



Senate

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Freedom of speech and preventing extremism in UK higher education institutions

By Sue Hubble

Inside:

1. Background
2. Statutory provisions governing freedom of speech in universities and colleges
3. The role of universities and colleges in preventing extremism
4. The Prevent Strategy and the higher sector
5. The Counter-Terrorism and Securities Act 2015
6. Guidance on speakers on campus
7. Concluding remarks



Contents

Summary	3
1. Background	4
2. Statutory provisions governing freedom of speech in universities and colleges	5
2.1 Freedom of speech provisions	5
2.2 Duty to act within the law	5
3. The role of universities and colleges in preventing extremism	7
3.1 University and colleges guidance on preventing extremism	7
4. The Prevent Strategy and the higher sector	10
5. The Counter-Terrorism and Securities Act 2015	12
5.1 Response to the Counter - Terrorism and Securities Act 2015	12
5.2 Home Office Prevent duty guidance	13
6. Guidance on speakers on campus	16
6.1 Banning speakers on campus	16
6.2 NUS No Platform policy	17
7. Concluding remarks	18

Sue Hubble

Summary

UK higher education institutions have a statutory duty to uphold freedom of speech in their institutions as far as is practical within the law. This duty has come under pressure recently from the Government's Prevent Strategy and provisions in the *Counter-Terrorism and Securities Act 2015*.

This briefing sets out the relationship between the role of universities and colleges in upholding freedom of speech and Government measures on preventing extremism. It outlines legislation in this area, details Government reports and university guidance documents and gives an overview of recent debate on the impact of Government policy on preventing individuals from being drawn into terrorism in higher education institutions.

1. Background

Higher education institutions are academic environments and open discussion and freedom of enquiry are fundamental to the way they teach students and carry out research. As argument and debate are at the heart of the university learning process freedom of speech is essential and this has been acknowledged by enshrining the principle in law in the [Education \(No. 2\) Act 1986](#). The difficulty however that these institutions currently face is finding the appropriate balance between upholding the right to freedom of speech and preventing the exploitation of this right by people with extremist views.

Since 2006 a number of ex-students from UK universities have been involved in terrorist activity and there have been suggestions that these individuals were radicalised at UK higher education institutions. For a number of years however the higher education sector has been attempting to combat intolerance and extremism on campus by issuing guidance to universities on their statutory duties with regard to combating discrimination and racial hatred and by sharing best practice in the area. None the less despite this action the Government has suggested that universities could do more to protect vulnerable young people from radicalisation.

In 2011 the Government introduced the Prevent Strategy – an initiative which aims to stop people becoming terrorists or supporting terrorism. The Strategy highlighted education as a priority area in the fight against radicalisation. Measures in the Prevent Strategy were put onto a statutory basis in the *Counter-Terrorism and Securities Act 2015*. The provisions in the Act have caused great concern among university leaders as they have the potential to conflict with the statutory duty of universities to uphold freedom of speech and to impact on the role of universities in promoting challenging debate.

2. Statutory provisions governing freedom of speech in universities and colleges

The legal framework governing academic freedom, freedom of speech and freedom of expression in the higher education sector has two facets – one set of legislative provisions cover the duty to ensure freedom of speech and the other covers the requirement to act within the law.

2.1 Freedom of speech provisions

Under section 43(1) of the [Education \(No. 2\) Act 1986](#) universities, polytechnics and colleges have a legal duty to ensure, so far as is reasonably practicable, that freedom of speech is upheld:

43 Freedom of speech in universities, polytechnics and colleges.

Every individual and body of persons concerned in the Government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.

This duty extends to students unions.

Section 43 also places a duty on the governing bodies of institutions to issue a Code of Practice in relation to their duty to uphold freedom of speech - governing bodies must ensure that the code is kept up to date and complied with. University Codes of Practice on freedom of speech can be read on university websites.¹

Furthermore the [Education Reform Act 1988](#) s202 contains provisions on academic freedom and states that university commissioners should have regard to the need to:

ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions.

2.2 Duty to act within the law

However freedom of speech is not an absolute right it is a freedom 'within the law', so the criminal and civil law can set limits on the lawful exercise of this right.

Higher education institutions must comply with laws governing public order. In the case of *R v University of Liverpool exp Caesar-Gordon* [1990]² it was upheld that higher education institutions could ban

¹ For an example see [University of Birmingham Code of Practice on Freedom of Speech on Campus 2014-15](#)

² Quoted in [Is academic freedom under threat in UK and US higher education](#) David Palfreyman

meetings by political groups or inflammatory speakers if there were good reasons to fear disruption on an institution's premises.

