

## Current position on freedom of speech on campus



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# Concerns?



Invited to speak at UN Women Oxford UK and disinvited 30 mins before talk



Prof Selina Todd disinvited from Oxford International Women's Festival

## Legal obligations on universities

- **Section 43 of the Education (No. 2) Act 1986**
  - Reasonably practicable steps to ensure freedom of speech secured for members, students, employees and visiting speakers
  - Includes ensuring, so far as reasonably practicable, use of premises not denied to a person/body due to their beliefs, policy or objectives
  - Code of practice about securing freedom of speech

## Legal obligations on universities

- **Section 202 of the Education Reform Act 1988**
  - In exercising functions, University Commissioners must have regard to the need:
    - “to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions”

## Legal obligations on universities

- **Equality Act 2010**
- **Common law duty of care**
- **Counter-Terrorism and Security Act 2015**

## Regulator - Office for Students

- **Higher Education and Research Act 2017**
  - Regulates Higher Education Providers
  - One of its roles is to make sure that Providers' governing documents on freedom of speech meet baseline requirements.
  - Can intervene and apply sanctions.

*R (Ben-Dor) v University of Southampton (27 Apr 2016)* 「Landmark  
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- Conference – “International Law and State of Israel: Legitimacy, Responsibility and Exceptionalism”
- University withdrew permission for event following risk assessment of violence
- B brought judicial review – breach of s43 in combination with Article 10 and 11 ECHR.

*R (Ben-Dor) v University of Southampton* (27 Apr 2016) 「Landmark  
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- General principles from Supreme Court in *R (Lord Carlile) v Home Secretary* (2014):
  - Free speech “*one of the essential foundations of a democratic society*” but not absolute
  - Proportionality of interference a matter for Court
  - But Court will give weight to the decision-maker where they are better placed to weigh risks

*R (Ben-Dor) v University of Southampton (27 Apr 2016)* 「Landmark  
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- Whipple J - no disproportionate interference of Article 10/11 ECHR here because:
  - Objective of avoiding risk of violence sufficiently important;
  - University not proposing to ban conference for all time;
  - Considerable weight given to University's assessment of risk;
  - Lawful to have regard to terrorism heightened state of alert following incident in Paris;
  - These were exceptional circumstances within meaning of University's Code.

## *R v University of Liverpool ex p Caesar-Gordon (25 May 1990)*

- Conservative Association invited South African diplomat to meeting
- University withdrew permission because of risk of disorder in University and in adjacent residential areas.
- High Court – s43 of the 1986 Act did not entitle University to take into account threat of disorder outside of its grounds by those not under its control.

## Student unions?

- Not required to comply with s43 duties, but:
  - Section 43 applies to student union premises; and,
  - Student unions have to follow code of practice

## EHRC Guidance

- EHRC Guidance produced in Feb 2019



## EHRC Guidance – no-platforming

“However, if a speaker has already been invited by an SU society or group and the speech will be lawful, the SU will need to consider their obligations under their HEP’s s.43 code of practice. If an SU cancels a speaker in these circumstances, their HEP has a duty to take reasonably practicable steps to ensure the speaker event can proceed.” (p27)

“However, if a student group or member of staff invited a speaker from an organisation that is subject to a ‘no-platform’ policy and the SU, their officials or other students attempt to stop them from speaking, the HEP must decide whether the speech is protected by the s.43 duty. If so, the HEP has a legal duty to take steps to enable them to speak.” (p35)

## What type of challenges?

- Office for Students?
- Student unions?
- Universities

## Challenging universities

1. Code breaches Article 10/11 ECHR;
2. Decisions that breach Article 10/11 ECHR and/or contrary to Code – e.g. *Ben-Dor* scenario;
3. Insufficient steps in requiring Student Unions/other student organisations to comply with Code;
4. Insufficient steps to ensure use of premises not denied to invited guest due to their beliefs or actions – e.g. EHRC guidance.

# Thank you for listening

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