# **Inquiry of the Office of the High Commissioner for Human Rights:**

# **‘Implementation of Human Rights with Regard to Young People’**

1. Christian Action Research & Education (CARE) is a well-established Christian social policy charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives.
2. CARE welcomes the inquiry of the Office of the High Commissioner for Human Rights into the implementation of human rights with regard to young people, as requested in the Human Rights Council Resolution 34/14 on youth and human rights. Our submission focuses on the situation of young people at universities in the UK and the challenges to freedom of opinion and expression, which are closely associated with the Prevent duty and the concept of ‘hate speech’.

**Introduction**

1. Freedom of speech, enshrined in the right to freedom of opinion and expression, is a right that is protected under the UK domestic law and under international law. The Human Rights Act 1998 incorporated the rights set out in the European Convention on Human Rights (the ECHR) into the UK domestic law, including the right to freedom of expression in Article 10 of the ECHR.
2. The right is also protected in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR states that:

‘1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

1. As it is clear from the wording of Article 19, the right to freedom of expression is not absolute and can be limited as indicated in Article 19(3). However, the limitations must be ‘as provided by law and are necessary.’
2. The right to hold opinions by contrast is absolute and the ‘the Covenant permits no exception or restriction.’[[1]](#footnote-2)
3. General Comment No.34 clarifies that ‘No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature.’[[2]](#footnote-3)
4. Furthermore, as confirmed in General Comment No. 34, freedom of expression includes

‘the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.’[[3]](#footnote-4)

1. In relation to countering terrorism, General Comment No. 34 clarifies that: ‘Such offences as “encouragement of terrorism” and “extremist activity” as well as offences of “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. Excessive restrictions on access to information must also be avoided.’[[4]](#footnote-5)
2. Despite this, over recent months universities have been subjected to more and more censorship. The 2017 British University Free Speech Ranking published by Spiked Online revealed that:

73 universities are reported to have actively censored speech and expression

35 universities are reported to have chilled free speech through excessive regulation

7 universities are reported to have not restricted or regulated speech and expression.[[5]](#footnote-6)

1. Even though freedom of speech is a basic right of everyone, freedom of speech at university should be even more protected and guaranteed as it goes to the very nature of this educational institution. Enabling people to engage in debates without limitation or fear of repercussions, universities should provide one of the safest environments for exploring, scrutinising and challenging ideas.
2. 43% of the universities are reported to have policies restricting religious speech.[[6]](#footnote-7) The restrictions observed at universities are informed by the application of the Prevent duty and a particular approach to ‘hate speech’ which is not constrained by the actual hate speech thresholds in UK domestic law.

# ***The Prevent Duty***

1. The Counter-Terrorism and Security Act 2015 introduced some new provisions aimed at countering terrorism in the UK, including imposing a general duty on specified authorities to prevent people from ‘being drawn into terrorism’ (so-called Prevent statutory duty).[[7]](#footnote-8)
2. The Prevent duty is a statutory duty imposed on specific authorities (listed in Schedule 6 of the Act) which are charged with responsibility to prevent people from ‘being drawn into terrorism’ as part of their day to day function.[[8]](#footnote-9) The specific authorities include local governments, schools, universities, health bodies, prisons, the probation service, and the police.
3. The duty is highly controversial and places universities in a very difficult position. Although section 31(2) of the Act emphasises the importance of guaranteeing freedom of speech[[9]](#footnote-10) and academic freedom[[10]](#footnote-11), it is less than clear how universities can accommodate freedom of speech and academic freedom at the same time as fulfilling their obligations under the Prevent duty.
4. One common occurrence is that certain speakers who are perceived as ‘extremist’ are being denied the chance to speak at universities, to discuss their ideas, and have their ideas challenged by others in an open debate. First, this drives any such ideas underground. Second, the definition of extremism, as identified in the Counter Extremism Strategy 2015, is very broad[[11]](#footnote-12), incorporates non-violent as well as violent forms of extremism, and does not necessarily relate back to the concept of terrorism. In his recent judgment in the case of Mr Salman Butt, Ouseley J confirmed that the Prevent duty is a duty to prevent people from being drawn into terrorism and does not refer to all forms of extremism.[[12]](#footnote-13) Nonetheless, no steps have been taken by the Government to confirm the correct interpretation and scope of the definition of what constitutes ‘extremism’ and its impact on the Prevent duty.
5. The Human Rights Committee has already dealt with the issue of state’s vaguely defined ‘extremist activity’ in its communications with Russia in 2009.[[13]](#footnote-14) On that occasion, the Committee recommended Russia to revise its law to amend its definition of ‘extremist activity’ to make it ‘more precise so as to exclude any possibility of arbitrary application.’ Similarly, the UK should amend its definition of ‘extremism’, and at minimum, ensure that the definition is narrower as per the judgment of Ouseley J (explained above).