Universities and colleges must also comply with provisions in the *Equalities Act 2010* which prevent discrimination and provisions in the *Public Order Act 1986* on the prevention of racial and religious hatred. Institutions must also ensure that events do not cause public order offences or threaten violence or cause fear, alarm or distress.

Institutions also have a duty of care towards their students.

3. The role of universities and colleges in preventing extremism

A number of ex-students from UK universities have been involved in terrorist activities. In 2006 a group of British men attempted to plant a liquid bomb on a transatlantic airplane; the group was led by Abdulla Ahmed Ali who had studied computer systems engineering at City University. In another incident on Christmas day 2009 an ex student of University College London, Umar Farouk Abdulmutallab, was arrested in the United States for attempting to smuggle a bomb on to airplane. During investigations into these and other terrorist incidents it was suggested that individuals had been radicalised whilst studying at UK higher education institutions.

These incidents and others have led Professor Anthony Gless director of the Centre for Security and Intelligence Studies at the University of Buckingham to state that universities are a 'breeding ground for terror' and that 'virtually every major British terrorist attack has been led by students or graduates'.³ However in February 2011 David Willetts the Universities minister said that there was no proof yet of a pattern of radicalisation on campuses across the UK.⁴

Universities and colleges have been addressing the issue of extremism on campuses for a many years and university and college organisations have published guidance documents for higher and further education institutions on promoting tolerance and preventing extremism. Any guidance on extremism and radicalisation on campus inevitably covers the difficult area of balancing tackling extremism and upholding freedom of speech in universities.

3.1 University and colleges guidance on preventing extremism

In 2005, Universities UK (UUK) issued a guidance document to all universities, [Promoting good campus relations: dealing with hate crimes and intolerance](#), this document provided advice on how to combat hate crimes and intolerant behaviour of all kinds, including racial discrimination and political or religious extremism. An article in *The Guardian* explained the background to the guidance:

Les Ebdon, vice-chancellor at the University of Luton, who headed the UUK steering group, stresses that the document is not a kneejerk reaction to the London bombings of July 7. "We have been working on these guidelines since 2003 and were just about ready to publish in July, but thought it would be sensible to look at them again in light of what happened. Although little has changed."

³ "[Universities: The breeding grounds of terror](#)", *The Telegraph*, 6 June 2011

⁴ "[How widespread is campus extremism?](#)", *BBC News* 7 February 2011

He says the guidelines aim to explain legislation and help vice-chancellors create an atmosphere of trust on campus: "Prevention is better than cure and the important thing is to develop an atmosphere of academic freedom and respect, where tolerance and free debate can grow and flourish. Universities can show it is possible to have tolerant communities in which people from all kinds of different backgrounds respect each other and are able to express different views and ideas."

The document sets out the legal responsibilities of universities to protect academic freedom for staff and students, looks at the implications of the Human Rights Act of 1998 and the European Convention on Human Rights and encourages universities to set up emergency working groups and to consider each incident on a case-by-case basis.

"It is a delicate path between safeguarding academic freedom and ensuring that campuses are safe and tolerant places, but there are plenty of examples of good practice around the country," says Ebdon. "If ever we find ourselves in a position where people with different views are forbidden from expressing them, we will be entering dangerous territory."⁵

This guidance was updated by the Department for Innovation Universities and Skills (DIUS) in 2007 in a document, [Promoting good campus relations, fostering shared values and preventing violent extremism in Universities and Higher Education Colleges](#).⁶

In 2009 UUK established a working group to look at how universities could best protect academic freedom whilst taking appropriate action to prevent violent extremism. The report of the working group was published in 2011, [Universities UK Freedom of speech on campus: rights and responsibilities in UK universities](#).⁷ The report said that universities took their responsibility to adjudicate between competing interests very and it recommended that universities should take the following action:

- Identify an appropriate senior person to lead on issues of campus security supported by clear identification of responsibilities within the institution in areas such as student services, security and IT.
- Ensure that all involved in making decisions in relation to campus security, academic freedom, free speech and equality rights are familiar with the legal requirements operating in this area and indeed this report.
- Review current protocols/policies on speaker meetings to ensure they are up to date and relevant, and are aligned with the students' union's protocols and policies.
- Consider developing a protocol on data-sharing with external organisations.
- Work with the students' union to provide clear information to students and student societies about the rights and responsibilities of the institution, the students' union, student societies and students in relation to academic freedom, free speech and equality rights.

