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a case study and context**

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# Contemporary Antisemitism on the UK University Campus: A Case Study and Context\*

Lesley Klaff

## Abstract

Contemporary antisemitism on the UK university campus takes the form of an anti-Zionist narrative that replicates antisemitic tropes. This creates a hostile campus environment for Jewish students that jeopardizes their educational opportunity, impairs the quality of their student experience, and causes them other tangible harms, such as anxiety, depression and feelings of intimidation. UK universities, however, are ill-equipped to address the problem of campus antisemitism because they lack a working definition of antisemitism and are unable to recognize it, especially when it takes the form of criticism of Israel. They are also largely ignorant of the laws that limit speech on campus and tend to regard all criticism of Israel, however expressed, as free political speech. Using a student antisemitism complaint as a case study, this paper analyzes the nature of campus antisemitism in the UK, its political context, and relevant legal provisions. It also considers the educational challenges that need to be overcome in order to prevent campus antisemitism in the future.

## Introduction

There has been a rise in contemporary antisemitism on UK university campuses since 2001, when the UN Conference against Racism in Durban accused Israel of the five cardinal sins against human rights: racism, apartheid, ethnic cleansing, attempted genocide, and crimes against humanity.<sup>1</sup> Since then, campus antisemitism has been cloaked in the language of human rights and promulgated in the so-called “fight for Palestine.” This employs an anti-Zionist narrative that conceives of Israel and the Zionist project in partial and distorted form and relies on a “distorting system of concepts” such as the idea that “Zionism is racism,” that “Israel is a ‘settler-colonial state’ which ‘ethnically cleansed’ the ‘indigenous people’ of Palestine, went on to build an ‘apartheid state,’ and is now engaged in an ‘incremental genocide’ against the Palestinians.”<sup>2</sup> The narrative also includes the ugly equation of Israelis, Zionists or Jews with Nazis and it promotes BDS, a global political program whose aim is to remove Israel from the world stage. As a result, Jewish students are routinely labelled as “Nazis,” “apologists for racism,” “apologists for apartheid” and “racists” by student supporters of Palestine. In addition, the word “Zionist” is frequently used as an insult against those who defend the actions of the Israeli Government.<sup>3</sup>

Although student supporters of Palestine may not *intend* to be antisemitic, and vehemently deny their antisemitism, the *effect* of their rhetoric is to harass those students who support Israel, the overwhelming majority of whom are Jewish, and some of whom are Israeli. The creation and maintenance of a hostile campus environment for Jewish and Israeli students inevitably harms the quality of their student

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\*An abridged version of this article is published in *Justice* 59, Spring-Summer 2017, pp. 19-25. The student Complaint and the University's Complaint Response cited in this article are internal documents unavailable to the public.

<sup>1</sup> Other factors relevant to the rise in campus antisemitism at that time were 9/11, the breakdown of the peace process between the Israelis and Palestinians, and the official start of the British boycott of Israel, which was precipitated by means of an open letter in *The Guardian*, calling for an EU moratorium on funding for grants and research contracts for Israeli universities “to condemn [Israel’s] policy of violent repression against the Palestinian people in the occupied territories.” THE GUARDIAN, April 6, 2002, 15. The letter was signed by 125 British academics.

<sup>2</sup> Alan Johnson, *The Left and the Jews: Time for a Rethink*, Fathom, Autumn 2015, p. 3, available at <http://fathomjournal.org/the-left-and-the-jews-time-for-a-rethink/> (last visited May 18, 2017).

<sup>3</sup> The House of Commons Home Affairs Committee, *Antisemitism in the UK*, Tenth Report of Session 2016-17, para 29.

experience and jeopardizes their educational opportunities, not least because it causes them to suffer emotional distress and anxiety, and puts them in fear of physical harm. Indeed, at those UK universities where BDS campaigns have been promoted, some Jewish students have reported physical assault and damage to their property and belongings.<sup>4</sup>

The anti-Zionist narrative is especially acute on campus during and in the aftermath of armed conflict in the Middle East, and the period following the start of Operation Protective Edge in the summer of 2014 was particularly difficult, with the demonization of Israel and Israelis by student Palestine societies. It is in this context that a campus antisemitism case involving a university in the north of England was referred to UK Lawyers for Israel (UKLFI)<sup>5</sup> in the summer of 2014. Although the university concerned must remain nameless, we may refer to it as "Any University UK" because the circumstances that gave rise to the complaint, the nature of the complaint, and the University's response to it, represent a fairly typical picture of the situation facing Jewish students in the UK university sector. Accordingly, this article will present the antisemitism complaint filed against Any University UK, the University's response, and the appeal decision by the Office of the Independent Adjudicator as a case study in order to discuss campus antisemitism in Britain and to put it in the context of the relevant law and the wider political issues. I worked on the case along with a retired former solicitor named David Lewis who, like me, was affiliated with UKLFI at the time the antisemitism complaint was brought.<sup>6</sup>

This article presents the first comprehensive analysis of campus antisemitism in the UK, using a student complaint as illustration. It sets out the relevant legal provisions and the political context in which they operate, and makes recommendations designed to combat campus antisemitism in the future.

#### Outline of the Antisemitism Case against Any University UK

The student complainant, whom we shall refer to as "Brian," identifies as Jewish and suffers from a disability. In June 2014 he submitted a complaint to Any University UK (hereinafter referred to as the "University") concerning the activities of the Palestine Society ("PalSoc") approved by and affiliated to his Students' Union ("SU"), and in particular about its social media activity. The University referred the complaint to the SU for a decision and Brian, accompanied by myself, met with the Head of Student Engagement at the SU in November 2014. At the meeting, Brian was informed that the SU was dismissing his complaint but no written decision or right of appeal information was issued as required by the SU's own complaints procedure.

In May 2015, Brian submitted a second complaint to the University, in which he repeated the concerns raised in his original complaint and in addition complained about further behavior by PalSoc on its social media which, he alleged, (a) breached its constitution; (b) incited hatred of Israel and Jews; and (c) caused him to feel harassed and intimidated. He complained that the University had taken no action against PalSoc or the SU and that the University had unreasonably allowed PalSoc to promote its activities on the University's corporate display screens and screensavers. Brian further complained

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<sup>4</sup> This was reported by Jewish students at SOAS, University of London, at an event organised by CAMERA and BBC Watch to discuss the BBC's biased coverage of Israel. The purpose of the event, which was held at Finchley Synagogue, Kinloss Gardens, London, N 3, on Nov. 10, 2015, was to consider to what extent the BBC's coverage of Israel complies with its legal obligations to treat news and matters of public policy and political controversy with due accuracy and impartiality; and to what extent biased reporting in relation to Israel promotes and leads to antisemitism and radicalisation.

<sup>5</sup> UKLFI is a non-governmental organisation (NGO), which provides pro-bono legal advice and representation for victims of contemporary antisemitism. UKLFI is not a registered law firm and refers cases to its members, or other lawyers, who are authorised to advise and represent clients.

<sup>6</sup> David Lewis had left UKLFI by the time Any University UK's decision on the complaint was delivered. He left to form an organisation called *Enforce the Law Against Public Sector Antisemitism* ("ELAPSA") whose role is to fight antisemitism in the public sector by requiring institutions, regulators and judges to enforce the relevant law.

about the SU's mishandling of the original complaint and made it clear that he would not accept another referral to the SU. He was supported in complaining to the University not only by David Lewis and myself as UKLFI members, but also by his personal carer, and a fellow student who also identifies as Jewish. We each submitted a statement in support of Brian's complaint.

The University arranged for Brian's complaint to be considered by a senior university administrator ("University Administrator") under the final stage of its *Student Complaints Policy and Procedure*. Brian, accompanied by David Lewis, met with the University Administrator in October 2015 so that she could ask him some questions. She subsequently dismissed Brian's complaint in February 2016 and informed him of his right to appeal to the Office of the Independent Adjudicator for Higher Education ("OIA") in March 2016. The OIA is a charity, whose purpose is to review a complaint against a university to decide whether it is "Justified," "Partly Justified," or "Not Justified."

The OIA received Brian's appeal, known as a Complaint, in May 2016. He complained that the University failed to consider his complaint properly, that it misrepresented his complaint, and that it unfairly insinuated that his complaint was driven by David Lewis and myself, rather than by him. He maintained that the University failed to have proper regard to the relevant law and guidance, and that it applied an unreasonably narrow definition of antisemitism when considering whether PalSoc's social media activity "crossed red lines" from legitimate criticism of Israel and Israelis to antisemitism.

The OIA issued its Complaint Outcome in October 2016. It found that Brian's complaint was Partly Justified. It recommended that the University compensate Brian to the tune of £3,000 (comprising £250 for the University's delay in considering his complaint, £2,500 for failing to address Brian's complaint of harassment properly, and £250 for the manner in which the University questioned Brian's ownership of the complaint.) It also required the University to remedy the failings identified in its review. Those failings, and the reasons for them, as well as the wider political implications, will be addressed in the following sections.

### The Lack of a Working Definition of Antisemitism

The Report of the House of Commons Home Affairs Select Committee on Antisemitism in the UK ("Select Committee"), which was published in October 2016, acknowledged that "it would be extremely difficult to examine the issue of antisemitism without considering what sort of actions, language and discourse are captured by the term, and that defining the parameters of antisemitism was central to the question of what should be done to address this form of hate."<sup>7</sup> In other words, in order to investigate allegations of antisemitism, one first needs to define what is meant by the term.