# ***‘Hate Speech’***

1. Another pressure on freedom of speech at universities comes from the law and wider concept regarding ‘hate speech.’ Under the UK law, so called ‘hate speech’ is criminalised in Sections 4A and 18, and Part 3 and 3A of the Public Order Act 1986.
2. ‘Hate speech’ results from the use of threatening, abusive or insulting words or the displaying of written material which is threatening, abusive or insulting and by doing so, intended to cause ‘the person harassment, alarm or distress’, stir up racial hatred etc. The restraint exercised by the Act on free speech, however, is constrained by Section 29J of the Public Order Act 1986, which seeks to provide a protection for freedom of expression, stating that:

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

1. Although legally ‘hate speech’ is meant to be used narrowly in relation to any speech that fulfils the particulars under the Public Order Act 1986 after allowing for the free speech provision, over time, the phrase has become embedded in everyday language to describe any statement that some may find ‘offensive.’ The increasing tendency to conflate anything that some find offensive with hate speech has resulted in a far greater willingness to countenance censorship.
2. In this regard one immediately thinks of the recent cases of Christian student groups not being able to attend events, such as the Christian Union that was banned by Balliol College, Oxford from being part of the freshers’ fair.[[14]](#footnote-15) Another example, the University of Strathclyde Students’ Association banned pro-life students from setting up an official group.[[15]](#footnote-16) The decision meant that the group could not receive any funding and their events would not be promoted on campus. In another case, a Christian student, Felix Ngole, was investigated by his university and ultimately removed from his course after in a Facebook conversation he said that ‘same sex marriage is a sin whether we like it or not. It is God’s words and man’s sentiments would not change His words.’[[16]](#footnote-17) As it is clear from the research conducted by Spiked[[17]](#footnote-18), the above-mentioned cases are not isolated cases but a pattern of excessive restriction of freedom of speech is visible throughout a significant number of the UK universities.
3. Furthermore, some universities have established so-called ‘safe spaces’ and even hired ‘safe space marshals’ to ‘patrol events and ensure that speakers do not offend audiences with their views.’[[18]](#footnote-19) It was reported that such ‘safe space marshals’ monitored a talk by Jacob Rees-Mogg, an MP known of expressing his traditional Christian values.[[19]](#footnote-20)
4. The above-discussed issues raise concerns about the state of freedom of speech, and associated rights, for example, of freedom of religion or belief and freedom of association or assembly, at UK universities.
5. The UK government must promote free speech in line with the Article 19 of the ICCPR and ensure that the right is not excessively limited. The UK government must ensure that universities are provided with adequate guidelines on how to approach the issue of ‘hate speech’ and assist them in upholding freedom of speech. The UK government should also ensure that there is an adequate review mechanism to ensure that any excessive limitations of the right to freedom of speech are scrutinised and addressed expeditiously.

***Conclusions***

1. The Prevent duty and ‘hate crime’ legislation - particularly the way in which it has informed a conflation of the criminal offence and the common misunderstandings of hate speech as any speech that may be offensive or not mainstream - have put a real strain on the right to freedom of speech in the UK in general. However, the right to freedom of speech at universities has suffered excessively. As the research prepared by Spiked makes clear (some of the results are presented in Appendix B), the policies introduced by many universities and or student unions have little if no regard for the need to protect of freedom of expression as defined by the Human Rights Act 1998. The restrictions are excessive and disproportionate to the aim sought, resulting in freedom of speech becoming a privilege of a few rather than a right of all.
2. The above explained limitations, have an adverse effect on young people in enjoying their right to opinion and expression enshrined in Article 19 of the ICCPR. The UK must ensure that the right is adequately protected and guaranteed for all, especially at universities.
3. The UK government must take affirmative steps to ensure that it meets its international obligations on the protection of freedom of speech. The UK government should amend its definition of ‘extremism’, and at minimum, ensure that the definition is narrower as per the judgment of Ouseley J as explained earlier. Furthermore, the UK government must ensure that educational institutions, including student unions, are adequately guided in their obligations to uphold freedom of speech and assist them in balancing their approach to countering ‘hate crime.’

