

Investigation carried out under the University of Bristol's Ordinance 28 by [REDACTED] QC

I. Introduction

1. I have been instructed to carry out an investigation under Regulation 4 of Ordinance 28 of the University of Bristol (hereafter “the University”) into a number of statements made by or attributed to Professor David Miller, and to consider whether there is “a formal disciplinary case for Professor Miller to answer, or whether the matter should be dealt with under a different procedure”. If I decide that there is no formal case to answer but consider that there are matters which should be considered under paragraph 2 of Ordinance 28 (Early Action), I am invited to make recommendations to this effect.
2. For reasons which are explained in full below, I conclude that, in relation to the question I have been asked to address, there is no formal case for Professor Miller to answer and no matters which should be considered under paragraph 2 of Ordinance 28 (Early Action). I express no opinions in relation to the wider investigation of which mine forms a part.

Terms of Reference

3. I am asked to investigate “whether the statements made by Professor Miller” on the occasions set out below “exceed the boundaries of acceptable speech bearing in mind” “all relevant University policies, Ordinances and Statutes, all relevant law (including, but not limited to, the Equality Act 2010, Human Rights Act 1998 and Education (No 2) Act 1986)” and “bear[ing] in mind the University’s adoption of the IHRA definition of anti-Semitism in November 2019”.
4. The particular statements which I am instructed to consider are alleged to have been made by Professor Miller in an online discussion which took place on 13 February 2021 and to a number of publications, as below:
 - 4.1. An online discussion which took place on 13 February 2021 a recording of which is available at <https://www.youtube.com/watch?app=desktop&v=zrAlJl73NCQ> and of which I have been provided with a transcript;
 - 4.2. An article in the *Jewish News* on 16 February 2021, available at <https://jewishnews.timesofisrael.com/action-urged-over-bristol-academic-who-called-for-end-zionism-as-an-ideology/>;

- 4.3. An article in the *Jewish Chronicle* on 18 February 2021, available at <https://www.thejc.com/news/world/iranian-state-broadcaster-press-tv-backs-end-of-zionism-academic-1.512104>;
- 4.4. An email from Professor Miller to Ben Bloch of *the Tab* on 18 February 2021 and reports in *the Tab*, available at <https://thetab.com/uk/bristol/2021/02/18/anti-semitism-is-unacceptable-bristol-su-back-jsoc-after-comments-made-by-lecturer-44242>; and <https://thetab.com/uk/bristol/2021/02/19/bristol-uni-does-not-endorse-david-millers-comments-about-jewish-students-44342>;
- 4.5. A piece in the *Electronic Intifada* on 20 February 2021, available at <https://electronicintifada.net/content/we-must-resist-israels-war-british-universities/32391>.
5. My investigation forms part of a wider investigation into whether “statements and comments” made by Professor Miller:
 - 5.1. may have amounted to or involved breaches of confidentiality by him;
 - 5.2. “could potentially undermine and adversely affect both [Professor Miller’s] and the University’s relationships with former, current or future students (Jewish or otherwise) and other third parties and, therefore, potentially constitute a breach of the University Rules of Conduct for Staff in so far as [his] actions could be deemed as prejudicial to the interests or reputation of the University and/or its ability to comply with its Public Sector Equality Duty”;
 - 5.3. “amount to conduct likely to endanger the health or safety of others”;
 - 5.4. “constitute a breach of the University’s Acceptable Behaviours Policy ... and/or the University’s Freedom of Speech Code of Practice”;
 - 5.5. “blur the boundaries of acceptable speech”.
6. I am not asked to investigate anything other than the last of these questions which in my TORs has been amended to refer to exceeding, rather than blurring, the “the boundaries of acceptable speech”. I have approached this task by considering whether Professor Miller’s statements can be categorised as *prima facie* unacceptable in the sense that they are properly characterised as antisemitic or otherwise unprotected by Article 10(1) of the European Convention on Human Rights and/or the principle of academic freedom. I should make clear that the University may be entitled, at least by reason of Article 10(2) ECHR, to impose limitations on *prima facie* acceptable speech. Further, while the principle of academic freedom is protective of the content of research-related material, it will not necessarily protect the manner in which that content is conveyed.

7. I am asked to determine I need to meet with Professor Miller and/or any other witnesses and to invite interviewees to provide such documentation as may be useful to my investigation. I have concluded that no such meetings or additional information are required.