However, UK universities do not have any working definition of antisemitism to use when investigating an antisemitism complaint. They have nothing to guide them in identifying or addressing antisemitism on their campuses. In the absence of a definition of antisemitism, the student complainant has to rely on the personal understanding, awareness and knowledge of antisemitism of the university administrator who happens to decide the outcome of the complaint. This is a risky business, however, as inevitably some university administrators are anti-Zionist and will share the same antisemitic and/or anti-Zionist assumptions and attitudes that form the basis of the student complaint.

Brian's complaint 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 by the University's Palestine Society that went way beyond the right to free speech and created a hostile environment for him. These posts and tweets, *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

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<sup>7</sup> *Supra* note 3, para 12.

Palestinian organs, being racists and fascists, and rejoicing in Palestinian deaths. To give an example, one specific PalSoc social media post that was listed in the complaint was:

One of the most sophisticated, nuclear powered, technological[ly] advance[d] armies in the world is committing monstrous atrocities; it has dropped bombs [on] disability shelters killing those seeking safety within, it has made targeted airstrikes on family homes killing entire families in cold blood, it is slaughtering children who are arriving to hospital "in bits" ...<sup>8</sup>

Brian complained that these posts contributed to “an intimidating campus climate”<sup>9</sup> 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.”<sup>10</sup> 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.”<sup>11</sup>

He explained the EUMC 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 EUMC Definition, which in May 2016 was adopted by the International Holocaust Remembrance Alliance (IHRA) consisting of 31 state members, including the UK, provides explicit examples of how antisemitism can be manifested, when context is taken fully into account, with respect to the State of Israel but also makes it clear that criticism of Israel similar to that levelled against any other state is not a form of antisemitism. This makes the Definition particularly suitable for deciding the question of contemporary campus antisemitism because, in the words of the House of Commons Select Committee, the Definition finds “an acceptable balance between condemning antisemitism in all its forms, and maintaining freedom of speech – particularly in relation to legitimate criticism of Israel.”<sup>12</sup>

However, the University refused to formally adopt the EUMC Working Definition of Antisemitism as Brian requested, even in order to help it decide the outcome of his complaint, preferring instead to conclude that the formal adoption of the EUMC Definition was a “policy matter” that was beyond the scope of the student complaints procedure. This allowed the University’s decision to be based on the subjective views of the administrator who decided Brian’s case.

Accordingly, despite an evidence file spanning 154 pages, the University found that evidence of antisemitism from Brian’s complaint was “not conclusive” and suggested that Brian was conflating criticism of Israel with anti-Jewish prejudice. The University’s Complaint Response stated that:

[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.<sup>13</sup>

This separation of hatred of Israel from hatred of Jews is a typical mode of denial of antisemitism for someone on the anti-Zionist left.

The University thereby ignored parts of Brian’s complaint that distinguished legitimate criticism of Israel from antisemitism. For example, paragraph 48 of Brian’s complaint stated that:

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<sup>8</sup> Complaint para. 68. This is an internal document which is unavailable to the reader.

<sup>9</sup> Complaint para. 47.

<sup>10</sup> Complaint para. 188.

<sup>11</sup> Complaint para. 207.

<sup>12</sup> Select Committee Report, *supra* note 3, para. 12.

<sup>13</sup> University’s ‘Complaint Response’ to Brian, Feb. 29 2016, para. 16. This is an internal document which is unavailable to the reader.

*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 paragraph 226 of his complaint, which was part of my witness statement, 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.*”[Emphasis added].

The University’s response that Brian’s complaint conflated criticism of Israel with antisemitism suggests that he brought his complaint in bad faith. This is presumably why it ignored Brian’s careful attempt to exclude mere criticism of Israel from the ambit of his complaint. The University also insinuated that David Lewis and I, who (as non-practicing lawyers) had assisted Brian throughout the process, had used Brian to pursue our own political and campaigning agendas. This is a common response of the anti-Zionist left who tend to believe that the “purveyors” of antisemitism are mobilizing a discourse of power for a self-serving purpose. Accordingly, the University questioned Brian’s ownership of his complaint. Such a perspective illustrates the practical application of “The Livingstone Formulation.”<sup>14</sup> It is a contemporary trope that is frequently deployed by anti-Zionists. Its use allowed the University to refuse to engage with Brian’s allegation of antisemitism by responding with an *ad hominem* attack against him and his legal representatives. In effect, we were accused of playing “the antisemitism card” for an ulterior motive.<sup>15</sup>

Indeed, the extent to which the University Administrator’s subjective views colored her decision-making is evident from her claim, expressed in the University’s dismissal letter of February 2016, that Brian’s use of the term “Jew-baiting” in his complaint to refer to PalSoc’s Facebook posts was itself more likely to “lead to poor relations between groups of people” than the posts he was complaining about.<sup>16</sup> This tendency to blame the Jewish complainant for causing disruption by means of his own behavior has a long pedigree among UK decision-makers.<sup>17</sup> Further, her dismissal letter categorized all PalSoc’s antisemitic social media output as merely “controversial and provocative” and as “offensive to some people, in particular those who have strong opposite views about the issues involved.”<sup>18</sup> The characterization of blood libels as merely “offensive” trivializes antisemitism, denies its political importance, and constructs Brian as overly sensitive rather than as a victim of harassment.

The absence of a working definition of antisemitism allowed Any University UK to conclude that there was no antisemitism on the part of the Palestine Society, and therefore there was no basis for specific

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<sup>14</sup> The Livingstone Formulation is named after Ken Livingstone, the former Mayor of London, who in 2006 wrote in *The Guardian*, “For far too long the accusation of antisemitism has been used against anyone who is critical of the policies of the Israeli government, as I have been.” David Hirsh, How raising the issue of antisemitism puts you outside the community of the progressive: The Livingstone Formulation at 6, available at <https://engageonline.files.wordpress.com/2016/04/livingstone-formulation-david-hirsh.pdf> at 6 (last visited March 26, 2017).

<sup>15</sup> David Hirsh, *Accusations of Malicious Intent in Debates about the Palestine-Israel Conflict and about Antisemitism: The Livingstone Formulation, ‘Playing the Antisemitism Card’ and Contesting the Boundaries of Antiracist Discourse*, TRANSVERSAL, 47-76 (2010).

<sup>16</sup> This claim was made in the context of Brian’s complaint that the University was in breach of its Public Sector Equality Duty (PSED) and is a poor analogy since Brian is not listed as a ‘public body’ in Schedule 19 to the Equality Act 2010 and is therefore under no statutory duty to foster good community relations.

<sup>17</sup> See, for example, the employment cases *Seide v Gillette Industries Ltd* [1980] IRLR 427 and *Garnel v Brighton Branch of the Musicians Union* (13 June 1983).

<sup>18</sup> OIA Complaint Outcome para. 18. This is an internal document which is unavailable to the reader.

action to be taken to reduce antisemitism over and above the University's existing policies in support of good relations on campus.

The lack of a working definition of antisemitism also presented a major problem for the decision-making of Any University UK's Students' Union, to which Brian's original complaint, filed in June 2014, had been referred for resolution. This original complaint, although relatively short when compared to the later one of May 2015, also complained about PalSoc's social media activity, on the grounds that it crossed the line from legitimate criticism of Israel into antisemitism and harassment. 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, despite Brian's request for one. She merely said that she did not think that the content of PalSoc's social media posts were antisemitic because she had seen similar statements on the internet. She admitted to having used no definition of antisemitism in coming to her decision. She was unable to provide an example of antisemitism, contemporary or otherwise, and said she had never heard of the "blood libel" or the "conspiracy libel." Finally, she admitted to knowing nothing about antisemitism.<sup>19</sup>

The OIA, however, understood the importance of defining antisemitism. After reviewing Brian's case, it identified the EUMC Working Definition of Antisemitism as "of particular relevance"<sup>20</sup> and described it as "more nuanced" than the University's approach.<sup>21</sup> It found that the University ought reasonably to have engaged with Brian's request that it formally adopt the Working Definition, which it said was

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.<sup>22</sup>

For these reasons, the OIA found Brian's complaint of antisemitic harassment against Any University UK to be "Justified."<sup>23</sup>

This finding by the OIA amounts to a strong endorsement of the EUMC Definition as a guide to deciding at what point anti-Zionist behavior on campus crosses the line into antisemitism. Its formal adoption by the University would have provided a good objective guide for determining at what point PalSoc's criticism of Israel "crossed the line" into antisemitism; and its formal adoption by the Students' Union would have ensured that Brian's antisemitism complaint against PalSoc was dealt with fairly and in an informed way. Unless and until the IHRA Working Definition of Antisemitism, as the EUMC Definition is now known, is properly implemented by UK universities to decide the outcome of campus antisemitism complaints,<sup>24</sup> any decision is likely to be influenced by the ideological perspective and unconscious bias of the university administrator who makes it.

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<sup>19</sup> This conversation between the Head of Student Engagement and myself was recorded in the minutes of the meeting and was included with the complaint submitted to the University in May 2015 and the appeal to the OIA in May 2016.

<sup>20</sup> OIA Complaint Outcome, para. 16.5

<sup>21</sup> OIA Complaint Outcome, para 42.

<sup>22</sup> OIA Complaint Outcome, para 41.

<sup>23</sup> The OIA also criticised the Students' Union for appointing a decision-maker who was ill-equipped to consider the complaint and recommended that the University work with it to review its complaint handling practices in order to ensure that complaints are dealt with fairly in the future, as is required by the Education Act 1994, OIA Complaint Outcome, para.. 19.2 and Recommendation 3

<sup>24</sup> Following the UK Government's adoption of the IHRA Working Definition of Antisemitism in December 2016, the Universities' Minister sent a letter on 13 February 2017 to Nicola Dandridge, Chief

Further, unless and until the IHRA Definition of Antisemitism is properly interpreted and implemented by UK universities, decisions on the outcome of antisemitism complaints will also be informed by the administrator's lack of knowledge about antisemitism and how to recognize it. The university sector provides no education and training on the topic of antisemitism for university administrators, including those responsible for promoting equality, respect for diversity and inclusivity for minority students, and dealing with incidents and complaints of racism. Given that Jews make up a percentage of the student population, and given the prevalence of anti-Zionist expression on UK university campuses, this lack of education and training on antisemitism is a significant omission.