CARE Public Policy Team

53 Romney Street

London

SW1P 3RF

## **Appendix A: Legal Challenge: The Case of Salman Butt**

Mr Salman Butt challenged the Prevent strategy which had led to him being branded as an extremist and he claimed this resulted in his not being invited to university conferences. Mr Butt, a British Muslim activist and the editor of islam21c.com, was mentioned in a Downing Street press release as a conference speaker who expressed views or opinions that were contrary to British values.[[20]](#footnote-21) Mr Butt was named in the press release together with five other speakers presenting at a conference. The press release indicated that all six speakers were ‘on record as expressing views contrary to British values.’ Mr Butt responded by issuing court proceedings to challenge the Prevent duty.

Mr Butt argued that the Prevent duty that branded him an extremist, as allegedly speaking against British values, had interfered with his right to freedom of speech. Mr Butts’ lawyers also argued that the Prevent duty guidelines that focus on non-violent extremism go beyond the relevant statutory provision, namely, Section 26 of the Counter-Terrorism and Security Act 2015, imposing a duty on authorities to prevent people from being drawn into terrorism. Furthermore, they argued that the guidelines were not clear enough to provide for legal certainty. Any such provisions that potentially can restrict fundamental rights should be clear and easy to understand. Lastly, Mr Butt argued that the provision, in its broad interpretation, may be contrary to the duty of universities to ensure and accommodate freedom of speech on campuses (Education (No. 2) Act 1986 and section 31 of the Counter-Terrorism and Security Act.)

On 26 July 2017, the judgment in Mr Butt’s case was released.[[21]](#footnote-22) In the judgment, Ouseley J explains that he would not consider whether Mr Butt was indeed an extremist or a hate speaker and this would have to be subject to separate proceedings.

Despite the judgment not considering the evidence against Mr Butt, Ouseley J clarified the notion of extremism as:

the active opposition to fundamental British values must in some respect risk drawing others into terrorism before the guidance applies to it. If there is some non-violent extremism, however intrinsically undesirable, which does not create a risk that others will be drawn into terrorism, the guidance does not apply to it.

According to the analysis of Ouseley J, the strategy does not apply to any non-violent extremism but only to the non-violent extremism that creates a risk of people being drawn into terrorism. The Government should tighten up the strategy so that it respects this principle drawn out by the Ouseley J judgement.

## **Appendix B: Spiked University Ranking**

The following contains excerpts from the research on freedom of speech at universities conducted by Spikes. The whole report is available at: <http://www.spiked-online.com/free-speech-university-rankings>.

At the University of Aberystwyth:

Policy bans 'racial', 'religious' 'homophobic' and 'disablist' slurs, stating: 'Even if the subject of the slurs is not LGBT+ or disabled, and it is said as a "joke", it is still offensive to the minority groups that these words have negative connotations.’ It maintains a ‘zero-tolerance attitude towards this in the students' union or on any Aberystwyth campus’ and resolves to ‘extend this campaign to cover all forms of offensive language and behaviour’.[[22]](#footnote-23)

At the University of Aston:

‘Political or religious extremists should not be given a platform to speak anywhere on campus… no extremist views will be represented on campus or through the students’ union.[[23]](#footnote-24)

At the University of Bath:

Freedom of expression also has to be set in the context of the university’s values, and the values of a civilised, democratic, inclusive society... The principal organiser is required to notify the university secretary – as far as possible in advance of the meeting, and in any case at least two weeks before it – for any meeting to be held on the university campus if the subject matter of the meeting is or might reasonably be construed as “controversial” (a “controversial” meeting in this context being taken as either a speaker who might reasonably be construed as having the potential to occasion protest from, or give offence to, any section of the university or wider community, or constitute extremist views, or any speaker from a political party).[[24]](#footnote-25)