⁵ "Law-breakers in the library", *The Guardian*, 8 November 2005

⁶ DIUS [Promoting good campus relations, fostering shared values and preventing violent extremism in Universities and Higher Education Colleges, 2007](#)

⁷ UUK [Universities UK Freedom of speech on campus: rights and responsibilities in UK universities](#), 2011

9 Freedom of speech and preventing extremism in UK higher education institutions

- Develop, if not already in existence, and maintain a mechanism for regular dialogue with relevant external organisations such as the police, local authorities and community groups.
- Take an appropriate role in relevant national, regional and local strategies, to include regular links with local colleges and other relevant local institutions to share practice and information. This might include the identification of regional contacts to facilitate local and regional networks.

4. The Prevent Strategy and the higher sector

The Government's [Prevent Strategy](#) aims to stop people becoming terrorists or supporting terrorism – the 2011 strategy document identified education as a priority area with regard to tackling radicalisation.

The Prevent Strategy document stated the following about radicalisation on campus:

More than 30% of people convicted for Al Qa'ida-associated terrorist offences in the UK between 1999 and 2009 are known to have attended university or a higher education institution. Another 15% studied or achieved a vocational or further education qualification. About 10% of the sample were students at the time when they were charged or the incident for which they were convicted took place. These statistics roughly correspond to classified data about the educational backgrounds of those who have engaged recently in terrorist-related activity in this country: a significant proportion has attended further or higher education.

We believe there is unambiguous evidence to indicate that some extremist organisations, notably Hizb-ut-Tahrir, target specific universities and colleges (notably those with a large number of Muslim students) with the objective of radicalising and recruiting students.⁸

The Prevent Strategy also stated unambiguously that the Government was 'completely committed to protecting freedom of speech in this country'⁹ and did not 'wish limit or otherwise interfere with the free flow of ideas'.¹⁰ However in discussing the role of higher and further education institutions in preventing extremism on campuses the report accepted that in the higher education environment there must be a careful balance between freedom of speech and preventing extremism. The strategy document also referred to the duty of care owed to students and the need to protect vulnerable students from radicalisation:

We are completely committed to protecting freedom of speech in this country. But universities and colleges also have a legal and moral obligation to staff and students to ensure that the place of work and study is a tolerant, welcoming and safe environment.

Although it is vital that universities and colleges must protect academic freedom, it is a long-established principle that universities also have a duty of care to their students. Universities and colleges – and, to some extent, university societies and student groups – have a clear and unambiguous role to play in helping to safeguard vulnerable young people from radicalisation and recruitment by terrorist organisations.¹¹

⁸ HM Government, *Prevent Strategy*, June 2011, paras 10.61, 10.66

⁹ HM Government, [Prevent Strategy](#), Cm 8092, June 2011 p6 para 3.10

¹⁰ *ibid* p71 para 10.56

¹¹ HM Government, [Prevent Strategy](#), Cm 8092, June 2011 p71

The Prevent Strategy document said that the Government was concerned that some universities and particularly further education colleges had failed to engage in the Prevent Strategy and that this lack of engagement had to be addressed.¹² However no funding has been allocated to help universities and colleges deliver the Prevent Strategy:

Higher Education: Radicalism

Diana Johnson: To ask the Secretary of State for Business, Innovation and Skills what funding his Department has allocated to universities in order to deliver the Prevent strategy; and which universities have received such funding. [161593]

Mr Willetts: There is no funding currently allocated directly to universities to deliver activities under the Prevent strategy. We do however fund 10 regional coordinators to support universities and colleges to engage with Prevent. In addition the National Union of Students receives funding to train staff and sabbatical officers in Prevent awareness and to produce guidance on external speakers and room bookings. Universities UK is publishing guidance for universities on speakers and has set up a website for the sector to share knowledge and collect resources together. [27 June 2013]

In February 2012 the Home Affairs Committee published a report [Roots of violent radicalisation](#).¹³ The report looked at the Prevent Review and explored issues around its implementation. The report said that there was 'seldom concrete evidence' to confirm where radicalisation had taken place and that the emphasis on the role of universities by Government departments was 'disproportionate'.¹⁴

The report made the following recommendations with regard to universities:

We accept that some universities may have been complacent about their role, and, while we agree in principle that universities are ideal places to confront extremist ideology, we are not convinced that extremists on campus are always subject to equal and robust challenge. We recommend that the Government issue clearer guidance to universities about their expected role in Prevent, following consultation with university and student representative bodies. We would hope that college authorities and student bodies will recognise that individuals or groups expressing hatred against any particular race or nationality is simply not acceptable on a British campus, and certainly needs to be challenged immediately.¹⁵

¹² *ibid* p75 para 10.82

¹³ Home Affairs Committee, [Roots of violent radicalisation](#), Cm1446, 6 February 2012

¹⁴ *ibid* para 38

¹⁵ *ibid* Conclusions and Recommendations para 8

5. The Counter-Terrorism and Securities Act 2015

In November 2014 the *Counter-Terrorism and Securities Bill* was fast tracked through Parliament, the Bill received Royal Assent on 12 February 2015.¹⁶ Part 5 of the *Counter-Terrorism and Security Act 2015* contains provisions to stop people being drawn into terrorism and places the Prevent strategy on a statutory footing.

Section 26 of the [Counter-Terrorism and Security Act 2015](#) places a duty on certain bodies, to have *due regard to the need to prevent people from being drawn into terrorism* – this is now referred to as the 'Prevent duty'. Schedule 6 of the Act contains a list of bodies (referred to as specified authorities) to which this duty applies and this list includes the governing bodies of higher education institutions. Section 29 of the Act gives the Secretary of State power to issue guidance to the specified authorities which they must have regard to in fulfilling their duties. Section 30 gives the Secretary of State power to give directions to enforce the performance of the Prevent duty in situations where authorities have failed to do so.

5.1 Response to the Counter - Terrorism and Securities Act 2015

On 7 January 2015 the Joint Committee on Human Rights issued a report, [Legislative Scrutiny: Counter-Terrorism and Security Bill](#). The report expressed concern about the impact of the new duties on universities:

In our view, universities are precisely the places where there should be open and inclusive discussion of ideas. Broad terms such as "extremist" or "radical" are not capable of being defined with sufficient precision to enable universities to know with sufficient certainty whether they risk being found to be in breach of the new duty and therefore subject to direction by the Secretary of State and, ultimately, a mandatory court order backed by criminal sanctions for contempt of court.[95] This legal uncertainty will have a seriously inhibiting effect on bona fide academic debate in universities, and on freedom of association, as lecturers and students worry about whether critical discussion of fundamentalist arguments, or of the circumstances in which resort to political violence might be justified, could fall foul of the new duty.

The Committee report recommended that universities should be exempt from the Prevent duty.

Universities were also critical of the provisions in the Bill; they were concerned about the impact of the measures on freedom of speech and about the damage that could be caused to the university/student

¹⁶ Two library briefing papers discuss the passage of the Bill – RP14/63 [Counter-Terrorism and Security Bill](#), 27 November 2014 and SN/HA/7073 [Counter-Terrorism and Security Bill 2014-15- Parliamentary stages](#), 10 February 2015

relationship if universities were expected to monitor students for extremist behaviour.¹⁷

On 3 February 2015 a [letter](#) signed by over 500 academics was published in the *Guardian*. The letter called the Bill 'unnecessary and ill-conceived' and contained the following comments:

We are deeply concerned that the [counter-terrorism and security bill](#) currently being debated in parliament will place an unlawful and unenforceable duty on educational institutions and staff.

One of the purposes of post-compulsory education is to foster critical thinking in staff, students and society more widely. Our universities and colleges are centres for debate and open discussion, where received wisdom can be challenged and controversial ideas put forward in the spirit of academic endeavour.

[...]

The best response to acts of terror against UK civilians is to maintain and defend an open, democratic society in which discriminatory behaviour of any kind is effectively challenged. Ensuring colleges and universities can continue to debate difficult and unpopular issues is a vital part of this. Draconian crackdowns on the rights of academics and students will not achieve the ends the Government says it seeks.

5.2 Home Office Prevent duty guidance

In 18 December 2014 the Home Office issued a [consultation document](#) on Government guidance on the new Prevent duty. The document contained the following statement on the role of higher education institutions in challenging extremism:

Universities' commitment to freedom of speech and the rationality underpinning the advancement of knowledge means that they represent one of our most important arenas for challenging extremist views and ideologies. However, there is also a risk that some people may use higher education institutions as a platform for drawing people into terrorism. Universities must take seriously their responsibility to exclude those promoting extremist views that support or are conducive to terrorism.

