

Regulator raps university that sided with Jew-baiting PaISoc

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Regulator raps university that sided with Jew-baiting PalSoc – Lesley Klaff

November 9, 2016 — David Hirsh



Lesley Klaff

In a landmark ruling by the Office of the Independent Adjudicator for Higher Education (OIA) last week, Sheffield Hallam University was told to pay a disabled Jewish student, Brian, £3,000 in compensation for failing to properly consider his complaint about antisemitic social media posts by the University's Palestine Society. The OIA ruling is particularly significant because it recognises that anti-Zionist behaviour on campus can harass Jewish students and because it endorses the use of the EUMC Working Definition of Antisemitism as a guide to determining when anti-Zionist behaviour crosses the line into antisemitism.

Brian's complaint, which was filed in May 2015, alleged that the University tolerated anti-Israel activity on campus that crossed the line from legitimate criticism of Israel into antisemitism and harassment. It listed appalling Facebook posts and tweets by the University's Palestine Society which went way beyond the right to free speech and created a hostile environment for him. These posts, inter alia, accused Israel and Israelis of genocide, deliberately killing Palestinian children, deliberately killing other Palestinian civilians, war crimes, atrocities, using chemical weapons, ethnic cleansing, inhumanity, cruelty, behaving like Nazis, sexual and other abuse of Palestinian children (including abduction and human trafficking), stealing Palestinian organs, being racists and fascists, and rejoicing in Palestinian deaths.

Brian complained that these posts contributed to "an intimidating campus climate" and that he felt "intimidated and afraid to mention Israel on campus or to wear my Star of David or my skull cap for fear of being picked on." He said that "they are based on lies and half-truths about Jews, invoking blood libel motifs, stereotypes and defamations on campus and online, creating a threatening mob mentality." He explained the EUMC International Working Definition of Antisemitism and invited the University to formally adopt it in order to identify all forms of antisemitic expression on campus and to identify clear protocols for addressing it.

The University took nine months to consider Brian's complaint and then comprehensively rejected it. Despite an evidence file spanning 154 pages, the University concluded that evidence of antisemitism from Brian's complaint was "not conclusive" and suggested that Brian was conflating criticism of Israel with anti-Jewish prejudice. It said, "[Brian's] complaint reflects a tendency to think that those who oppose the policies and actions of Israel as a state or government are antisemitic and prejudiced against Jews The complaint

appears to conflate being anti-Israel with being anti-Jewish and opposition to Israel on political or moral grounds with hatred on religious and racial grounds". The University thereby ignored parts of Brian's complaint that distinguished legitimate criticism of Israel from antisemitism. For example, para 48 of Brian's complaint stated that: "I do not ask or expect the University to prevent spoken or written criticism of the State of Israel; but the University must not permit such criticisms to be expressed in a form which is or might reasonably be viewed as intending to stir up religious hatred against Jews or adherents of other religions"; and para 26 of his complaint explained that: "An example of a contemporary antisemitic trope is the allegation that Israelis (or Jews or Zionists) behave like Nazis. Such criticism of Israel must be distinguished from legitimate criticism of Israel which is not antisemitic."

The University concluded that as there was no antisemitism, there was no basis for specific action to be taken to reduce antisemitism over and above its existing policies in support of good relations on campus. In fact, the University thought that Brian's use of the term "Jew-baiting" in his complaint was itself more likely to "lead to poor campus relations between groups of people" than any of the Palestine Society's anti-Israel posts.

On the issue of the EUMC Definition, the University said that its formal adoption was a "policy matter" that was beyond the scope of the student complaints procedure and insinuated that David Lewis and I, who as (non-practising) lawyers had assisted Brian throughout the process, had 'used' Brian to pursue our own political and campaigning agendas. Accordingly, the University questioned Brian's ownership of his complaint.