Without the requisite education and training, university administrators are forced to draw on their own personal knowledge and understanding of antisemitism when deciding the outcome of a student complaint. This is problematic in the UK where most people are confused as to what counts as antisemitism. The general confusion is said to be due to the fact that the Holocaust conditions popular understanding of antisemitism as state sponsored genocide, along with ignorance of antisemitism's pre-Holocaust history.<sup>25</sup> Most British people have never heard of the 'blood libel' or "conspiracy theory" or *The Protocols of the Elders of Zion*, nor do they know anything about the history of antisemitism in Stalinist politics.

The only anti-racism and diversity training provided in the university sector focuses on promoting educational opportunity for Black-Minority-Ethnic (BME) students and Jewish students are not included in that group. It is suggested that the exclusion of Jewish students from the BME category is, in part, because Jews are thought of as white, privileged and as coming from families that are well integrated into British society.<sup>26</sup> The former President of Oxford University's Jewish Society, Aaron Simons, has argued that the perception of Jews as powerful and privileged is prevalent in the university setting.<sup>27</sup> Anthony Julius notes that antisemitism faded from political consciousness in Britain after Israel's victory in the Six-Day War precisely because of the feeling that Jews could look after themselves.<sup>28</sup> Further, because antisemitism is associated with state-sponsored violence, it is regarded as a relic of the past, a symptom of an outdated ideology.<sup>29</sup> All this conspires to make university administrators illiterate with respect to antisemitic language and iconography, which is the typical mode of anti-Zionist expression.

#### Lack of Constraints and Compliance.

Campus antisemitism persists in the UK because universities do not comply with the law that limits free speech on campus. This is because they are either ignorant about the relevant law, or they misunderstand how it ought to be interpreted. Indeed, the tendency of UK academia is to believe that freedom of speech on campus is absolute. This is because academia subscribes to the traditional view that the university is a "market place of ideas"<sup>30</sup> where views can be freely exchanged even if they cause offense.

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Executive of UUK, outlining the Government's expectation that all UK universities would henceforth follow the Definition. However, there are now problems regarding the correct interpretation and implementation of the Definition, particularly with respect to "Israeli Apartheid Week."

<sup>25</sup> Anthony Julius, TRIALS OF THE DIASPORA: A HISTORY OF ANTI-SEMITISM IN ENGLAND (2010), 450 -455.

<sup>26</sup> *Id.* p. 517. There is also the universal practice of omitting "Jewish" from ethnic questionnaires in the university sector and elsewhere, thereby denying the national identity of Jews.

<sup>27</sup> Aaron Simons, *It's time we acknowledged that Oxford's student left is institutionally antisemitic*, THE GUARDIAN, Feb. 18, 2016.

<sup>28</sup> Julius *supra* note 25, p. 517.

<sup>29</sup> *Id.*

<sup>30</sup> Timothy C. Shiell, CAMPUS HATE SPEECH ON TRIAL (2009).



However, the “market place of ideas” metaphor is outdated and free speech on campus, including free political speech, is circumscribed by several UK laws designed to promote racial, religious, sexual, and disability equality on campus, to prevent harassment and discrimination, and to promote equality of educational opportunity.<sup>31</sup> Many universities fail to consider these laws,<sup>32</sup> allowing campus antisemitism to flourish.

Much of the problem is due to the fact that academics in the UK confuse the principle of "freedom of speech" with the principle of "academic freedom." Academic freedom means the right of universities to be free from state and political interference, the right of university academics to be free to test received wisdom and to express controversial views without being fired, the right of universities to be free to appoint staff and admit students, and to decide what to teach them and what research to undertake.<sup>33</sup> Academic freedom does not equate to absolute free speech as many academics think. This confusion between academic freedom and free speech means that views that are highly critical of Israel, Judaism and Jews are regarded as merely "controversial" or “offensive” even when they are antisemitic and are defended on the grounds of academic freedom.

A good illustration of the confusion relates to an anti-Israel essay written by Dr. Sandra Nasr of Perth University in Australia which was posted on the London School of Economics (LSE) Human Rights blog last year, even though it falsely and offensively caricatured Jewish law and religious beliefs. The essay entitled, "Delegitimising through Dehumanisation: Palestinian 'Human' Rights Denied," purported to summarize Jewish ethics, law and behavior, by reproducing antisemitic tropes about "notions of separateness, superiority and entitlement." It completely misread the idea of Jews as "the chosen people" and attacked Israel by employing vile racist slanders against Judaism. The essay further included a link to a Holocaust Denial website.<sup>34</sup> Despite its antisemitic content, the essay was considered suitable for publication by the LSE's Centre for the Study of Human Rights, which subjected the post to an editorial process before allowing it to be published on its blog. The essay was removed from the LSE blog following the intervention of the Community Security Trust, but many academics vehemently protested that it should have been left on the blog on the grounds of respecting Dr. Nasr's "academic freedom." This is wrong. Academic freedom does not protect antisemitic hate speech, or racist speech of any kind. In fact, once the LSE was made aware of the antisemitic content of Dr. Nasr's essay, it was legally obligated to remove it. This is because free speech on campus is limited by certain laws, one of which is section 149 of the Equality Act 2010.

#### *Section 149 Equality Act 2010*

Under section 149 of the Equality Act 2010, every UK university has a legal duty to exercise its functions with due regard to the need to eliminate harassment and to foster good relations between students of different ethnic groups and religious beliefs, including by tackling prejudice and promoting understanding. This is known as the affirmative Public Sector Equality Duty (PSED) and it applies to Jewish students who are protected both as a religious group and as an ethnic group under the law. In exercising its function of providing an educational environment, each university must seek to ensure that Jewish students can realize their full educational potential without fear, threat or intimidation. Compliance with this duty requires that each university places some limitations on free speech, and indeed this is recognized by each university's "Anti-Harassment" policy and other codes, such as the Student Charter, which typically promises to provide students with a safe and supportive educational environment.

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<sup>31</sup> These laws have been codified in the Equality Act 2010.

<sup>32</sup> Many universities also fail to consider the possibility that some anti-Zionist activities might constitute racially aggravated public order offences under sections 18, 19 & 21 of the Public Order Act 1986, however, an analysis of this problem is beyond the scope of this paper.

<sup>33</sup> Education Reform Act 1988, sec. 202.

<sup>34</sup> CST condemns post on LSE Human Rights blog, <https://cst.org.uk/news/blog/2015/12/04/cst-condemns-post-on-lse-human-rights-blog>, Dec. 4 2015 [accessed December 11, 2015].

The Public Sector Equality Duty is flouted whenever a university fails to take reasonable steps to prevent or remove campus expression that is antisemitic, thereby causing a hostile environment for Jewish students which harasses them. A good example of a university's compliance with the duty relates to an exhibition at the London School of Economics (LSE) commemorating the Palestinians involved in the "Knife Intifada" terror attacks. The LSE's Palestine Society displayed graphic images of injured Palestinians without background details and context and claimed that they had been "killed over their resistance to the Israeli occupation."<sup>35</sup> Following complaints from Jewish students and columnist Melanie Phillips that the university was allowing Jewish students to be intimidated through the systematic demonization of Israel, its director of communications, Adrian Thomas, admitted that the LSE was "deeply troubled" by the exhibition. He said, "We believe that both the content and manner in which it was displayed caused serious harm to relations between sections of our community on campus."<sup>36</sup> He added that "the apparent celebration, even if unintended, of violence and perpetrators of violence caused significant distress to students who identify with victims of that violence."<sup>37</sup> The university would "continue to remind all parties of the need for student societies to balance robust debate with mutual respect for fellow students."<sup>38</sup>

In the case of Brian's antisemitism complaint against Any University UK, the University demonstrated ignorance and misunderstanding of its legal responsibilities under section 149 of the Equality Act 2010, and of its obligations under its Student Anti-Harassment Policy and its Student Charter.

Brian's complaint alleged that in tolerating PalSoc's antisemitic anti-Zionist behavior on campus, the University failed to have due regard to the need to eliminate harassment contrary to section 149(1)(a) of the Equality Act 2010; facilitated the creation of an environment of harassment contrary to the *Student Anti-Harassment Policy*; failed to enable Brian to learn in a safe environment contrary to the *Student Charter*; failed to have due regard to the need to foster good relations between Jewish students and the wider university community contrary to section 149 (1)(c) of the Equality Act 2010; and failed to provide Brian with an environment that fosters the inclusive, supportive and collaborative university community which he is entitled to expect under the *Student Charter*.

In support of these allegations, Brian explained in his complaint 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,"<sup>39</sup> that he felt he could not be open about his Jewish identity, and that he felt unable to attend classes during Israeli Apartheid Week in 2013 and 2014 due to a flare-up of his disability caused by stress and anxiety.<sup>40</sup> He explained further that:

Hate speech is recognised by the fear which it generates, and I feel threatened by the campaigning of PalSoc, and in particular its output on Facebook and Twitter, which 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....The nature of the behaviour that

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<sup>35</sup> Melanie Phillips, *The graduates of hatred*, The Jewish Chronicle, Dec. 3, 2015, p. 34

<sup>36</sup> Naomi Firsht, LSE 'troubled' by anti-Israel display, The Jewish Chronicle, Dec. 3, 2015, p. 6.