The freedom to express views may need to be balanced against the need to secure freedom from harm for students and communities … If an external speaker is involved student group must: confirm any external speakers’ affiliations (specifically where they are political or religious)…[provide a] declaration of any knowledge of controversy attracted by the speaker or topic in the past.[[25]](#footnote-26)

The University of Oxford:

The university believes that a culture of free, open and robust discussion can be achieved only if all concerned avoid needlessly offensive or provocative action and language.[[26]](#footnote-27)

In 2014, the Oxford Christ Church cancelled an abortion debate organised by the Oxford Students For Life on the topic ‘This House believes that abortion culture harms us all.’[[27]](#footnote-28)

The Queen Mary University:

External speakers must seek to avoid insulting other groups, within a framework of positive debate and challenge’. Events that may be referred include ‘talks by organisations generally considered to be extremist by NUS, the union and related searches… a speaker who is known to have spoken previously at another institution on a topic that has caused fear or intimidation of students or staff… A speaker accepted in mainstream as being highly controversial.[[28]](#footnote-29)

The University of Durham:

The students’ union policy:

Reasons for disciplinary action shall include… displays of homophobia, biphobia, transphobia, sexism or any other prejudice.[[29]](#footnote-30)

UCL:

The right to manifest a belief may be qualified by the need to show respect for the differing worldviews, lifestyles and identities of others. The university has an over-arching responsibility to promote pluralism and tolerance and will seek to intervene in instances where manifestations of a belief constitute harassment or create conflict that goes beyond open and reasoned debate.[[30]](#footnote-31)

SU: Members of UCL and all other persons attending meetings held on the premises must behave in a lawful manner and avoid taking any action or using any language which is offensive or provocative… We ask that all speakers and event attendees are respectful of the beliefs and opinions of others.[[31]](#footnote-32)

The University of Nottingham:

We believe that the religious sensibilities of the union’s members should be respected. In the past students have felt unsafe when certain groups with known anti-religious views have come and protested on campus. Some events on campus have involved outside religious speakers with views which have caused offense to our students.[[32]](#footnote-33)

The University of Manchester:

SU: Policy states that societies must ensure they, or an invited speaker, do not ‘promote or recruit to extremist ideologies or groups’ and refrain from using ‘discriminatory language’.[[33]](#footnote-34)

The University of Hull:

SU: [Speakers must not] purposefully insult and offend other groups identified by, for example, age, disability, faith, gender and gender reassignment, sexual orientation, race, marriage or civil partnership status or maternity/paternity.[[34]](#footnote-35)