II. The matters complained of

Speech by Professor Miller on 13 February 2021

8. I have listened to a recording of this as well as consulting the transcript with which I have been provided. The relevant text is as follows:

“... I’ve been invited to say a few things about the university sector and the alleged antisemitism ‘crisis’. I want to start by agreeing and then disagreeing with Tony [Greenstein]. I think this is what I do every time I come on [laughs]. First of all, Tony is completely correct about free speech. It’s not an unlimited right: you can’t shout ‘Fire!’ in a crowded theatre, and nor, indeed, can you organise to commit genocide and eliminate an ethnic group. That’s not legitimate free speech. Now someone’s mentioned earlier a ‘distinction’ between ‘talking about genocide’ and ‘organising genocide’. Now this is a distinction of no meaning whatsoever. One of the things which worries me about the idea of free speech is that it diverts attention away from the fact that there are more things in the world than speech: there are actions in the world. The Palestinians are oppressed not just through speech and prop– [connection cuts off].

So, free speech, yes, it’s an important principle and, of course, we have to defend key cases like Julian Assange and others. But the enemy we face here is Zionism and the imperial policies of the Israeli state. And free speech is not the main problem here, it seems to me: it’s *a* problem but not *the main* problem. So, this is where I want to disagree with Tony.

Tony said, on the question of naming the organisation, that it started with the Labour Party. It *didn’t* start with the Labour Party. It’s not started with the Labour Party and moved to the universities. It’s an all-out onslaught by the Israeli government – mainly through the Ministry of Strategic Affairs but also other ministries, too – on the left *globally*. And this is not something which *just* happened in Britain, *just* to the Labour Party, *just* to the universities, etcetera (which I’ll come on to talk about in a minute). It’s also happened in France and Germany before it got to the UK, and of course it’s been happening in the US as we saw with Bernie Sanders and Ilhan Omar, etcetera. This is an all-out attack by the Israeli government, it’s not something to do with the Labour Party. Really, the Labour Party is a mere detail of this attempt by the Israelis to impose their will all over the world. And that’s, I think, what we should recognise.

It’s not just a question of being allowed to say, ‘Zionism’s bad’ or ‘Zionism’s racism’ – which, of course, we should be allowed to say because it *is*. But it’s not just a question of that; it’s a question of how we defeat the ideology of Zionism in practice. How do we make sure that Zionism is ended, essentially? I mean, there’s no other way than saying that. It’s not enough for us to say, ‘Zionism is racism’, ‘Israel is a settler-colonial

society'. These are arguments we might make, yes, but the aim of this is not just to *say* things but to *end* settler-colonialism in Palestine and to *end* Zionism as a functioning ideology of the world. And so, that's the thing which worries me most about the idea of freedom of speech is that it diverts our attention from the practical realities, the *material* – can I use that word, Tony? I think you would approve of that – the *material* realities of the jackboot on the neck of the Palestinians. So, that's my, 'I agree with Tony, I don't agree with Tony' preamble.

On to the question of the universities. Now, people have mentioned the UCL vote. And this is a dramatic event, that UCL have voted to get rid of the IHRA. This is the first time it's happened. [There was] a concerted lobbying effort by the Israelis over the holiday period and the New Year to try and undermine this possibility. But people have stood firm and voted against the IHRA, and this is the beginning of our fightback. And I want to say a few words about that very quickly. I mean, people will probably be aware that, of the four options which were on the ballot, the option which has been favoured is the option to withdraw the IHRA but to *replace* it with something else. Now, this is the second-best option, in my view. It should have just been retracted and not replaced. But we face, as a result, a huge struggle over what it will be replaced with. Now, of course, the Zionists will come up [with] (and they already are planning) their alternative to the IHRA – it's called the 'Jerusalem Declaration' – and it will be announced shortly at a time of their choosing, when they think it's going to make the most impact and have the most effect. So, what we will be faced with here is especially a liberal-Zionist case for suggesting that there is a serious problem of antisemitism or Judeophobia in this country, when there isn't a serious problem, and they will try and get that back on the agenda. So, we face a massive battle over that.

Now, this is a battle which is going on not just at UCL, but throughout all of the universities in this country. As some of you will know, I've been attacked and complained about by the head of the Bristol JSoc (the Jewish Society) along with the President of the Union of Jewish Students, both of which organisations are of course formally members of the Zionist movement. JSocs are a part of the UJS, the UJS is a member of the World Union of Jewish Students, which is a direct member of the World Zionist Organization. And in its [constitution], the UJS of course mentions being pro-Israel.

So, those kinds of complaints are being made across the country in different places: one against me in Bristol, there's been one in Warwick – again made by a UJS or JSoc person – and there have been several others. And we will continue to see this attempt to drive the possibility of anybody speaking out about Palestine, or about what Zionism is, or about having any kind of critical account of Zionism as racism or settler-colonialism, etcetera. And we have to fight back against that. And the way to fight back against it is to organise proper debates and to get people to understand the issues, but not to be fooled by the idea that there is some kind of liberal-Zionist panacea which is not as bad as the IHRA in some respects. We have to make sure that we are properly across those debates and can fight back against them when they are launched, which they will be very shortly.