<sup>37</sup> *Id.*

<sup>38</sup> The LSE, however, took no disciplinary action against either the Palestine Society or its university's Students' Union, which had fully endorsed the exhibition. Its Students Union's General Secretary, Nona Buckley-Irvine, had said that she was "satisfied with the [Palestine] Society's explanation that they were attempting to recognise that Palestinians are dying as a result of the recent escalation of the conflict", Phillips, *supra* note 35 37.

The LSE's statement on the Palestine exhibition available at <http://www.lse.ac.uk/newsAndMedia/aroundLSE/archives/2015/LSESUexhibition.aspx> (last visited May 18, 2017).

<sup>39</sup> Complaint para. 188.

<sup>40</sup> Complaint paras. 198 & 199.

PalSoc engaged in...has been threatening, abusive and insulting and contributes to an intimidating climate where students feel they cannot speak their mind...<sup>41</sup>

In addition, Brian provided a statement from his personal carer in support of his complaint to the effect that PalSoc's activities had adversely affected his emotional wellbeing, and had jeopardized his ability to study.

The University in its Complaint Response demonstrated a profound misunderstanding of the law of harassment under section 149 of the Equality Act 2010 and therefore applied it wrongly to Brian's case. It interpreted the civil tort and criminal offense of harassment as requiring the behavior to have been directed at a particular person for him to experience harassment, and this is incorrect.<sup>42</sup> It is the recipient's perception of behavior that is important, and not whether harassment was intended by the perpetrator. This is true also under the University's *Student Anti-Harassment Policy*, indicating that the University also misunderstood and misapplied its own anti-harassment policy.<sup>43</sup> As a result, the University failed to adequately explore whether a hostile, intimidating, offensive or humiliating environment had been created for Brian and instead focused too heavily on whether Brian had been personally threatened or whether there was an intention on the part of PalSoc to be threatening, abusive or insulting.<sup>44</sup> This was entirely the wrong approach.

Further, with respect to the blood libels and abusive posts, the University failed to ask itself whether there was evidence of antisemitic material or behavior that was likely to have harassed Brian as a student identifying as Jewish.<sup>45</sup> This is because it failed to take into account "sector guidance" in the form of a document entitled, *Universities UK: Freedom of Speech on Campus*, which Brian had referred to throughout his complaint.<sup>46</sup> This guidance, which advises universities on how they can reconcile their legal duties to promote good campus relations and avoid unlawful discrimination with their legal obligation to promote free speech, states 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."<sup>47</sup> In addition, in accordance with its Public Sector Equality Duty, as the OIA pointed out, the University could reasonably have engaged in discussions with the SU and with PalSoc about the substantive issues raised in Brian's complaint, but it failed to do this.<sup>48</sup>

In light of its failure to correctly interpret and apply the relevant law under the Equality Act, to correctly apply its own University policies and codes, as well as its failure to follow UUK sector guidance, the OIA concluded that the University had not acted reasonably in its consideration of Brian's complaint that PalSoc had "crossed red lines" from legitimate criticism of Israel to antisemitism; and that its failure to properly turn its mind to the question of whether Brian, as a student identifying as Jewish, had experienced harassment as a result of PalSoc's social media activity was unreasonable and likely to have caused Brian distress and inconvenience.<sup>49</sup> Indeed, the OIA strongly criticized the University for basing its response to the complaint on the outcomes Brian was seeking<sup>50</sup> and for failing to engage properly with the charges and the blood libels.<sup>51</sup> Accordingly, the OIA recommended that the University

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<sup>41</sup> Complaint paras. 207 & 209.

<sup>42</sup> OIA Complaint Outcome, para. 35.

<sup>43</sup> OIA Complaint Outcome, para. 36.

<sup>44</sup> OIA Complaint Outcome, para. 45.

<sup>45</sup> OIA Complaint Outcome, para. 38.

<sup>46</sup> OIA Complaint Outcome, para. 40.

<sup>47</sup> OIA Complaint Outcome, para. 43.

<sup>48</sup> OIA Complaint Outcome, para. 46.

<sup>49</sup> OIA Complaint Outcome, para. 47.

<sup>50</sup> These outcomes were (a) asking PalSoc to remove posts which "incite hatred of Jews and/ or Israelis"; (b) requiring PalSoc to "refrain from further Jew-baiting"; (c) taking disciplinary action against the students responsible for the posts; and (d) taking steps to reduce antisemitism.

<sup>51</sup> OIA Complaint Outcome, para. 26

compensate Brian to the tune of £2,500, amounting to the bulk of the total £3,000 award, for failing to deal properly with the blood libel charges. The OIA 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, students and others are protected from harassment, discrimination and victimization.

#### *Section 22 Education Act 1994*

Another legal constraint on UK universities is their obligation under section 22 of the Education Act 1994 to monitor their students' union expenditure and its compliance with charity law. This is relevant because complaints of contemporary antisemitism on campus are invariably made against student Palestine societies which, like students' unions, have charitable status. Charity law requires that all students' unions and societies act within their charitable purposes as set out in their constitutional document. They are not permitted to engage in political activity except in furtherance of those charitable objectives, which are normally to advance the education of the students at the university.<sup>52</sup> It is therefore illegal for a students' union or student society to engage in other political activities, and particularly to do so in a manner that is liable to impair the educational opportunities of Jewish students and other student supporters of Israel.

In the case against Any University UK, an SU official<sup>53</sup> had specifically stated in writing that the constitutional objectives of PalSoc were "to raise awareness of the issues in the region, to provide opportunities for different views to come together, and to cross barriers to promote positive change."<sup>54</sup> This suggested that PalSoc's behavior, which included the demonization of Israel, was illegal under charity law because it was for the sole political purpose of promoting and supporting Palestinian solidarity which was outside the Society's constitutional objectives.

Brian's complaint therefore charged the University with failing to take action against the SU for approving PalSoc and for making financial and other resources available to PalSoc, for failing to shut down or disband PalSoc, and for failing to take any other action against PalSoc for breaching its constitutional objectives. He further charged the University with failing to monitor the SU's expenditure for compliance with charity law, failing to request or compel the SU to take action against PalSoc for breaching its constitutional objectives, and failing to take action against the SU for failing to conduct Brian's complaint against PalSoc, its Chair and other responsible officers, in accordance with SU's rules.<sup>55</sup>

Unfortunately, the OIA found that this part of Brian's complaint was 'Not Justified.' As the University's response to Brian's complaint made clear, PalSoc's constitutional objectives went further than those that had been explicitly stated by the SU official. Its objectives also referred to "... the continued humanitarian crisis challenging the lives of Palestinians; ... their struggle for peace and self-determination; ... to raise awareness of the present and historical oppression that has been subjected [sic] to the Palestinians; ... to provide an insight into Palestinian history, literature, music, dance and food" as well as aim to "commemorate Palestinian Solidarity Day."<sup>56</sup> Not surprisingly, the University found that Brian was wrong to say that PalSoc's aims and objectives were about raising awareness and discussion of issues in the Middle East in general. Rather, PalSoc's aims and objectives were "explicitly

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<sup>52</sup> *Webb v O'Doherty and Others* (1991) 3 Admin LR 731; Charity Commission's Guidance CC9.

<sup>53</sup> The Students' Union Societies and Activities Programme Leader.

<sup>54</sup> Email correspondence between the university's Students' Union Societies and Activities Programme Leader and me, March 22, 2015.

<sup>55</sup> Brian also complained as a procedural matter, that the university failed to take his original complaint in June 2014 seriously when referring it to the SU and for failing to monitor the progress of the complaint and its outcome.

<sup>56</sup> Complaint Response para. 5.

about Palestine... and they clearly set out a pro-Palestine perspective.”<sup>57</sup> Therefore, the University decided that "PalSoc was not in breach of its constitutional objectives and the OIA agreed that PalSoc's activities were broadly in line with its stated aims and objectives, or at least that *it was not unreasonable for the University to have so decided*"<sup>58</sup> (emphasis added).

The OIA said, “The material on Twitter, when taken together with the Facebook posts included in [Brian's] evidence file, support the University's conclusion that PalSoc's activities appeared to be broadly in line with its stated objectives... all of the material is pro-Palestinian and advocates a particular perspective on the situation in Palestine... [it] appears to fall broadly under the headings of “awareness raising” (such as links to news reports on the situation in Israel/Palestine) and events (including a talk by a student from Gaza involving poetry and Palestinian food, and an event by the SU's Nursing Society on delivering medical care in war zones), as per its constitution.”<sup>59</sup>

Nevertheless, it must be pointed out that the OIA excluded from this finding those individual posts and tweets that replicated the blood libel as these “did not broadly fall under the headings [sic] of awareness raising.”<sup>60</sup> Rather than declaring these posts and tweets to be in breach of charity law, however, the OIA concentrated on the University's failure to consider whether they were likely to have harassed Brian.<sup>61</sup>

#### *Section 43 Education (No. 2) Act 1986*

Many UK universities fail to comply with the legal constraints placed on them by The Education (No. 2) Act 1986, section 43. Section 43 requires the university to ensure freedom of speech on campus within the law for its members and visiting speakers, as well as for its students and employees.<sup>62</sup> This means that there is no duty to allow known hate speakers onto campus in the name of academic freedom or free speech, and there is a duty to make a risk assessment in those cases. It also means that the university should ensure the security and freedom of speech for a visiting Israeli speaker. Section 43 means that whenever a controversial speaker, such as someone who is alleged to have links to terror organizations, is invited to campus to give a talk by a university's Palestine Society, the students' union is required to run a simple internet search on him in accordance with its own students' union "external speakers policy" to assess the risks associated with his being on campus. For example, the SU policy of Any University UK stated that the internet search must consider the first three pages of results to see whether the proposed speaker could "threaten the safe environment students' unions provide for their members."<sup>63</sup>

For this constraint to be effective, however, the students' union must carry out the required internet search in good faith and be prepared to take the necessary measures to prevent a speaker who is likely to engage in hate speech from coming onto campus. When Any University UK's PalSoc invited onto campus a speaker who had previously called for the destruction of Israel and had openly pledged support for Hamas, a Freedom of Information Act request produced no evidence that the SU had undertaken any internet search on him. There was no evidence of the SU's written guarantee that the proposed speaker and his proposed talk had been subjected to a "vigorous process" of vetting in order to ensure

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<sup>57</sup> Complaint Response, para. 6.