The OIA found, however, that the University ought reasonably to have engaged with Brian's request that it formally adopt the EUMC Definition in the consideration of his complaint because it is "more nuanced" than the University's approach and because it is "relevant to the question of whether material which purportedly was criticising the (alleged) actions of the Israeli state 'crossed the line' from being merely offensive or inflammatory to [Brian] to amounting (or potentially amounting) to material which might reasonably be perceived as anti-Semitic and likely to cause [Brian], as a student identifying as Jewish, to experience harassment". This finding, in my view, amounts to a strong endorsement of the EUMC Definition as a guide to deciding when anti-Zionist behaviour on campus crosses the line into antisemitism.

On the issue of harassment, the OIA found that the University had failed to ask itself whether there was evidence of antisemitic behaviour or material and failed to properly turn its mind to the question of whether "as a student identifying as Jewish" Brian was likely to have been harassed as a result of some of the offending material. The OIA listed by way of example seven of the blood libels set out in Brian's complaint and stressed that the University should have engaged further with this aspect of the complaint because it had not explored adequately whether a hostile, intimidating, offensive or humiliating environment had been created for Brian but focussed too heavily on whether Brian had been personally threatened or whether the Palestine intended to be threatening, abusive or insulting. The OIA also criticised the University for failing to properly take into account "sector guidance" (by which it presumably meant *Universities UK: Freedom of Speech on Campus*, which Brian had referred to throughout his complaint). This says that "it is often the manner and form in which views are expressed, rather than the opinions themselves, which take the relevant speech or conduct into the area of unlawful harassment."

For failing to properly consider his claim of harassment relevant to his Jewish identity, the OIA recommended that the University compensate Brian to the tune of £2,500. The OIA also recommended that the University pay Brian £250 for its delay in considering his complaint and £250 for the manner in which it questioned his ownership of the complaint. This means that no university in the future can treat a complaint of antisemitic harassment with the indifference and contempt seen in this case without risking criticism by the OIA and a compensation award.

The OIA also criticised the Students' Union. In June 2014, Brian had submitted an earlier complaint to the University concerning the social media activity of the Palestine Society. He did this by means of an email, which the University had then referred to the Students' Union for resolution. Brian was asked to meet with the Head of Student Engagement at the Students' Union in late November 2014 and I accompanied him. At that meeting the Head of Student Engagement dismissed Brian's complaint but gave no plausible reasons and no written decision was ever issued. She merely said that she did not think the content of the Palestine Society's social media posts about which Brian complained were antisemitic because she had seen similar statements on the internet. I asked her which definition of antisemitism she was using and she did not reply. I asked her to give me a definition of antisemitism and she could not give me one. I asked her to give me an example of antisemitism and she remained silent. I asked her whether she had ever heard of the blood libel and she answered "no". I asked her whether she had ever heard of the conspiracy libel and she answered "no". Finally, she admitted to knowing nothing about antisemitism. All this was recorded in minutes taken of the meeting and included with the complaint submitted to the University in May 2015 and the appeal to the OIA in MAY 2016.

Although Brian's appeal to the OIA in May 2016 treated the Students' Union handling of his original complaint as a secondary issue and did not ask the OIA to evaluate it, the OIA nevertheless criticised the Students' Union for failing to treat Brian's email as a formal complaint and for appointing a decision-maker who was ill-equipped to consider his complaint. It further criticised it for failing to ask the Palestine Society to respond to the complaint, thereby missing an opportunity to persuade the Society to remove the offending social media posts at an earlier stage; for failing to issue Brian with a written decision; and for failing to advise Brian of his right of appeal to the University. The OIA accordingly recommended that the University work with the Students' Union to review its complaints handling practices in order to ensure that complaints are dealt with fairly. It further recommended that the University work with the Students' Union to raise awareness across campus of the legal framework governing freedom of speech and the university's responsibility to ensure that staff and students are protected from harassment.

The OIA has a record of acting fairly and justly in cases brought by Jewish students and this case involving Brian and Sheffield Hallam University and its Students' Union is no exception. As my colleague David Lewis has said, "This decision could really help Jewish and pro-Israel students to complain effectively to their universities about some of the worst abuses by anti-Zionists" and I agree with him.

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