



UK Mission
Geneva

UK Mission Geneva
PO Box 6
Avenue Louis Casar 58
1216 Cointrin GE

Tel: 022 918 2453
Fax: 022 918 2333

Note Verbale No. 140

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit the response to communication JAL GBR 4/2022, further to the letter dated 2 March 2022 from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right to education and the Special Rapporteur on the situation of human rights defenders.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 17 June 2022

Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights

Response of the Government of the United Kingdom of Great Britain and Northern Ireland to AL GBR/4/2022 from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right to education and the Special Rapporteur on the situation of human rights defenders.

Thank you for your letter of 2 March 2022 regarding threats against academic and human rights lawyer, Mr Colin Harvey.

The UK condemns actions that seek to undermine the right to freedom of expression and the academic freedoms which are so important for our democracy. The UK supports freedom of expression as both a fundamental right in itself and as an essential element of a full range of human rights.

1. Please provide any additional information and comments you may have on the above-mentioned allegations.

It would not be appropriate for the Government to comment on the allegations that have been outlined. It is important that any police investigation be allowed to take its course.

2. Please provide information about the measures taken to ensure the physical and psychological integrity of Mr Harvey.

The Police Service of Northern Ireland (PSNI) are the operational lead, protecting the people of Northern Ireland, and bringing to justice those responsible for threatening the personal safety of others.

Officials at the Northern Ireland Office (NIO) have consulted with PSNI in relation to the alleged threats made against Professor Harvey. As you are aware, the PSNI are currently investigating these matters.

The Government does not discuss the safety and security arrangements of individuals.

3. Please provide information on measures in place to ensure that academics and human rights lawyers can exercise their right to freedom of expression and their academic freedom without fear of discrimination, threats or attack.

The Government is absolutely committed to upholding our international obligations and commitments on human rights and upholding free speech. Legislation and policies are in place to protect this fundamental right. The UK is an open and diverse country and freedom of speech is one of the values that defines us as a society. Our legislation

values free speech and enables people who wish to engage in debate to do so – regardless of whether others agree.

This is a qualified right however, which means that it can be restricted for certain purposes to the extent necessary in a democratic society. Importantly, the law also ensures that people are protected against criminal activity including threatening, harassing or abusive behaviour both on and offline. Threats, verbal abuse, and assault are crimes. The police have a duty to investigate allegations that a crime has been committed.

We have seen a worrying rise in the amount of online abuse, harassment and intimidation directed at those in public life. This abuse corrodes our democratic values and dissuades people from entering public life.

We are taking urgent action to address the online abuse and threats targeted at public representatives.

There are a number of measures in place to ensure that academics, human rights lawyers and other members of the public can exercise their right to freedom of expression.

Human Rights Act

The Government has recently run a Consultation on potential reforms to the Human Rights Act. Our consultation recognises the importance of freedom of expression, and a presumption in favour of upholding this right subject to exceptional countervailing grounds. We are assessing responses to the consultation and will reflect on responses received as we develop and finalise the details of our proposals.

Defamation Law

Defamation law in England and Wales offers a range of protections to alleged libel and slander. There are some general defences (summarised below), but we would also highlight a specific defence in the academic context made by the Defamation Act 2013 and which provides qualified privilege for peer-reviewed statements published in scientific or academic journals (both in print and online).

To rely on this defence, a defendant must show that the statement complained of relates to a scientific or academic matter and that, before the statement was published, an independent review of the statement's scientific or academic merit was carried out by the editor of the journal and one or more persons with expertise in the scientific or academic matter concerned (the peer review). Privilege can also attach to the publication of such assessments. Newspaper or other reports summarising or containing extracts from the statement complained of would also consequently be

privileged. However, if a claimant establishes that the defendant acted with malice, the defence will be defeated. The scope of this defence is restricted and is not a general protection for academic speech.

In Northern Ireland, similar provisions regarding a defence in defamation law in the academic context have been proposed by the Defamation Bill. This was recently passed by the Northern Ireland Assembly and is awaiting Royal Assent.

Online Safety Bill

The Online Safety Bill was introduced to Parliament on 17 March 2022. The bill's key objectives are to tackle illegal content and activity, protect children and give adults greater control. This Bill also contains important safeguards for freedom of expression. Tech companies will no longer be able to arbitrarily remove content. If users feel like they've been treated unfairly, they'll have the right to appeal. And we're protecting journalistic and democratically-important content, too. The Online Safety Bill extends and applies to the whole of the United Kingdom (except for the communications offences in Part 10 which extend to England and Wales only).