<sup>58</sup> OIA Complaint Outcome paras 30 – 32.

<sup>59</sup> OIA Complaint Outcome para. 31.

<sup>60</sup> OIA Complaint Outcome para. 31.

<sup>61</sup> OIA Complaint Outcome paras 31, 32, & 44.

<sup>62</sup> Section 43 provides that: "Persons concerned in the government of an institution in the higher or further education sector have a duty to take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students, employees and visiting speakers."

<sup>63</sup> Any University UK's Students' Union External Speakers Policy.

the safety of [Jewish] students.<sup>64</sup> Further, owing to concerns about the proposed speaker's links to extremists expressed to the University by a body known as the "Students Rights Organisation,"<sup>65</sup> the University's lawyer asked an SU officer to put in place some controls around the talk, which would include sending a member of the SU staff to attend it to make sure that the speaker did not "stray into areas inciting racial hatred and any topics that are not consistent with the University's policy on equality and diversity."<sup>66</sup> However, the SU staff member who attended the controversial speaker's talk, "A Beginner's Guide to Palestine," was ill-equipped to assess the presence of incitement to racial or religious hatred, the creation of a hostile environment, or indeed, to assess whether or not the speaker's narrative about the Israel/Palestinian conflict was accurate. She subsequently advised the University, its security officer and lawyer that the speaker's talk "went absolutely fine" and that "nothing that raised any concern was said."<sup>67</sup> This was in sharp contrast to my own opinion as someone who attended the talk for monitoring purposes. I was sufficiently concerned by its contents to send a copy of my contemporaneous notes to the Community Security Trust, which monitors antisemitism.

This experience with Any University UK suggests that a university's awareness and knowledge of its legal obligations under section 43 of the Education (No.2) Act 1986 is not enough if the relevant students' union cannot be relied upon to engage properly with the risk assessment process in order to vet external pro-Palestinian speakers. Each university needs to work very closely with its students' union staff in order to make sure that the legal "risk assessment" obligations are carried out with due diligence and rigor, and be prepared to withdraw funding where a students' union is non-compliant. This is necessary because those who work for the students' unions are frequently as pro-Palestinian in their political outlook as the Palestine student societies that they have ratified, and this can color their judgment and behavior.<sup>68</sup> Indeed, the SU official<sup>69</sup> who attended the controversial talk and claimed to have carried out the vetting process was found to have joined the PalSoc FB group some twelve months earlier.<sup>70</sup> According to Jacob Williams, the Oxford University student who founded the free speech magazine *No Offence*: "It's well known that student unions are largely run by unrepresentative, politically extreme activist groups."<sup>71</sup>

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<sup>64</sup> Email from Any University UK's Head of Student Activities to Brian, Feb.13, 2015: "Just to give you some context and reassurance, over several years we have worked in partnership with various teams and departments within [the university] to develop a robust process where external speakers and the context of their proposed talk is thoroughly checked, to ensure the safety of our students and to ensure that everything remains within the law. This particular event and speaker, like all external speaker requests that we receive from all societies, was subject to the same vigorous process with staff here and the security team at [the university] being satisfied that the event can go ahead."

<sup>65</sup> This organization was set up to tackle extremism on campus, *see* <http://www.studentrights.org.uk/> (last visited May 18, 2017).

<sup>66</sup> Email from Any University UK's solicitor to the Students' Union Societies and Activities Programme Leader, Feb. 17, 2015, obtained pursuant to a Freedom of Information Act request.

<sup>67</sup> Emails sent by the Students' Union Societies and Activities Programme Leader, Feb. 23, 2015, obtained pursuant to a Freedom of Information Act request.

<sup>68</sup> It is interesting that in the case of the Students' Union involved in the UKLFI complaint, it ratified the Palestine Society as an official society of the Students' Union, three months after the antisemitism complaint that had been brought against it.

<sup>69</sup> The Students' Union Societies and Activities Programme Leader. This was the same SU officer who misrepresented PalSoc's constitutional objectives to Brian.

<sup>70</sup> Email from Brian to me and David Lewis, Nov. 16, 2016.

<sup>71</sup> Javier Espinoza, *Anti-Rhodes campaign 'depleted' student union cash*, THE TELEGRAPH, Feb. 3, 2016, available at <http://www.telegraph.co.uk/education/educationnews/12139220/Anti-Rhodes-campaign-depleted-student-union-cash.html> (last visited March 26, 2017).. Jacob Williams is a final year Philosophy, Politics and Economics student at Oxford University. He opposed the Rhodes Must Fall Campaign, which sought to topple the statute of Cecil Rhodes that stands outside Oriel College, Oxford, on the grounds that it evokes Britain's colonial past. The Rhodes Must Fall Campaign was

With respect to Brian's antisemitism case, the OIA recommended that the University work with its SU to raise awareness across campus of the legal framework governing freedom of speech and the University's responsibility to ensure that staff and students and others (such as visitors) engaging with the University are protected from discrimination, harassment and victimization.<sup>72</sup>

In fact, university oversight and vigilance in the vetting of external speakers is now especially important because of the statutory Prevent Duty that has been placed on universities by Section 26(1) of the Counter-Terrorism and Security Act 2015. This duty requires universities and other higher education authorities, when exercising their functions, to have due regard to the need to prevent people from being drawn to terrorism because of campus activity.<sup>73</sup> Further, because former Prime Minister David Cameron recognized that antisemitism is linked to extremism,<sup>74</sup> universities may well need to take a far more proactive and engaged position with respect to anti-Zionist speakers on campus in order to fully meet their statutory Prevent Duty.

It appears, however, that compliance with the Prevent Strategy is not popular with some universities. Six universities have recently been investigated by the Higher Education Funding Council for England (HEFCE)<sup>75</sup> over allegations that they allowed meetings to be held on campus during which Cage speakers advised students on how to avoid being de-radicalized by Prevent.<sup>76</sup> Cage, which was founded in October 2003, is a London-based advocacy organization with an Islamic focus, whose stated aim is "to highlight and campaign against state policies developed as part of the War on Terror."<sup>77</sup> The organization has worked closely with a number of former detainees held by the United States and campaigns on behalf of Muslim prisoners, including convicted terrorists.

The attitude of these six universities may be due to over-compliance with their section 43 obligation to secure freedom of speech on campus, and may again be reflective of the outdated view that the university is a market place of ideas. The attitude is well illustrated by the statement of the recently appointed vice-chancellor of Oxford University, Professor Louise Richardson, who said that extremist groups must be allowed to speak at British universities because to ban them would stifle free speech: "We need to expose our students to ideas that make them uncomfortable so that they can think about why it is that they feel uncomfortable about [sic] and what it is about those ideas that they object to."<sup>78</sup> Her comments follow concerns that universities are giving in to "political correctness" following attempts to ban controversial speakers like Germaine Greer from campus and attempts to remove the Cecil Rhodes statue from Oxford University because of its association with colonialism. These attempts

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funded by the Oxford Students' Union, which in turn had received its funding from Oxford University. A decision has since been made not to remove the statue.

<sup>72</sup> OIA Complaint Outcome, Recommendation 4.

<sup>73</sup> While the Counter-Terrorism and Security Act 2015 covers all public authorities, this specific section was enacted in recognition of the fact that young people continue to make up a disproportionately high number of those arrested in England and Wales for terrorist-related offences and of those who are travelling to join terrorist organisations in Syria and Iraq; and the fact that many become radicalised at university because of activity on campus.

<sup>74</sup> Marcus Dysch, *David Cameron: We can't fight the Islamist Threat until We've Tackled Jew-hate*, THE JEWISH CHRONICLE, July 23, 2015.

<sup>75</sup> HEFCE monitors the English higher education sector's work on preventing people from being drawn into terrorism and provides information on how the sector must comply, see [www.hefce.ac.uk/reg/prevent](http://www.hefce.ac.uk/reg/prevent) (last visited May 18, 2017)..

<sup>76</sup> Javier Espinoza, *Extremist groups must be allowed to preach on British campuses, new Oxford head says*, THE TELEGRAPH Jan.16, 2016, available at [www.telegraph.co.uk/education/educationnews/12102509/Extremist-groups-must-be-allowed-to-preach-on-British-campuses-new-Oxford-head-says.html](http://www.telegraph.co.uk/education/educationnews/12102509/Extremist-groups-must-be-allowed-to-preach-on-British-campuses-new-Oxford-head-says.html) (last visited May 18, 2017).

<sup>77</sup> CAGE, <https://cage.ngo/war-on-terror-campaigns> (last visited May 18, 2017).