The consultation document covered areas such as: prevent awareness training for staff, welfare/chaplaincy support in universities and colleges, use of IT on campus, policies on speakers and events, student union activities, and the use of prayer rooms. The section on speakers and events proved particularly contentious:

Universities must take seriously their responsibility to exclude those promoting extremist views that support or are conducive to terrorism. We would expect the policies and procedures on speakers and events to include at least the following:

1. Sufficient notice of booking (generally at least 14 days) to allow for checks to be made and cancellation to take place if necessary;

¹⁷ See "[Universities must not become part of the security apparatus](#)", *Times Higher Education* 8 January 2015

2. Advance notice of the content of the event, including an outline of the topics to be discussed and sight of any presentations, footage to be broadcast etc;
3. A system for assessing and rating risks associated with any planned events, providing evidence to suggest whether an event should proceed, be cancelled or whether mitigating action is required (for example a guarantee of an opposing viewpoint in the discussion, or someone in the audience to monitor the event); and
4. A mechanism for managing incidents or instances where off-campus events of concern are promoted on campus.
5. Where appropriate and legal to do so, a university should also have protocols in place for the sharing of information about speakers with other institutions and partners.

The guidance was challenged by universities and politicians including Nick Clegg and Vince Cable:

Nick Clegg has blocked tough new laws intended to stop [extremist speakers brainwashing university students for terrorism](#), raising fears that Britain will be left more vulnerable to attack.

The Deputy Prime Minister personally vetoed the plan during private talks with David Cameron, after one of the worst Cabinet rows in the Coalition's five-year rule.

Mr Clegg said he could not support moves to require university bosses to vet visiting speakers and prevent impressionable students from falling under the spell of extremists – because Liberal Democrats feared the move would erode “free speech”.

Draft legal guidelines detailing how the ban would work, which were published by the Home Office in December, have now been scrapped. Senior government sources warned that students would remain at risk of radicalisation by preachers visiting campus Islamic societies.

Theresa May, the Home Secretary, told the Telegraph that academics must now “play their part” in preventing radicalisation, even though there is no government guidance on how they should tackle extremist speakers.¹⁸

The Home Office guidance under section 29 of the *Counter-Terrorism and Security Act 2015* Act was finally issued in March 2015 [Prevent Duty Guidance: for England and Wales](#). The guidance sets out various actions that are expected of higher education institutions including - conducting risk assessments to ascertain where and how students might be at risk of being drawn into terrorism and instigating Prevent awareness training for staff.

The guidance also states that universities should monitor student behaviour and be aware of signs of radicalisation:

But managing the risk of radicalisation in universities is not simply about managing external speakers. Radicalised students can also act as a focal point for further radicalisation through personal contact with fellow students and through their social media activity. Where radicalisation happens off campus, the student concerned may well share his or her issues with other students.

¹⁸ [“Nick Clegg blocks terror laws banning extremists from universities”](#), *Telegraph* 14 March 2015

15 Freedom of speech and preventing extremism in UK higher education institutions

Changes in behaviour and outlook may be visible to university staff. Much of this section addresses the need for universities to have the necessary staff training, IT policies and student welfare programmes to recognise these signs and respond appropriately

The controversial section on speakers and events in the consultation document was removed from the final guidance document,¹⁹ - the document said however that guidance on external speakers would be published.²⁰

It has also been ruled that the Oxford and Cambridge Unions would be exempt from the Prevent Duty because "they exist separately from the universities of Oxford and Cambridge, and as such are not covered by the duty".²¹

¹⁹ "[Theresa May drops rules on ordering universities to ban extremist speakers](#)", *The Guardian* 20 March 2015

²⁰ *Prevent Duty Guidance: for England and Wales*, March 2015 p16 para 105

²¹ "[Oxford and Cambridge Unions avoid terror ban on extremist speakers](#)", 13 March 2014

6. Guidance on speakers on campus

Higher education institutions are autonomous bodies with the freedom to determine their own external speaker processes within the law.