Our approach will safeguard freedom of expression and pluralism online, protecting people's rights to participate in society and to engage in robust debate online. The Bill creates strong safeguards to protect freedom of expression. All services will need to have regard to freedom of expression when implementing the safety duties. In-scope companies will have to consider and implement safeguards for freedom of expression when fulfilling their duties. Ofcom, the independent regulator, will also need to realise its new duties in a way that protects freedom of expression.

The largest and riskiest services will also have additional duties to assess their impact on users' rights and to take steps to mitigate this impact. They will need to assess their impact on users' rights both when deciding on, and after they have adopted, their safety policies. These services will also have duties to protect democratic and journalistic content, and must consider whether the public interest in seeing some types of content outweighs the potential harm it could cause.

The vital role of the media in providing people with reliable and accurate information must also be protected. We deplore attempts to restrict freedom of expression including the blocking of access to the internet, the intimidation of journalists and the interference of their ability to operate freely, and legislation which restricts the free expression of opinion.

Online abuse is unacceptable. Our approach will make platforms responsible for tackling abuse online, including anonymous abuse, while protecting rights and freedom of expression.

Under the new laws, all services in scope will need to proactively remove and prevent users from being exposed to priority illegal content. This includes hate crime, along with other offences relating to sexual images i.e revenge and extreme pornography, and harassment and cyberstalking.

Under the new laws, all services will need to proactively remove and prevent users from being exposed to priority illegal content. This includes harassment and cyberstalking or hate crime directed at public figures.

The Higher Education (Freedom of Speech) Bill

The Government introduced this bill to parliament on 12 May 2021 and it was reintroduced on 11 May 2022. The Higher Education (Freedom of Speech) Bill aims to strengthen existing legislation on freedom of speech and academic freedom in higher education in England. This includes strengthening the duties regarding freedom of speech which are currently imposed by section 43 of the Education (No. 2) Act 1986 on higher education providers registered with the Office for Students (OfS), the higher education regulator in England. The OfS already has the power to investigate a higher education provider when there has been a breach of the existing duty.

The Bill will in particular create a new duty for registered higher education providers to promote lawful freedom of speech and academic freedom in higher education, whilst also creating new duties for constituent institutions of registered higher education providers (i.e. colleges) and students' unions at approved (fee cap) providers (a category of registered provider).

It should be noted that, since education is a devolved matter, the Bill will apply to England only. Any similar legislation for Northern Ireland would be a matter for the Assembly.

4. Please provide information on the remedies available to those who have allegedly been discriminated against on one or more of these grounds [i.e. breach of freedom of expression and/or academic freedom].

The Higher Education (Freedom of Speech) Bill

The Bill will make clear that academic staff have freedom within the law to question and test received wisdom, and put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of losing their jobs or privileges at the provider, or reducing the likelihood of their securing promotion or different jobs at the provider. Similar protection will be given to external academic applicants.

The Bill will also provide clearer enforcement measures. It will require the higher education regulator in England, the Office for Students (OfS), to establish a free to use

complaints scheme for members, staff, students and visiting speakers. This will provide a route for an academic who believes they have suffered adverse consequences as a result of action or inaction of a registered higher education provider or of a constituent college of such a provider in breach of specified duties in the Bill. The OfS will be able to make recommendations which could include that the provider or college should pay compensation to the individual.

In addition, the Bill will create a new statutory tort which will act as a backstop, allowing an academic to complain of breach of specified duties in the courts.

It should be noted that the Bill will only protect lawful speech, not harassment or hate speech. Higher education providers will continue to balance the range of duties placed on them, including under equality law.

Defamation Law

A number of avenues exist in England and Wales in this respect:

- Damages – this is the most common defamation remedy, general (compensatory) damages. Courts will take a range of factors into account in the sum awarded e.g. extent of publication, level of harm likely to have been caused, any mitigating factors etc. Very exceptionally the court may also impose exemplary (punitive) damages in addition.
- Injunctions – interim injunctions are often refused in defamation cases as they run counter to freedom of expression. More common are injunctions to prevent further publication after a court has found published statements to be defamatory.
- Summary of judgment – the court may order the defendant to publish a summary of its judgment against them in its media.
- Offer of amends – published apology/financial settlement (this can be a remedy as well as a defence).

More generally, decisions on arrests are ultimately an operational matter for the police, in line with their duties to keep the peace, to protect communities, and to prevent the commission of offences, working within the provisions of the legal framework set by Parliament.