<sup>78</sup> *Supra* note 76.

are to create so-called "safe spaces" for minority students on campus. Instead, Professor Richardson advocates

[F]raming a response and using reason to counter these objectionable ideas and to try to change the other person's mind and to be open to having their own minds changed. That is quite the opposite of the tendency towards safe spaces and I hope that universities will continue to defend the imperative of allowing even objectionable ideas to be spoken.<sup>79</sup>

Professor Richardson's emphasis on free speech on campus ignores the legal constraints on campus speech and allows campus antisemitism to thrive. Indeed, within weeks of her "free speech" endorsement, in February 2016, Oxford University student Alex Chalmers resigned as co-chair of what he referred to as the "poisonous" Oxford University Labour Club (OULC) because it had endorsed Israeli Apartheid Week 2016 despite its history of targeting and harassing Jewish students and of inviting antisemitic speakers onto campus. This endorsement of Israeli Apartheid Week, he said, was in complete disregard of the concerns of Jewish students. Chalmers also cited other examples of antisemitism in the OULC. For instance, fellow students had "expressed their 'solidarity' with Hamas, explicitly defending their tactics of indiscriminately murdering civilians" and a former co-chair had claimed that "most accusations of anti-Semitism are just the Zionists crying wolf."<sup>80</sup> Other students had thrown around "the term 'Zio' (a term for Jews usually confined to websites run by the Ku Klux Klan)" with "casual abandon."<sup>81</sup> Following Chalmers's resignation, Oxford University's Jewish Society issued a statement confirming a shocking pattern of antisemitic behavior and intimidation at OULC.<sup>82</sup> Baroness Royall of Blaisdon also produced a report which said that it was "clear" to her that there had been incidents of antisemitic behavior at OULC.<sup>83</sup>

The harassment and intimidation of Jewish students at Oxford University as described above and recent events at both University College London (UCL) and Kings College London (KCL), described immediately below, suggest that there are no "safe spaces" for Jewish students on some university campuses. At UCL and KCL, the lack of safe space was the result of university failure to provide freedom of speech and security for visiting Israeli speakers as required by section 43.

At UCL, a talk by Hen Mazzig, a former IDF lieutenant, who worked closely with the Palestinian Authority during his tenure, was interrupted by an angry mob of 60- 80 pro-Palestinian activists who forced their way into the room where he was speaking.<sup>84</sup> The talk had been organized by the Student Israel Society. The mob chanted, banged drums, and screamed abuse at Mazzig and at the Jewish students and other supporters of Israel who were present. Despite the best intentions of campus security, the room had to be evacuated and the speaker, Mazzig, had to be given a police escort to allow him to leave the premises in safety. Jewish students who were present reported their fear and terror and the

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<sup>79</sup> *Id.*

<sup>80</sup> Alex Chalmers, *Antisemitic Anti-Zionism and the Scandal of the Oxford University Labour Club*, Fathom, Spring 2016, available at <http://fathomjournal.org/antisemitic-anti-Zionism-and-the-scandal-of-oxford-university-labour-club> (last visited May 18, 2017).

<sup>81</sup> JC Reporter, *Student Labour leader quits amid antisemitism claims*, The Jewish Chronicle, Feb. 16, 2016, available at <http://www.thejc.com/news/uk-news/1553498/student-labour-leader-quits-amid-antisemitism-claims> (last visited May 18, 2017). Mr Chalmers concluded that "a large proportion of both the OULC and the student left at Oxford more generally have some kind of problem with Jews."

<sup>82</sup> Labour Students launched an immediate investigation and the Labour Party said it welcomed and supported it, see Emilio Casalicchio, "Labour launches probe into antisemitism allegations at Oxford University," Politics Home, Feb. 18, 2016, available at <https://www.politicshome.com/news/uk/social-affairs/politics/news/68474/labour-launches-probe-antisemitism-allegations-oxford> (last visited May 18, 2017).

<sup>83</sup> *Supra* note 3, para. 78.

<sup>84</sup> Marcus Dysch, *Campus shame*, The Jewish Chronicle, 4 Nov. 4, 2016, p. 1.



police are investigating an alleged assault against one of them by an activist.<sup>85</sup> Although UCL had provided some campus security, it was insufficient to keep the angry and violent mob from disrupting Mazzig's talk and from threatening him. This means that UCL failed to comply with its section 43 obligation to provide freedom of speech and security for a visiting Israeli speaker. In fact, a subsequent report on the UCL event, undertaken by one Professor Rees, concluded that there was a serious failure to protect freedom of speech on the UCL campus. The disruption was a pre-planned attempt to prevent the talk from taking place.<sup>86</sup>

Just a few months earlier, Kings College London (KCL) also did not comply with its section 43 obligation when it failed to provide an Israeli speaker with a safe platform to talk by failing to prevent a threat to his security. Fifteen police officers had to be called to the KCL campus when an angry, violent mob of pro-Palestinian students broke up a talk by the former Shin Bet Security Chief, Ami Ayalon, who was advocating a "two-state solution" to the Israeli-Palestinian conflict. The pro-Palestinian students caused property damage and physically assaulted the President of the Student Israel Society, which had organized Ayalon's talk.<sup>87</sup> Given that attacks on Israel appear to quickly devolve into attacks on Jewish students, whether verbal or physical, it is imperative that universities make their section 43 obligation to provide adequate security for Israeli-speaking events a top priority.

Further, the recent incidents at UCL and KCL provide some insight into the hate and intimidation experienced by Jewish students on some UK university campuses.<sup>88</sup>

### The Educational Challenges Ahead of Us

The recent events at King's College London, University College London, the Oxford University Labour Club, and Birmingham University, where a Jewish student was on the receiving end of antisemitic abuse after speaking out against Hitler posters on campus,<sup>89</sup> and as well at several other universities, have brought awareness of campus antisemitism into the public domain, and along with it, an increased concern for the welfare of Jewish students. The Community Security Trust's figures for student-related incidents from January - June 2016 are two-and-a-half times those recorded for the same period in 2015.

Given this increase in campus antisemitism, and increased public awareness of the problem, it appears that the time is now ripe for the implementation of a program of education and training about antisemitism across the entire university sector, and this has, in fact, recently been recognized by Universities UK. Its 2016 UUK Taskforce Report on Hate Crime in Universities, *Changing the Culture*, acknowledges that there is a lack of understanding about Jewish identity and the antisemitism that manifests itself in anti-Zionist expression on campus. It identifies the need for "improved understanding

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<sup>85</sup> Hen Mazzig, Hen Mazzig on the UCL protest: "They were shouting 'intifada' – we were petrified", *The Jewish Chronicle*, Nov. 3, 2016, p. 1, 6.

<sup>86</sup> Professor Geraint Rees, 'Investigation into the UCLU Friends of Israel Society event on Oct. 27, 2016 ("the Event")', available at <http://www.ucl.ac.uk/news/news-articles/0117/310117-ucl-publishes-investigation-report> (last visited Aug. 8, 2017).

<sup>87</sup> Naomi Firsh, *Students terrified as violent thugs attempt to halt Israel meeting*, *The Jewish Chronicle*, Jan. 21, 2016, p. 6.

<sup>88</sup> Harvey Garfield, who was present at the UCL incident, gives a good eye witness account of the violence and intimidation, *No safe spaces' for Jews? First hand account of hatred at Hen Mazzig event in London*, *UL Media Watch*, Oct. 31, 2016, available at <https://ukmediawatch.org/2016/10/31/no-safe-spaces-for-jews-first-hand-account-of-hatred-at-hen-mazzig-event-in-london/> (last visited May 18, 2017).

<sup>89</sup> Lydia Willgress, *Jewish student faced vile anti-Semitic abuse – including being called an 'oven magnet' –after speaking out against Hitler posters on campus*, *THE DAILY MAIL*, Nov. 5, 2015 available at [Dailymail.co.uk/news/article-3305211/Jewish-student-faced-vile-anti-Semitic-abuse-including-called-oven-magnet-speaking-against-Hitler-posters-campus.html](http://Dailymail.co.uk/news/article-3305211/Jewish-student-faced-vile-anti-Semitic-abuse-including-called-oven-magnet-speaking-against-Hitler-posters-campus.html) (last visited May 18, 2017).

of the broader ethnic and national dimension to Jewish identity” and recommends proactive training for university staff and signposts clear and visible reporting mechanisms.<sup>90</sup> Further, the 2016 Select Committee Report recommends that Universities UK should work with appropriate student groups to produce a resource for students, lecturers, and student societies on how to deal sensitively with the Israeli-Palestinian conflict, and how to ensure that pro-Palestinian campaigns avoid drawing on antisemitic rhetoric; and further recommends that this resource should be distributed widely via students’ unions, university staff, and social media.<sup>91</sup>

The recommendations of UUK and the Select Committee are a good start. The challenge is to design and implement across the university sector a program of education that will address the culpable ignorance of antisemitism’s long pre-Holocaust history and explain the fact that antisemitism can manifest itself in language, iconography and behavior that targets Israel as the Jewish collective. Naz Shah, MP for Bradford West, who was suspended from the Labour Party in 2016 over antisemitic comments about Israel, revealed that education about antisemitism had helped her to understand how and why her comments were antisemitic. Writing for *Haaretz* after her reinstatement, she said:

My understanding of antisemitism was lacking. I didn’t get it. I don’t believe in hierarchies of oppression, but I’d never before understood that antisemitism is different –and perhaps more dangerous – than other forms of discrimination, because instead of painting the victim as inferior, antisemitism paints the victim as, in a way, superior and controlling.<sup>92</sup>

Unlike other racisms, antisemitism is not easy to recognize, especially when it is disguised as criticism of Israel. It is therefore essential that universities formally adopt a definition of antisemitism to assist them in identifying it and in developing clear protocols to address it, as well as to remove the subjectivity that was seen in the decision-making in the case of Any University UK. Encouraging universities to adopt a suitable definition of antisemitism will be easier if a program of antisemitism education and training is implemented as discussed above, and education about an appropriate definition should be included in that program.

