

Written evidence by the National Secular Society to the JCHR Freedom of Speech in Universities inquiry



14 December 2017

About the National Secular Society

1. The NSS is a party-politically neutral organisation which works for the separation of religion and state, and for equal respect for everyone's human rights so that no one is either advantaged or disadvantaged on account of their beliefs. We regard secularism and freedom of expression as essential features of a fair and open society.

This inquiry

2. We have received growing concerns over efforts to silence at universities voices which are critical of religion. At the same time legitimate concerns are being raised about extremist speakers on campus. Against this there are two competing sensationalised media narratives; the first that ordinary student activism/protest/governance is part of a broad 'politically correct' attack on free speech, the second that efforts to challenge extremism are a front to restrict dissident speech.
3. Against this backdrop, the [Higher Education Policy Institute](#) has found 83% of students "feel free to express their political opinions and views openly", while 79% "feel they have satisfactory protection against discrimination and emotional harm".
4. But there is a need to address the outlier situations, whether these are caused by occasional overzealous overreach by student/university authorities, poor policies regarding the clash of speech rights, or specific areas of concern.

Whether Government policy on free speech in universities is coherent

5. The Government currently has an overlapping set of statutes and guidance which touch on freedom of speech, as well as other responsibilities of universities such as their equality duties and their duty to prevent people being drawn into extremism.
6. Universities play a unique role in our civil society. They are independent, yet dependent on public support, part of a marketplace, yet expected to operate by higher values.
7. Their unique role in public discourse justifies a public policy goal of protecting freedom of speech – not only as a legal concept, but as a positive value – on university campuses.

8. Student unions (SUs) aim to promote views and policies in line with the values of their constituents. Individual students and societies aim to promote views which may go against those of other students. The Government aims to limit the influence of extremist groups in civil society. A coherent policy on free speech needs to recognise the legitimacy of these competing aims and their limitations, creating as far as possible a framework where the rights of all are respected.
9. Universities have a statutory (Education Act 1986) responsibility to ensure that lawful speech on campuses is protected. This duty is clear and there is a long developed body of Article 10 case law that this should not impede efforts to prevent unlawful speech including indictment to violence, hatred or harassment; nor should it impede efforts to create an inclusive welcoming environment and uphold equality duties.
10. Unfortunately universities/SU authorities are not always clear on the limits of this duty and its interaction with their other duties or policy objectives.

Taken together, do the Prevent duty and the statutory duty to ensure free speech appropriately balance Convention rights and public interest considerations?

11. There is a well-developed body of Article 10 case law which can provide guidance of the interaction of public policy (such as Prevent) with Convention rights.
12. There are undoubtedly incidents where the Prevent duty has been misunderstood or overzealously applied that have resulted in a chilling effect on speech. Sensationalism and misrepresentation of Prevent by those opposed to any form of counter extremism strategy also undoubtedly has an effect, as do concerns of the definition of extremism and the state's role in challenging it.
13. The continued prevalence of extremist speakers does not suggest that the Prevent duty is restricting freedom of expression even to the extent that would be permitted by the Convention. For example in their report on [Extreme Speakers and Events: In the 2016-17 Academic Year](#), Student Rights identified 107 events featuring extremist speakers, with only one event attempting to provide a balanced platform.

The role of the Office for Students in ensuring freedom of speech

14. The primary role in this area should be to promote best practice in partnership with universities/SUs developing their own policies which balance their various responsibilities.
15. There may be a role to act as arbitrator in disputes over freedom of speech policies/complaints.
16. There are no objective measures of free speech protection in universities. The Office for Students could misunderstandings and sensationalism by reporting on the extent to which university/SU policies meet their obligations, along with quantitative data on concerns raised and the outcome of any complaints.

Universities' freedom of speech duty and independence of student unions

17. There isn't an inherent conflict between universities' statutory duties and respecting SUs' independent governance. SUs manage their day to day affairs but are dependent on university funding and the use of university property, the terms of which are always subject to negotiation and obligations.
18. The 1994 Education Act already requires universities to have oversight of their SU, indeed SU constitutions must be approved by their university.
19. The Higher Education and Research Act 2017 would extend universities' free speech duty to their SUs. But universities have always been free to extend this duty through agreement – simply by making it a condition of their support to SUs, that they have clear policies on freedom of expression.
20. Universities can further fulfil their free speech duties by ensuring that SUs cannot monopolise control of potential speech platforms on campus, simply by making alternative platforms available.

If there is a problem, in what ways is free speech being suppressed? By whom? What are the causes? Is any problem increasing?

21. When a private institution controls a speech platform, they have the almost unlimited right to restrict the terms of use of that platform. The question is who 'owns' the speech platforms of universities. Is it a public platform, does it belong to the university, or to the private groups to which the university provides space?
22. Where a speech platform is 'owned' by a SU, to what extent does the SU as a corporate entity, rather than its individual members/societies control it, and on what basis can they make decisions about its use? To what extent is this freedom superseded by the terms on which that space is provided to them by the university, which itself has statutory responsibilities?
23. Such conflicts usually relate to internal disagreements; between SUs and their members/societies, or between SUs and universities. What is important is that these conflicts should be resolved in a fair and consistent manner.
24. What is a concern is not when restrictions on freedom of expression are the normal internal governance of a private institution, but when semi-public institutions use such restrictions in a manner at odds with their legitimate function, to target specific groups or viewpoints. This is a common theme we have seen in the targeting of groups critical of religion, with the claim usually being criticism of religion is akin to harassment, incitement or creating a hostile environment.

- a. Jan 2012: University College London's SU [requested that their Atheist, Secularist and Humanist Society remove a satirical web comic](#) from their Facebook page over religious offence. The London School of Economics' SU [threatened their Atheist, Secularist and Humanist Society with expulsion](#) for posting the same comic, with claims the "offensive nature of the content on the Facebook page is not in accordance with our values of tolerance, diversity, and respect".
- b. Oct 2012: Reading University's SU [expel their Atheist, Humanist and Secularist Society from the fresher's fair](#) over a pineapple being named Mohammed to promote a debate on 'blasphemy', which was apparently "causing upset and distress".
- c. October 2013: London School of Economics' Atheist Secularist and Humanist Society is [threatened with physical expulsion and their stall vandalised](#) by union officials due to 'offensive' t-shirts featuring a satirical religious comic.
- d. Feb 2014: London South Bank University's SU [bans posters of the Atheist, Humanist and Secular Society](#), which they deemed 'offensive' for a satirical religious figure – the Flying Spaghetti Monster.
- e. Apr 2015: Bath University's SU and university chaplains [ordered a line featuring Mohammed cut from a student comedy show](#), because it caused "great offence."
- f. Sep 2015: Warwick University's SU [bans human rights advocate Maryam Namazie from speaking about apostasy](#) to the Atheists, Secularists and Humanists Society, saying speakers must "avoid insulting other faiths"
- g. Dec 2015: Maryam Namazie was [prevented from talking at the Goldsmiths University's Atheist, Secularist and Humanist Society](#) by members of the male ISOC disrupting the event.

25. An analogy could be drawn with schools' anti-bullying policies, which do not normally raise freedom of speech concerns, indeed their public sector equality duty arguably makes such policies mandatory. But concerns would be raised if these policies were so vague as to be open to arbitrarily abuse on the whims of school authorities, or were systemically used against viewpoints that should not reasonably fall under the policy.

This response was prepared by Alastair Lichten, Education and schools officer

For more information please contact: National Secular Society, London, WC1R 4RL

020 7404 3126 | education@secularism.org.uk