So, this is a problem for freedom of speech – I’m going to finish now – and also for academic freedom. The complaint about me was about a lecture that I gave on Islamophobia, where I said that one of what I’ve called the ‘five pillars of Islamophobia’ is parts of the Zionist movement. Now, this is simply a matter of fact: the Zionist movement, parts of it, *are* engaged in deliberately fostering Islamophobia. It’s fundamental to Zionism to encourage Islamophobia and anti-Arab racism, too. And the pressure that they’re mounting here is to try and get us to stop teaching this stuff, to stop writing about it and speaking about it in public, and indeed to stop researching it so we can’t properly go about researching Zionism, or the Israeli state, or the Ministry of Strategic Affairs (which is of course behind this whole ‘antisemitism crisis’) because to do so will be somehow, in some way ‘antisemitic’.

So, I think this is a valuable effort to focus on the issue of free speech. But we must also remember, as I mentioned earlier, academic freedom, which is a specific and separate Act – as you will know – in the Education [Reform] Act [1988].

And, lastly, to say that it’s not just that we want to be able to *speake*, we want to be able to *win* as well as to speak. That’s what I would want us to remember.

[The Jewish News 16 February 2021](#)

9. The article in the *Jewish News* concerns Professor Miller’s speech and reactions to it and contains links to a tweet from Harry’s Place (13 February 2021) which itself links to a 1 mn, 55 second clip of Professor Miller’s speech and states “WATCH Professor Miller of @Bristol Uni. ‘The enemy that we face here is Zionism’. There is ‘An all out onslaught by the Israeli government...on the left globally’ This is Soviet antisemitism, the assertion that there’s a global Zionist conspiracy against the left”. It also links to two other *Harry’s Place* tweets of 14 February 2021 stating that, at the event the previous day attended by Professor Miller and others “Sami Ramadani spoke about Jews as a global Zionist conspiracy”, and that “Professor Miller of @BristolUni lashes out against @UJS_PRES and Bristol Jewish Society, points out @UJS_UK and JSOC are ‘formally members of the Zionist movement’ ... ‘Its fundamental to Zionism to encourage islamophobia and anti Arab racism too’”.
10. The text of the article under the headline “Action urged over Bristol academic who called to ‘end Zionism as an ideology’” and the strapline “Students outraged over comments made by sociology professor David Miller, after he branded Zionism ‘the enemy’ and launched an attack on the Jewish society” is as follows:

“Jewish students have demanded action from Bristol University after one of its professors called for ‘an end’ to Zionism and attacked the university’s Jewish Society. Sociology professor David Miller’s remarks are the latest in a string of incidents which have seen formal complaints by Jewish community groups and students lodged with the university.

Speaking at a 'Building the Campaign for Free Speech' rally online at the weekend, Miller labelled Zionism 'the enemy.'

'The enemy that we face here is Zionism, and the imperial policies of the Israeli state,' he said.

'[There] is an onslaught by the Israeli government ... on the left globally.' He also claimed there was an 'attempt by the Israeli government to impose their will all over the world.'

'It's a question of how do we defeat the ideology of Zionism in practice?' he added. 'How do we make sure Zionism has ended essentially? The aim of this ... is to end Zionism as a functioning ideology of the world.'

The university's Jewish Society say their members have now been abused after being singled out as 'part of the UJS which is a direct member of the World Zionist Organisation.'

'For a member of staff to abuse his position and launch a personal attack on our JSoc President is unjustifiable,' said the society. 'Prof. Miller's words led to our President being targeted for abuse online.'

'We will not sit by in silence and allow this hatred to be spread by representatives of our university towards Jewish students.'

The Union of Jewish Students has condemned the university for 'two years of inaction' over Professor Miller, saying it was another example of students being targeted for 'for their imagined part of his global Zionist conspiracy fantasy.'

'This is not the first time that this has happened and until appropriate action is taken, sadly, we believe, it will not be the last,' said a UJS spokesperson.

'How many more times must Jewish students be made to feel unsafe and uncomfortable within their own university community?'

Sabrina Miller, a student at the University, told Jewish News that the university's bureaucratic response to complaints was 'the most draining thing.'

'A good first start would be for the university to communicate with the wider Jewish body about the complaint,' she said. 'For them to have a level of transparency and updates about the complaint and a recognition that they need to take it seriously.'

Professor Miller was suspended by the Labour Party after claiming leader Sir Keir Starmer took money from 'the Zionist movement.'

He later quit the party, alleging 'targeted harassment.'

A Bristol spokesman said university officials would now meet with the Jewish Society over the comments, which 'have caused upset.'

'We would urge anyone who feels that they have been discriminated against or subject to hate speech or harassment, to contact our support services so we can offer appropriate help and support,' he said.