1. UN Human Rights Committee, General Comment no. 34, CCPR/C/GC/34, (12 September 2011) para.9. [↑](#footnote-ref-2)
2. Ibid. [↑](#footnote-ref-3)
3. Ibid., 11. [↑](#footnote-ref-4)
4. Ibid., 46. [↑](#footnote-ref-5)
5. http://www.spiked-online.com/free-speech-university-rankings/results#.WfmkKD5JaM8 [↑](#footnote-ref-6)
6. http://www.spiked-online.com/free-speech-university-rankings/results#.WfmkKD5JaM8 [↑](#footnote-ref-7)
7. Section 26 of the Counter-Terrorism and Security Act 2015. [↑](#footnote-ref-8)
8. Section 26(1) of the Counter-Terrorism and Security Act 2015. [↑](#footnote-ref-9)
9. Section 43(1) of the Education (No. 2) Act 1986. [↑](#footnote-ref-10)
10. Section 202(2)(a) of the Education Reform Act 1988. [↑](#footnote-ref-11)
11. The Counter Extremism Strategy 2015 defines extremism as: ‘the vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty, and respect and tolerance for different faiths and beliefs. We also regard calls for the death of members of our armed forces as extremist.’ [↑](#footnote-ref-12)
12. The judgment is explained in Appendix A. [↑](#footnote-ref-13)
13. UN Human Rights Committee, Considerations of Reports Submitted by State Parties under Article 40 of the Covenant, CCPR/C/RUS/CO/6 (29 October 2009), para. 24. [↑](#footnote-ref-14)
14. http://www.telegraph.co.uk/education/2017/10/10/oxford-college-bans-harmful-christian-union-freshers-fair/ [↑](#footnote-ref-15)
15. http://www.huffingtonpost.co.uk/entry/university-of-strathclyde-student-union-bans-pro-life-group-for-violating-students-safe-space\_uk\_5845420ce4b061fb97e5eddd [↑](#footnote-ref-16)
16. http://www.christianconcern.com/our-concerns/education/the-case-of-the-politically-incorrect-student [↑](#footnote-ref-17)
17. http://www.spiked-online.com/free-speech-university-rankings/results#.WfmkKD5JaM8 [↑](#footnote-ref-18)
18. https://www.thetimes.co.uk/article/king-s-college-students-hire-safe-space-marshals-to-police-events-37nmfhvvs [↑](#footnote-ref-19)
19. https://www.standard.co.uk/news/london/kings-college-slammed-for-patronising-and-problematic-safe-space-marshals-paid-12-an-hour-to-police-a3669151.html [↑](#footnote-ref-20)
20. PM's Extremism Taskforce: tackling extremism in universities and colleges top of the agenda, 17 September 2015, Available at: https://www.gov.uk/government/news/pms-extremism-taskforce-tackling-extremism-in-universities-and-colleges-top-of-the-agenda [↑](#footnote-ref-21)
21. Salman Butt v. Secretary of State for the Home Department [2017] EWHC 1930 (Admin) [↑](#footnote-ref-22)
22. <http://www.spiked-online.com/free-speech-university-rankings/profile/aberystwyth#.WfmnzT5JaM8> See also: <https://www.abersu.co.uk/pageassets/yourunion/governance/policymotions/Thats-So-Gay.pdf> [↑](#footnote-ref-23)
23. http://www.spiked-online.com/free-speech-university-rankings/profile/aston#.WfmoyT5JaM8 [↑](#footnote-ref-24)
24. <http://www.spiked-online.com/free-speech-university-rankings/profile/bath#.WfmqBj5JaM8> See also: http://www.bath.ac.uk/regulations/Regulation18.pdf [↑](#footnote-ref-25)
25. <http://www.spiked-online.com/free-speech-university-rankings/profile/bath#.WfmqBj5JaM8> see also: https://www.thesubath.com/pageassets/policy-governance/2014-15-3-External-speakers-policy.pdf [↑](#footnote-ref-26)
26. <http://www.spiked-online.com/free-speech-university-rankings/profile/oxford#.Wfmsez5JaM8> see also: http://www.ox.ac.uk/media/global/wwwoxacuk/localsites/gazette/documents/supplements2014-15/Code\_of\_Practice\_on\_Freedom\_of\_Speech\_-\_%281%29\_to\_No\_5092.pdf [↑](#footnote-ref-27)
27. http://oxfordstudent.com/2014/11/17/christ-church-cancels-abortion-debate/ [↑](#footnote-ref-28)
28. <http://www.spiked-online.com/free-speech-university-rankings/profile/queen-mary#.Wfmsdz5JaM8> see also: https://www.qmsu.org/pageassets/societies/committeeshub/externalspeakers/..External-Speaker-Procedure-2016.pdf [↑](#footnote-ref-29)
29. <http://www.spiked-online.com/free-speech-university-rankings/profile/durham#.WfmxcT5JaM8> [↑](#footnote-ref-30)
30. <http://www.spiked-online.com/free-speech-university-rankings/profile/ucl#.Wfmxej5JaM8> see also: https://www.ucl.ac.uk/students/policies/equality/religion [↑](#footnote-ref-31)
31. <http://www.spiked-online.com/free-speech-university-rankings/profile/ucl#.Wfmxej5JaM8> see also: [↑](#footnote-ref-32)
32. <http://www.spiked-online.com/free-speech-university-rankings/profile/nottingham#.WfmxXz5JaM8> see also: <https://www.su.nottingham.ac.uk/pageassets/make-the-change/democracy/policylawsadmin/Policy-File-updated-010716.pdf> [↑](#footnote-ref-33)
33. http://www.spiked-online.com/free-speech-university-rankings/profile/manchester#.WfmxXT5JaM8 [↑](#footnote-ref-34)
34. <http://www.spiked-online.com/free-speech-university-rankings/profile/hull#.WfmxWj5JaM8> [↑](#footnote-ref-35)