In 2013 UUK published guidance for universities about speakers on campus, [External speakers in higher education institutions](#) – this guidance built on the earlier 2011 document [Freedom of speech on campus: rights and responsibilities in UK universities](#). The guidance states the following principles with regard to speakers:

This duty ‘within the law’ extends to ensuring ‘so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with (a) the beliefs or views of that individual or of any member of that body; or (b) the policy or objectives of that body.’²²

The NUS have published guidance for student staff and managers in a document [Managing the risks associated with external speakers. Guidance for HE students’ unions in England & Wales](#) July 2011. This document explains the duties of students unions and other student societies and clubs with regard to freedom of speech. These bodies are not covered by the legal right of ‘academic freedom’ as this only applies to university staff and academics.

6.1 Banning speakers on campus

Many universities have used current legislative provisions to ban speakers from their campuses. In 2013 University College London banned an organisation known as the Islamic Research and Education Academy (IERA) from holding events on the university’s premises after they segregated students by gender at a meeting.²³ Other universities have cancelled events on controversial issues such as a debate at the University of Oxford on abortion²⁴ and a conference at the University of Southampton on the state of Israel,²⁵ due to concerns about disruption and public safety. These incidents have led to accusations of self-censorship and erosion of the right to freedom of speech at universities.

An article in the *Guardian* in February 2015 said that research by online magazine Spiked showed that 80 percent of universities had some type of restriction on free speech and freedom of expression on campus beyond the requirements of the law:

“What’s worrying is we seem to have moved away from a clear ideological divide to an apolitical calculation as to who should be censored, because of a wider judgment based purely on the

²² Universities UK [External speakers in higher education institutions](#) revised edition March 2014 p6

²³ UCL News, [IERA event at UCL on 9 March](#), 11 March 2013

²⁴ “[Oxford students shut down abortion debate. Free speech is under assault on campus](#)”, *The Telegraph* 19 November 2014

²⁵ “[University event questioning Israel’s right to exist is cancelled](#)”, *The Guardian*, 31 March 2015

potential to upset and offend," says Tom Slater, assistant editor at Spiked and co-ordinator of the project. "We found a few startling examples." In one incident, at [London South Bank University](#), an atheist group was asked to remove their posters. "It's how wide that net is becoming that's troubling, because it could go anywhere."

Not everyone will agree with the criteria Spiked used in its rankings. Banning an event, a speaker or a song – all cited as reasons for being graded "red" – is usually considered an act of censorship. But an equality policy stating that homophobic, sexist and racist language will not be tolerated also attracts a red rating.

[...]

Spiked's rankings show it is not usually university managements that are behind outright censorship on campus: only 9.5% have done so, according to the research. By contrast, 51% of student unions have actively censored certain types of speech or instituted bans. "Students' own representative bodies are far more censorious than universities," says Slater.²⁶

6.2 NUS No Platform policy

Section 5 of the NUS Constitution contains statements on equal opportunities, and part 5b of this section states what is known as the 'No Platform Policy', this policy restricts freedom of speech of certain groups or individuals by forbidding any officer of the NUS from sharing a platform with a 'racist' or 'fascist' speaker:

No Platform Policy In pursuance of these aims any individuals or members of organisation or groups known to hold racist or fascist views will not be allowed to stand for election to any NUS office, or attend, speak or otherwise participate in NUS conferences, meetings or any other NUS events, and NEC members will not share a public platform with an individual or member of an organisation or group known to hold racist or fascist views.

Organisations subject to the 'No Platform' policy in November 2013 were the British National Party, the English Defence League, Hizb-ut-Tahrir, Al Muhajiroun (MPAC) and the Muslim Public Affairs Committee.²⁷

²⁶ "[Free speech? Not at four in five UK universities](#)," *The Guardian* 2 February 2015

²⁷ NUS report [No Platform Policy](#) 4 November 2013

7. Concluding remarks

Higher education institutions have to negotiate a difficult path between securing freedom of speech on campus and preventing this freedom from being abused by individuals or groups who seek to spread extremism.

Universities and colleges are currently subject to numerous statutory requirements around freedom of speech at institutions and university bodies have issued a plethora of guidance documents. Under existing laws institutions have cancelled events on controversial issues and banned groups on the ground that meetings might have caused disruption.

The new Government plans to introduce a Counter-Extremism bill²⁸ and this might have further implications for higher education institutions.

As has been discussed the evidence for radicalisation on campus is inconclusive. The effect of the implementation of current measures on freedom of speech on campus and the impact of any future measures will have to be carefully monitored if higher education institutions are to continue in their traditional role as bastions of challenging debate and enquiry.

²⁸ Prime Minister's Office Press Release [Counter-Extremism Bill - National Security Council meeting](#), 13 May 2015

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