

MODULE 4: SECTION 3

ONE UNIVERSITY'S APPROACH

Introduction

It is three decades since legislation was passed in the UK to ensure freedom of speech within the law is secured within universities (with the exception of Scotland), and marginally less since employment safeguards linked to academic freedom were enshrined in UK legislation. These statutory requirements - other than their extension to a wider set of universities than those in existence in the late 1980s - remain unamended in law. However, the co-existence and interaction of academic freedom and freedom of speech in a complex legislative environment, including the Prevent duty for HEIs, poses questions and challenges for their interpretation and application. The Prevent duty guidance for higher education institutions in England and Wales (with separate guidance for Scotland) came into force in September 2015 and the subsequent Hefce framework for monitoring of arrangements was published in late 2015 to ensure relevant higher education bodies (RHEBs) comply with the duty. Debates in relation to the Prevent duty are significant as they go to the heart of the purpose of universities and other HEIs as spaces where intellectual challenge and enquiry flourish, and freedom of speech within the law is both upheld and exercised.

This "think piece" examines some key implications of implementing the Prevent duty on the legal principles and practice of academic freedom and freedom of speech, and provides some personal insights into policy development and review in my own university, as head of governance, secretary to the governing body, and Prevent policy lead at Northumbria University, Newcastle.

The legislative context

It is important to note that the ERA 1988 established a specific as opposed to broad application of academic freedom, through:

"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 institution."

Its initial scope was restricted to the pre-1992 universities and colleges and, subsequently, to the post-1992 universities.

The wider concept of freedom of speech was enforced through the Education Act (No 2) 1986, which states that "persons concerned in the government of any establishment... shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers." The legislation requires universities to maintain and review a code of practice for the organisation of meetings and events where free speech may be an issue, and requires them to ensure university premises are not denied to anyone on the grounds of their beliefs or views. The legislation should also be set in the context of more recent legislation, including the Human Rights Act 1998 which makes reference to "freedom of expression" as extending beyond speech, to encompass freedom to research and publish.

The Counter-Terrorism and Security Act 2015 states the need for specific authorities, including universities, to have "due regard to the need to prevent people from being drawn into terrorism" and from which sector-specific guidance has been developed by the Home Office.

Before discussing the practical implications of the Prevent duty on matters of academic freedom and freedom of speech within the law, it is important to acknowledge whether parity exists between the status and force of the legislation. Both the 1986 and 1988 Acts refer respectively to *ensuring* that freedom of speech and academic freedom is exercised in our universities within the law, whereas the Counter-Terrorism and Security Act 2015 refers to specified authorities having *due regard* to the need to prevent people from being drawn into terrorism. These differences are intended to highlight the fact that even at the level of wording, university governing bodies, senior management teams and practitioners from professional services and academic staff are not working with absolutes in balancing the rights and responsibilities of the academic freedom and freedom of speech of individuals and the Prevent duty requirements.

Concerns have been expressed that the 2015 Act threatened academic freedom and freedom of speech. However, there is the potential for the principles and practice of academic freedom and freedom of speech and the Prevent duty, to be mutually supportive and reinforcing. This will only serve as a real opportunity for universities, if the Prevent duty is implemented sensitively, proportionately and meaningfully in local settings. After all, it is widely accepted that critical and informed debate as the expression of academic freedom and freedom of speech are an important vehicle for undermining extremist views and actions in whatever form they take.

Developing a statement on academic freedom and freedom of speech

The Home Secretary is required to have regard to the importance of freedom of speech and academic freedom when issuing guidance on the Prevent duty. This is set out in section 31 of the CT&S Act. In turn in its monitoring framework, Hefce itself refers to HEIs reviewing their policies on external speakers and events to ensure that they understand and reflect the institution's duty to ensure freedom of speech on campus, and its arrangements to protect academic freedom.