The EUMC Working Definition of Antisemitism, which since its adoption by the International Holocaust Remembrance Alliance in May 2016 has been referred to as the IHRA Working Definition of Antisemitism, is an ideal definition for universities to adopt because it provides several explicit examples of how antisemitism can be manifested, when context is taken into account, with respect to the State of Israel, but also emphasizes that criticism of Israel similar to that levelled against any other state does not constitute a form of antisemitism.<sup>93</sup> This makes it eminently suitable for campus life because it allows criticism of Israel while at the same time preventing some of the worst anti-Zionist abuses. In fact, the Select Committee endorsed the IHRA Working Definition of Antisemitism precisely because it achieves a balance between free speech and antisemitism.<sup>94</sup> Its adoption will also bring uniformity across the university sector, provided it is correctly interpreted and properly implemented.

Prior to its adoption by the International Holocaust Remembrance Alliance, the EUMC Definition received considerable endorsement in the UK, despite being controversial because it is disliked by anti-

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<sup>90</sup> Taskforce to examine violence against women, harassment and hate crime affecting university students, UUK 2016, [www.universitiesuk.ac.uk/policy-and-analysis/Pages/taskforce-violence-against-women-hate-crime.aspx](http://www.universitiesuk.ac.uk/policy-and-analysis/Pages/taskforce-violence-against-women-hate-crime.aspx) (last visited May 18, 2017).

<sup>91</sup> *Supra* note 3, para. 94.

<sup>92</sup> Naz Shah, *British Labour MP Naz Shah: My Understanding of Anti-Semitism Was Lacking*, *Haaretz*, July 18, 2016.

<sup>93</sup> ‘Working Definition of Antisemitism’, European Union Monitoring Centre on Racism and Xenophobia, March 16 2005, [www.antisem.eu/projects/eumc-working-definition-of-antisemitism](http://www.antisem.eu/projects/eumc-working-definition-of-antisemitism) (last visited May 18, 2017).

<sup>94</sup> *Supra* note 3, paras.12 & 25.

Zionists.<sup>95</sup> The Report of the All-Party Inquiry into Antisemitism 2006 recommended its general adoption and it was, in fact, adopted by the National Union of Students (NUS) in 2007.<sup>96</sup> The London Conference on Combatting Antisemitism in 2009, whose landmark document aimed to institutionalize a particular understanding of antisemitism, recommended the Definition for adoption by UK educational authorities.<sup>97</sup> Then, following its adoption by the International Holocaust Remembrance Alliance (IHRA) in May 2016<sup>98</sup> and the Select Committee's endorsement of the IHRA Definition in October 2016,<sup>99</sup> the UK Government formally adopted the IHRA Working Definition of Antisemitism on December 12, 2016.<sup>100</sup> British Prime Minister Theresa May was critical of the fact that antisemitic behavior is often overlooked because the term is ill-defined, with different organizations adopting their own interpretations.<sup>101</sup> However, it is clear that the IHRA Definition will not be implemented legally as it will have no statutory underpinning.

Fortunately, when the UK Government adopted the IHRA Working Definition of Antisemitism, it strongly encouraged its use by other bodies, such as universities. May told *The Jewish Chronicle* that: "We will actively encourage the use of this definition by the police, the legal profession, universities and other public bodies."<sup>102</sup> Universities UK (UUK) then confirmed that it was looking at plans to adopt it and to include it in its sector guidance. Subsequently, on February 13, 2017, Universities Minister Jo Johnson MP wrote a letter to the Chief Executive of Universities UK, Nicola Dandridge, underlining the obligation of all UK universities to tackle antisemitism on campus, particularly in the context of "Israeli Apartheid Week" (IAW). Mr Johnson outlined the Government's expectation that the legal position and the guidelines of the IHRA Working Definition of Antisemitism "[were] universally understood and acted upon at all times" by UK universities, including policy towards events "that might take place under the banner of 'Israel Apartheid' events."<sup>103</sup>

It is somewhat disappointing that, following her receipt of Jo Johnson's letter, Nicola Dandridge informed all UK universities that the IHRA Definition did not preclude Israeli Apartheid Week events on campus from going ahead, provided they were properly handled and remained within the law. This suggests that Ms. Dandridge has overlooked the antisemitic nature of the term "Israeli Apartheid Week," particularly when it is used in conjunction with captions such as "100 years of settler-colonialism,"<sup>104</sup> which are routine. These terms amount to an allegation that Israel is a racist endeavor, and that it has been since its very inception, and for that reason, they fall within the IHRA Definition. One challenge ahead of us, therefore, is to assist Nicola Dandridge in her understanding of the

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<sup>95</sup> David Hirsh, *Defining Antisemitism Down*, Fathom Winter 2013, pp. 3-13.

<sup>96</sup> NUS adopts EU Definition of Antisemitism, Antisemitism Reference Center, available at <http://www.zionismontheweb.org/antisemitism/Promoting-Antisemitism.htm> last visited May 18, 2017).

<sup>97</sup> The London Declaration on Combating Anti-Semitism, <http://www.antisem.org/london-declaration/> last visited May 18, 2017).

<sup>98</sup> See Guidance Notes, IHRA, 2016, available at [https://www.holocaustremembrance.com/sites/default/files/press\\_release\\_document\\_antisemitism.pdf](https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf) (last visited May 18, 2017).

<sup>99</sup> *Supra* note 3, para. 25.

<sup>100</sup> *Anti-Semitism: Theresa May attacks 'twisted' Labour Views*, BBC, Dec. 12, 2016, available at <http://www.bbc.co.uk/news/uk-38281950> (last visited May 18, 2017).

<sup>101</sup> *Id.*

<sup>102</sup> Theresa May writes for the JC: *I'll keep you safe*, *The Jewish Chronicle*, Dec. 15, 2016, p. 1.

<sup>103</sup> *Universities minister calls on UK universities to tackle anti-Semitism, particularly in context of 'Israel Apartheid Week'*, Conservative Friends of Israel News, Feb. 22, 2017, available at <https://cfoi.co.uk/universities-minister-calls-on-uk-universities-to-tackle-anti-semitism-particularly-in-context-of-israel-apartheid-week> (last visited 27 August, 2017).

<sup>104</sup> Letter from Jonathan Turner, Chair of UK Lawyers for Israel, to Nicola Dandridge, Chief Executive of UUK, March 1, 2017 (private mail).

antisemitic nature of the term "Israeli Apartheid Week," and the associated captions and activities that take place on campus during that period, and to respectfully ask her to revise the advice she has given to UK universities. Not only are these terms inherently antisemitic according to the IHRA Definition, but they promote real hostility towards Jewish and other students who support Israel. The adoption of the IHRA Definition by UK universities will be of little use unless it is correctly interpreted and properly implemented.

Alongside the IHRA Working Definition, universities should be encouraged to adopt *The MacPherson Report* 1999<sup>105</sup> to decide the matter of antisemitism, and this Report should be included in any program of education and training. The MacPherson Report, which reported on the mishandling of the Stephen Lawrence murder, stipulated that a racist incident should be defined by the victim. This principle is applied in the case of anti-black racism on campus but not in the case of antisemitism. The MacPherson principle does not mean that persons who reports an experience of racism should necessarily be considered to be right; but what it does mean is that it should be assumed that they are right and should be taken seriously and listened to carefully until an informed judgment can be made as to whether or not they are right. That informed judgment requires evidence, and it requires someone other than the victim to make an objective judgment of that evidence.<sup>106</sup> This is another reason why it is necessary for universities to correctly interpret and properly implement the IHRA Definition of Antisemitism. As noted by the Select Committee, an objective interpretation of the evidence will be difficult, if not impossible, without an agreed definition of antisemitism.<sup>107</sup>

While both the Report of the All-Party Parliamentary Group against Antisemitism<sup>108</sup> and the Report of the Select Committee<sup>109</sup> recommended that the starting point for deciding the matter of antisemitism is the perception of the alleged victim, the Select Committee went further and said that a good working definition, which provides a strong basis for investigation, is that a racist incident is one "perceived to be racist by the victim *or any other person*"<sup>110</sup> (emphasis added).

The Livingstone Formulation, which was used by Any University UK, is a clear violation of the MacPherson principle. Further, comments made by university vice-chancellors at the *Anglo-Israel-Association Roundtable Discussion* at the House of Lords in 2014<sup>111</sup> suggest that some universities do not understand the implications of the MacPherson principle for deciding the issue of campus antisemitism. This indicates that the MacPherson Report needs to be specifically included in a program of education and training on antisemitism across the university sector.

Another important reason for including the MacPherson Report is that it introduced the concept of "unconscious" or "unintentional racism"; this allows us to focus on the act or speech rather than on the actor or speaker's inner essence when deciding the question of antisemitism. It has been noted that much contemporary antisemitism is unconscious and unintentional and can be identified by the replication of antisemitic tropes without the need to even consider any moral failing on the part of the

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<sup>105</sup> Report of the Stephen Lawrence Inquiry, Feb. 24, 1999, available at <https://www.gov.uk/government/publications/the-stephen-lawrence-inquiry> (last visited May 18, 2017).

<sup>106</sup> *Supra* note 3, para. 22.

<sup>107</sup> *Id.*

<sup>108</sup> "It is the Jewish community itself that is best qualified to determine what does and does not constitute antisemitism." All-Party Parliamentary Group against Antisemitism, [www.docplayer.net/70522-Report-of-the-all-party-parliamentary-inquiry-into-antisemitism.html](http://www.docplayer.net/70522-Report-of-the-all-party-parliamentary-inquiry-into-antisemitism.html) (last visited May 18, 2017).

