

# ANTISEMITISM POLICY TRUST

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## Special Briefing



HIGHER EDUCATION  
(FREEDOM OF SPEECH) BILL  
PRIORITIES FOR THE HOUSE OF COMMONS  
SECOND READING

Front cover: 'Microphone voice speaker in business seminar'. Licensed by Chinnapong/Shutterstock.com

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## Introduction

The Antisemitism Policy Trust welcomes any moves by government to protect and promote free speech. We agree with the Secretary of State for Education, who set out in his departmental policy paper in February 2021 that free speech is fundamental to society, and has been used to stand up to tyranny, injustice and oppression. We also understand government's concerns about a potential chilling of free speech, particularly on campus, and are aware that Jewish students have faced threats to their safety when trying to assert their rights for free

expression. We were not convinced that new legislation was required but now it has been introduced, are keen that it be as effective as possible, and not undermine existing protections against anti-Jewish racism and Holocaust denial. What follows are details of several concerns we hold which we would ask parliamentarians to consider and address as part of the discussion around the Bill.

## Duties of Registered Higher Education Providers (Part 1)

### Duty to take steps to secure freedom of speech (A1) for staff and visiting speakers.

A duty is established to take steps that are 'reasonably practicable' to achieve freedom of speech within the law for specified persons, including (a) staff of the provider and (d) visiting speakers.

For visiting speakers, this includes avoiding the denial of provision of premises to anyone based on their ideas, beliefs or views or a body's policies, objectives or ideas, or the beliefs or views of any of its members.

For staff, this covers their freedom (within the law and their field of expertise) to probe received wisdoms and put forward controversial or unpopular opinions without risking their job, privileges, being overlooked for promotions or in the case of prospective staff, not being overlooked for a job.

### Code of Practice (A2) (and repeated in A5 (3) for student unions)

A code of practice is introduced to implement the provisions in A1. Part 3 of this section specifies that "The code of practice may deal with such other matters as the governing body considers appropriate".

### What are the concerns?

**On visiting Speakers:** The broad wording in the Bill, only referring to free speech 'within the law' without any additional qualification or reference, lends itself to the abuse of free speech by extremists. One can easily imagine a Holocaust denier, a leading Hamas sympathiser or someone that has espoused extremist views, taking legal recourse for being denied a platform. Put another way, and as Hope Not Hate has detailed, freedom of speech is complex. Saying what we want and saying it wherever we want are different, so too the relationship to the quality and value of speech is complex.

If free speech is not based on such values, it allows the loudest voices to potentially undermine free speech in an unequal debate. The Government argues that existing Equalities Act and Prevent duties will ensure Holocaust denial (which is legal) will not be permitted on campus. The act has not been tested in this respect, and there is some suggestion from legal experts that the Act requires Jewish students to be present at a meeting, in order for direct discrimination to occur. The Equalities Act applies the Public Sector Equality Duty to institutions, but it does not criminalise Holocaust denial.

Moreover, direct Holocaust denial is rare, minimisation and distortion more common. The Act potentially empowers people to pursue this hateful narrative. There are numerous considerations, both broad and specific, that should be a part of any discussion on these matters. This might include power imbalances in the case of student-staff relationships, the description of an event (for example as a vigil) deterring debate, or a debating society inviting a Holocaust denier to speak to it before a formal debate – with no opposing speaker on a campus with no Jewish society.

Questions:

- What specific legal guidance and assurance does the Government have about the Equalities Act, Prevent and other areas of law in relation to antisemitism and other forms of hate, and will it be published?
- Is the government prepared to specify in the Act that freedom of speech must accord with established provisions for protecting against extremism, such as the Prevent programme?

**On academics:** As above, academics have a right to pursue their employer if they feel they are overlooked for a role based on freedom of speech linked to their expertise. It is not inconceivable that some academics might use the shield of free speech to make (ultimately legal) antisemitic comment.

Questions:

- In what way would an academic be prevented from making a claim under this legislation, if his or her comments were not illegal but were antisemitic?
- How can government ensure academics will not use this Bill as cover to abuse minorities?