However, academic freedom and freedom of speech extend significantly beyond the arena of external speakers and events. In responding to the Prevent duty, the starting point at Northumbria was to return to the principles of academic freedom and freedom of speech. This was on the basis that what academic freedom actually meant in practice, and the responsibilities that were associated with it, had not been sufficiently built on in university policy. Where academic freedom was examined and tested it appeared to be on a reactive basis - such as where its application was subject to scrutiny in the context of threats to it, such as (the decline of) professorial tenure as an intended safeguard for academic freedom of staff in the US. This position reflected practice generally across other UK HEIs.

Beyond a couple of examples of good practice in policy statements on academic freedom and research, and a UCU statement, in most cases, reference was limited to reproduction of the statutory wording from the 1988 Act on academic freedom in the academic staff statute and ordinances in the pre-1992s and instrument of government of the post-1992 HEIs. The same wording was included in relevant staff terms and conditions or in staff handbooks. The main exception to gaps in describing principles and practice relating to academic freedom was HEIs' codes of practices in relation to freedom of speech for speakers and events. This will be discussed later.

As part of Northumbria's Prevent duty preparations, through the Prevent coordinating group and with the support of the university executive, academic board and the board of governors, a *Statement on Academic Freedom and Freedom of Speech* was developed which sought to unpack more fully the rights and responsibilities associated with these freedoms. This provided an opportunity to place the Prevent duty requirements as they related to academic freedom and freedom and speech in a broader context, as part of a wider package of rights and responsibilities.

Underpinning the statement was the principle that exercising academic freedom and freedom of speech does not establish a broad right **not** to be offended, and that the expression of views, or undertaking research or teaching which some people might find objectionable or offensive, is not generally unlawful. Of specific relevance to the Prevent policy requirements, the statement:

- Confirms that, alongside the rights associated with academic freedom and freedom of speech, is a responsibility to ensure that individuals or groups who incite hatred or violence against any group or seek to undermine society's, a group's or an individual's fundamental democratic rights and freedoms, are not supported or promoted.
- Confirms that in exercising academic freedom and freedom of speech, support for, endorsement or membership of, "proscribed organisations" was unlawful under the Terrorism Act 2000, and this remained unchanged by the Prevent duty requirements.
- Encourages the development and teaching by academic staff of curricula which challenge norms and conventional wisdom and viewpoints, involves learning and assessment related to controversial topics, including terrorism and extremism. Many HEIs in the UK and overseas offer modules devoted to these topics, and entire Masters programmes in counter-terrorism, intelligence and policing, placing such debate and rigour at the fore.
- Confirms that undertaking research linked to extremism and terrorism is wholly acceptable and an expected part of generating new knowledge and thought leadership. This includes using university networks and allowing access for bona fide teaching and research purposes to extremism-related material which may ordinarily be blocked, should senior managers have taken a decision to apply and activate filters, which institutions are required to consider in the Prevent duty guidance. Such access would normally be achieved through a proactive process of "whitelisting" of an IP address.

The rights of the individual to academic freedom and freedom of speech in the Statement are intended to balance the obligations (including Prevent-related ones) associated with these freedoms. The Statement is also intended to highlight that academic freedom and freedom of speech remain enshrined as fundamental principles of university life. However, it is important to acknowledge that the Statement does not provide a rubric for, or straightforward answer to, the judgment calls and interpretation required by colleagues making judgments in relation to what is acceptable within the bounds of the law, particularly as may be tested in the context of the Prevent duty. The work of groups such as Academics for Academic Freedom, and high-profile cases of academic staff in the UK and overseas who appear to have fallen foul of unclear restrictions to academic freedom or freedom of speech, signal that ongoing debates about these topics will continue.

The introduction of the Prevent duty make a territory that is already complex to navigate even more so. Recent debates about the distinction between universities and members of their communities taking a position in boycotting of Israeli universities and the rights of academics to question national and international politics and foreign policy for example, highlight such challenges. Specifically in relation to the Prevent duty, grey areas exist in relation to where the line can reasonably be drawn between debating versus supporting or promoting extremism and terrorism and, for example, the threshold at which controversial topics and discussions convert into inciting religious or racial hatred and violence.

