas such as Borough Market, containing multiple food and drink outlets but where customers are free to stand outside in the common market areas, will the owner/operator of the market be expected to take the lead in any Protect Duty risk assessment and appropriate mitigation measures?

BIBA key points in summary

- We recognise that the threat from terrorism is significant and is not easy to mitigate. We agree with the intentions of the Duty to keep the public as safe as practically possible.
- We consider that the capacity limits to being in scope should be at least 500+.
- We consider that the Duty should be based on guidance, training and awareness rather than being legislative.
- Additional training and awareness requirements should be Government funded using an accredited provider for consistency.
- We believe the implementation of the Duty could have unintended consequences on several insurance covers for those in scope.
- The implementation of the Duty needs to be considered against the backdrop of businesses recovering from the pandemic who remain under very considerable financial pressures.
- We consider some areas of the Duty require further clarification.

We would be happy to discuss these issues with you.

Yours faithfully



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