**On Codes of Practice:** At present, the Codes of Practice which will set out how an institution is taking steps to ensure freedom of speech make no reference to accompanying harms or legal protections.

- **The relevant subsection in A2 and A5 should be amended to read “The code or practice may deal with such other matters as the governing body consider appropriate, including protection from harm and duties under the Equalities Act 2010”.**

## Duties of Student’s Unions (Part 2)

### Duty to take steps to secure freedom of speech (A4)

This duty matches the duty on universities but includes (3) affiliation to the students’ union is not denied to any student society on grounds specified in subsection (4)(b). 4b specifies this is in relation to a society or other body, its policy or objectives or the ideas, beliefs or views of any of its members.

### What are the concerns?

For decades, Hizb-Ut Tahrir (HUT), an extremist islamist group which engages in antisemitic rhetoric and inspires terrorism, has sought to establish front-groups on campus.

HUT is not a proscribed organisation, and this legislation would encourage its front groups, and those from other organisations like the far-right patriotic alternative, to set up on campus. Not only would such groups gain status, they would be in receipt of funding.

Question:

- What protections are in place to prevent the arming of groups such as those described above?

## Regulation of duties of registered higher education providers (Part 5)

This section introduces further conditions of registration for higher education providers in the UK (which are maintained and overseen by the Office for Students) relating to freedom of speech.

### What are the concerns?

The OfS currently has no conditions of registration relating to harassment and sexual abuse. It has been consulting on this with a view to introducing measures \*less than\* conditions of registration. Despite the Antisemitism Policy Trust and others pressing for these measures to be introduced at the time of the OfS's establishment, no specific measures were introduced as a condition of registration, though as a compromise, the first Ministerial guidance to OfS did reference discrimination.

## Complaints Scheme (Part 7)

This section amends the Higher Education and Research Act 2017 to establish a complaints scheme, managed by the Office for Students, in respect of Freedom of Speech. Specifically, in the introduction, it established that:

*2 (1) A HEP free speech complaint is a complaint made by an eligible person to the OfS which— (a) claims that the person has suffered adverse consequences as a result of action or inaction of the governing body of a registered higher education provider, and (b) claims that, or gives*

Question:

- Why is there no condition of registration for HE institutions relating to plans to address harm or discrimination on campus, and why does Freedom of Speech have preference in this regard?

The Bill might be amended as follows: *8A (4): "Higher education providers should clearly communicate, and embed across the whole organisation, their approach to preventing and responding to all forms of harassment and sexual misconduct. They should set out clearly the expectations that they have of students, staff and visitors."*

*rise to a question as to whether, the action or inaction was a breach of a duty of the governing body under section A1.*

### What is the concern?

There is no mention of competing freedoms. The Bill should be amended to make mention of competing freedoms, such as inserting at the end, "taking into account competing freedoms".

## Director for Freedom of Speech and Academic Freedom (Part 8)

This section also amends the aforementioned 2017 Act, to establish a post on the Office for Students board responsible for academic freedom. Specifically: *3A (1) The Director for Freedom of Speech and Academic Freedom*

*("the Free Speech Director") is responsible for— (a) overseeing the performance of the OfS's free speech functions.*

## What is the concern?

The Director has significant responsibility in overseeing OfS performance in this area and potentially overseeing complaints. At present, there is no requirement for them to adjudicate based on competing freedoms.

### Action:

- Seek to amend 3A(1), to include “taking into account competing freedoms” or similar.

## Other Concerns:

Government has said that expenses for speakers or events would be subject to equitable charging from an institution. It is unclear where this is specified in the Bill and clarity is required.

Furthermore, the definition of campus has been called into question, for example, whether this applies to digital services offered by a university or a Student’s Union, clarification would be welcome.

The Antisemitism Policy Trust's mission is to educate and empower parliamentarians, policy makers and opinion formers to address antisemitism. It provides the secretariat to the British All-Party Parliamentary Group Against Antisemitism and works internationally with parliamentarians and others to address antisemitism. The Antisemitism Policy Trust is focussed on educating and empowering decision makers in the UK and across the world to effectively address antisemitism.

## Contact APT



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