Revising the code of practice on visiting and external speakers

As with most other HEIs, Northumbria has reviewed its policy on freedom of speech and external speakers and events in light of the Prevent duty. It is this topic which dominates debate about freedom of speech in the academy. The importance of taking a proportionate and risk-based approach, as advised in the Prevent duty guidance and Hefce's monitoring framework, was central to the review of the policy. The 1986 legislation requiring that a code of practice is established for the management of events and speakers in universities is also arguably proportionate with reference to HEIs taking "reasonably practicable" steps to secure freedom of speech. However, we were clear that we wished to make a number of key changes to the policy which went beyond reference to the Prevent duty guidance and supported the proportionality principle in assessing and authorising events and speakers on and off campus. These centred on:

- Identifying the different types and breadth of events which would exist at the university and its premises and branded events off-campus, including:
 - i. External speakers engaged in the routine course of teaching delivery such as presenting in a classroom or lecture setting.
 - ii. Speakers at university conferences, research seminars, presentations and demonstrations.
 - iii. Extra-curricular activities which may supplement and advance staff and students' understanding of a subject area or discipline.
 - iv. Public lecture programmes and corporate events.
 - v. Students' union- (or society-) led events.
 - vi. Tenant-led events and externally booked conferences and events.
- Emphasising that there would **not** be a general expectation that speakers engaged in the routine course of teaching, learning and research, would require higher approval within the academic department or faculty or beyond under the policy. This would only require additional assessment through designated assessors at head of department and director of professional service level if, in addressing a series of core questions listed in the policy, potential flags were raised. The purpose of this approach was to act proportionately and practically in a large and complex multi-faculty institution, while avoiding imposing undue burden which could deter colleagues from inviting speakers and therefore be detrimental to disciplinary and programme vibrancy and breadth, academic freedom and the student experience. The policy nonetheless emphasised the responsibility of the organiser of the event to make an informed assessment, and seek advice if they felt they had any doubts or concerns.
- The core questions events organisers are expected to address were built into the policy, to trigger further advice and a risk assessment if required:

Has the speaker been refused permission to speak publicly at other educational establishments or organisations (including the students' union of this or another university)?

Is the subject matter, topic or title controversial if advertised to the general public, or within the university community?

Is there the likelihood of a situation arising in which people might experience harassment, intimidation, verbal abuse or violence, damage to person or property?

Do we know or think the speaker would not be able to confirm that he/she would be able to abide by all relevant university policies, including the Statement on Academic Freedom and Freedom of Speech?

Other key changes effected to the policy, which responded to the Prevent duty guidance changes were:

- Expanding on the requirements in the existing code on what would make an event and speaker unlawful, by making explicit reference that the university is prohibited from holding events and meetings involving or supporting speakers from “proscribed organisations” as defined under the Terrorism Act 2000. A link to the Home Office list of proscribed organisations is included in the policy. The policy makes clear that proscribed organisations are only one criteria for prohibiting a speaker, but that this is unequivocal in law and therefore trumps freedom of speech.
- Identifying the key processes for risk assessment and due diligence of an event or speaker, and enlisting of specialist support and advice from across the university.
- Ensuring that the authorising officer for events escalated beyond the relevant faculty or central service organiser and assessor area (myself as head of governance and university secretary) enlisted an independent assessment of an event from one or more designated role-holders, including the head of legal services, irrespective of the likely outcome of the authorising officer’s decision.
- Ensuring event and speaker modifications including those examples cited in the government Prevent duty guidance, such as considering whether it is appropriate to have a speaker with an opposing view to that of a controversial speaker at the same event.
- An appeal mechanism to the vice-chancellor for any individual or group, unhappy with a decision of the authorising officer, irrespective of that outcome.

The key challenge lies less in reviewing the policy or consulting with stakeholders, including the students’ union, who are not directly subject to the prevent duty, but in ensuring the policy is accessible, clear and well-understood by students, staff and visitors. As with many universities, Northumbria has been grappling with the notion of branded university events off campus and application of the policy in our offshore partnerships, where the Prevent duty does not apply but where we would expect its principles, and those of academic freedom and freedom of speech, to be upheld. Following recent approval of the revised policy by the board of governors, and the development of a toolkit, including FAQs, a clear form and guidance to aid risk assessment and the audit trail for events and speakers is currently being progressed.