<sup>109</sup> "The perceptions of Jewish people – both collectively and individually, as an alleged victim – should be the starting point for any investigation into antisemitism." *Supra* note 3, para. 22

<sup>110</sup> *Id.*

<sup>111</sup> Anglo-Israel-Association (AIA) Roundtable Discussion on Campus Antisemitism conducted under Chatham House Rules, House of Lords, Oct. 7, 2014.

individual(s) concerned.<sup>112</sup> This is important in the university setting because student supporters of Palestine may not intend to be antisemitic and vehemently deny that they are antisemitic, and universities are not prepared to label student supporters of Palestine as “antisemites.”<sup>113</sup>

Universities and students’ unions also need to be required to regard Jewish students as an ethnic minority and to include them in the BME student classification. UUK is helpful in this respect because its recent Taskforce Report on Hate Crime makes it clear that “under current legislation, Jews are identified as members of a race as well as a religion.”<sup>114</sup> Recognition of Jewish students as an ethnic minority as well as a religious minority will encourage universities to regard antisemitism as a form of racism. This in turn will help to bring about the inclusion of antisemitism in universities’ anti-racism and diversity training.

Any program of education and training for universities would need to provide instruction on the law that limits free speech on campus. It appears from the incidents at KCL, UCL, Oxford University, Birmingham University and Any University UK, as well as several others, that the guidance contained in reports and other documents is not performing the function of advising universities on the relevant law and its application to the issue of campus antisemitism.<sup>115</sup> As noted above, Any University UK failed to follow UUK’s sector guidance even though it was referred to throughout Brian’s complaint.<sup>116</sup> One reason for universities’ failure to follow the written guidance might be that they do not take the time to read the materials properly or otherwise do not consider them to be important. It is noteworthy that in September 2015, Academic Friends of Israel (AFI), together with Baroness Ruth Deech, sent a letter drafted by Baroness Ruth Deech, Jonathan Turner of UKLFI, and myself to 130 universities outlining their legal responsibilities to Jewish students and only twenty acknowledgments were received. The high non-response rate does little to encourage the perception that UK universities consider their legal responsibilities to Jewish students to be a priority.

The final educational challenge before us is the formation of an organization whose specific remit is to combat campus antisemitism. There is no organization in the UK that is equivalent to the Washington DC based Louis D. Brandeis Center for Human Rights under Law, whose sole function is to lead the

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<sup>112</sup> David Hirsh, *Hostility to Israel and Antisemitism: Towards a Sociological Approach*, 5 JOURNAL FOR THE STUDY OF ANTISEMITISM, 23 - 44 (2013).

<sup>113</sup> Anglo-Israel-Association (AIA) Roundtable Discussion on Campus Antisemitism, *supra* note 111.

<sup>114</sup> Changing the Culture, Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students, Universities UK, available at <http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/changing-the-culture-final-report.aspx> (last visited Aug. 10, 2017).

<sup>115</sup> The OIA cited ten guidance documents and reports relevant to Brian’s antisemitism case but Any University UK only considered the Charity Commission Guidance document. The ten documents were: The Equality and Human Rights Commission: Equality Act 2010: Technical Guidance on Further and Higher Education; Equality and Human Rights Commission: Equality Act 2010: Technical Guidance on the Public Sector Equality Duty: England; Equality and Human Rights Commission: Services, Public Functions and Associations: Statutory Code of Practice: Report of the All-Party Parliamentary Inquiry into Antisemitism (Sept. 2006); European Union Monitoring Centre: Working Definition of Antisemitism (2005); Charity Commission Operational Guidance 48 (for Students’ Unions); National Union of Students: Protecting Free Debate: SU Policy-Making Structures and the Law 2016; Universities UK: Freedom of Speech on Campus: Rights and Responsibilities in UK Universities (2011); Equality Challenge Unit: Equality Act 2010: Implications for Students’ Unions (2012); Equality Challenge Unit: Promoting Good Relations on Campus: A Guide for Higher and Further Education (2013).

<sup>116</sup> The OIA found that the University had failed to properly take UUK “sector guidance” into account: OIA Complaint Outcome paras. 16.8 & 40.

fight against campus antisemitism in North America by means of education, research and advocacy.<sup>117</sup> Apart from a few grassroots organizations that campaign against antisemitism, the UK only has its three Jewish communal bodies, namely, The British Board of Deputies (BoD), The Jewish Leadership Council (JLC), and The Community Security Trust (CST), none of which have campus antisemitism as part of their express or specific remit.<sup>118</sup> In light of this, students who wish to bring a campus antisemitism complaint have to rely on the voluntary advice and representation given by members of UK Lawyers for Israel (UKLFI) or ELAPSA. This amounts to a reactive approach to addressing campus antisemitism rather than a proactive one. Further, such an approach relies on the know-how and willingness of Jewish students to contact UKLFI or ELAPSA in the first place, and on their having the courage to pursue a complaint against their university or students' union in the face of a hostile environment and institutional indifference.

Currently *StandWithUs UK*, a non-profit Israel education organization, does a good job of organizing educational and other events on campus to counter the false narrative about Israel, but unfortunately this has proved to be insufficient to keep campus antisemitism at bay. An NGO needs to be created whose sole purpose, like that of the Louis D Brandeis Center, is to combat campus antisemitism. Such an organization would need full time staff, including lawyers, and funding, and would be responsible for combating campus antisemitism by means of research, advocacy, education and training, using the Louis D Brandeis Center as a model. It is envisaged that such an organization would design, coordinate, and deliver the program of education and training that universities so badly need, and would provide free advice, assistance and legal representation to students who experience antisemitic harassment on campus. The organization would also liaise with bodies like Universities UK, the Equality and Challenge Unit (an organization which works to further and support equality and diversity for students and staff in all UK higher education), the National Union of Students, the Union of Jewish Students, and the three Jewish communal organizations.

### Conclusion

UUK's recent Taskforce Report on Hate Crime, *Changing the Culture*, which recommends training on antisemitism for universities, together with the Government's recent requirement that all UK universities follow the IHRA Working Definition of Antisemitism, are positive developments in the fight against campus antisemitism in the UK. Indeed, Jo Johnson's letter to UUK's Nicola Dandridge further stated that the Government expected all UK universities to have "robust policies and procedures in place to comply with the law, [and] to investigate and swiftly address ... any antisemitic incidents that are reported."<sup>119</sup> However as Nicola Dandridge's advice to universities about Israeli Apartheid Week indicates, the correct interpretation and implementation of the IHRA Definition across the university sector requires understanding of the antisemitic nature of anti-Zionist rhetoric. This means that not only is a program of education and training on antisemitism necessary for universities, but advice and guidance on the nature of antisemitic anti-Zionism is also needed for Nicola Dandridge, the Chief Executive of Universities UK. Such advice and guidance could be provided by UKLFI, but the question remains as to whether Ms. Dandridge would be amenable to it. To date, she has not acknowledged or responded to UKLFI's letter of March 1, 2017 which explained the antisemitic nature of Israeli Apartheid Week.

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<sup>117</sup> In 2015 alone, the Louis D. Brandeis Center initiated a unique law school chapter program in 18 universities to fight campus antisemitism; achieved funding reforms in federal higher education policy to end the misuse of highly politicised, virulently anti-Israel, university-based Middle East Studies programs; and published research to raise awareness of campus antisemitism and how to combat it: personal email from Kenneth L. Marcus, President of the Louis D Brandeis Center, Dec. 23, 2015.

<sup>118</sup> The Board of Deputies of British Jews is an elected representative body of Anglo-Jewry; the Jewish Leadership Council is a charity whose purpose is "the provision of services to the Jewish voluntary sector"; and the Community Security Trust records antisemitic incidents and provides security training for Jewish institutions.

<sup>119</sup> Letter from Jonathan Turner, Chair UKLFI, to Nicola Dandridge, Chief Executive UUK, *supra* note 104.

The importance of education and training on antisemitism, including antisemitic anti-Zionism, for the entire university sector, including Universities UK, cannot be overemphasized. Characterizing something as antisemitic is a political judgment that requires knowledge about how antisemitism works, an understanding of context, and an analysis of the unintended consequences. It goes without saying that the formal adoption by universities of the IHRA Working Definition can only provide the best available guidance for the correct political judgment to be made<sup>120</sup> and help to change the campus culture if it is followed and implemented correctly, including during Israeli Apartheid Week.

Responding to the threat that antisemitism poses to the education and welfare of Jewish students also necessitates their inclusion as a racial minority in BME training and the provision of education and training for all staff involved in the prevention of discrimination, student affairs, equality and diversity, as well as those working in the students' union, on antisemitism and on the law that limits free speech on campus. We also need to see the formation of an organization whose remit is to fight campus antisemitism by means of advocacy, research, education and training. These developments are essential if antisemitism is to be treated by UK universities with the same promptness and vigor as other forms of discrimination, whether racial, ethnic, religious, gender, sexual orientation or disability.

Until these recommendations can be implemented, the OIA decision in Brian's case against Any University UK sets a good precedent for any student who experiences antisemitic harassment on campus. The OIA decision endorses the formal adoption by universities of the EUMC Working Definition of Antisemitism (which has now become the IHRA Definition), it explicitly recognizes the fact that certain forms of anti-Zionist expression can harass a student who identifies as Jewish, and it declares that no university or students' union can respond to a student's antisemitism complaint with indifference and complacency without exposing itself to severe criticism and a compensation award.

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*The opinions expressed in this article are those of the author and do not necessarily reflect the views of JUSTICE or the International Association of Jewish Lawyers and Jurists. The accuracy of the article is the sole responsibility of the author.*

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<sup>120</sup> David Hirsh, The new definition of antisemitism is only a threat to antisemites, Dec. 12, 2016, available at <https://engageonline.wordpress.com/2016/12/12/the-new-definition-of-antisemitism-is-only-a-threat-to-antisemites-david-hirsh> (last visited Aug. 10, 2017).