Miller told Jewish News he believed there 'is a censorship campaign by a foreign regime targeting Britain's universities, political parties and public institutions to shut down criticism of it.' He also denied singling out the Jewish Society."

The Jewish Chronicle 18 February 2021

11. The article in the *Jewish Chronicle* is entitled “Iranian state broadcaster Press TV backs ‘end of Zionism’ academic” and carries the strapline “News channel warns of ‘concerted campaign against Professor Miller’ against backdrop of ‘intense activity by the Zionist lobby’”. It reads:

“The Iranian state mouthpiece Press TV has backed controversial Bristol academic David Miller after he called for the ‘end of Zionism’.

On its website, the news channel warned of a ‘concerted campaign against Professor Miller’ against a backdrop of ‘intense activity by the Zionist lobby across the length and breadth of the British political landscape’.

It featured a picture of Prof Miller, under a caption which claimed he was ‘fighting back against the Zionist lobby in the UK’.

Prof Miller caused outrage last week after he launched an inflammatory tirade during an online seminar about free speech in which he claimed there was not ‘a serious problem’ with antisemitism in Britain.

He hit out at Jewish student groups for lodging complaints about his views and warned Britain was facing an ‘all out onslaught by the Israeli government’.

‘It’s a question of how we defeat the ideology of Zionism in practice. How do we make sure Zionism is ended essentially?’ he said.

‘The enemy we face here is Zionism and the imperial policies of the Israeli state.’

He later doubled down on his comments, telling the JC that Jewish students were being used as ‘political pawns by a violent, racist foreign regime’.

Press TV claimed the backlash provoked by Prof Miller’s views was actually the ‘intense pressure’ of a ‘Zionist lobby in the UK which appears to be intent on destroying his career’.

The network added: “The concerted campaign against Professor David Miller is widely seen as the latest sign of the Zionist lobby’s relentless political, ideological and cultural offensive in Britain.’

And it highlighted an article Prof Miller wrote in *The Electronic Intifada* over the weekend, in which he made fresh claims that he was the victim of a smear campaign.

Bristol University said it did ‘not endorse the comments made by Professor David Miller about our Jewish students’ and admitted it received a ‘significant’ number of calls for him to be dismissed.”

The Bristol Tab

12. The references provided in the TORs link to an article published on 18 February 2021 in the *Bristol Tab* entitled ““Anti-Semitism is unacceptable’: Bristol SU back JSoc after comments made by lecturer: Professor David Miller’s comments led to the JSoc president being ‘targeted for abuse online’”. The text is as follows:

“Bristol SU has released a statement of support for the University of Bristol Jewish Society (JSoc) after a video of Professor David Miller, a sociology professor at the university, emerged which according to JSoc ‘criticised Jewish students and the Jewish society’ for speaking out against anti-semitism.

In the video, the professor calls for the ‘end’ of Zionism as a ‘functioning ideology of the world’, as well as saying: ‘It’s fundamental to Zionism to encourage Islamophobia and anti-Arab racism’.

He also mentions he has been ‘complained about’ by the presidents of JSoc and the UJS, which are, he says, ‘formally members of the Zionist movement’.

In a statement, Bristol SU said: ‘We are deeply concerned by the points JSoc have raised and stand in solidarity with our Jewish students. We will always support students who call for action against discrimination on our campus. Antisemitism is unacceptable.’”

13. The article includes a link to a tweet by Hannah Rose (former President of the UJS and, according to Professor Miller, one of the original signatories of a complaint against Professor Miller to the University) which states that “It’s been two years since we first launched the complaint, and Miller has continued to spew racist conspiracies. @BristolUni have absolutely failed their Jewish students. All power to the brilliant Bristol J-Soc and @UJS_UK for keeping it up”. That tweet itself retweets one of the *Harry’s Place* tweets of 14 February 2021.
14. I have also been provided with the text of an email exchange between Ben Bloch, editor of the *Bristol Tab*, and Professor Miller. Bloch having written to Professor Miller in connection with the article above and offering him a right of reply, Professor Miller responded as follows:

“Ben

This is on the record:

Zionism is and always has been a racist, violent, imperialist ideology premised on ethnic cleansing. It is an endemically an anti-Arab and Islamophobic ideology. It has no place in any society.

Bristol’s JSoc, like all JSocs, operates under the auspices of the Union of Jewish Students (UJS), an Israel lobby group. The UJS is constitutionally bound to promoting Israel and campaigns to silence critics of Zionism or the State of Israel on British campuses. This campaign of censorship renders Arab and Muslim students, as well as anti-Zionist Jewish students, particularly unsafe.

The UJS and Bristol JSoc have consistently attacked me with a campaign of manufactured hysteria for two years, attempting to have me sacked. The campaign reached new heights of absurdity when a Zionist activist pretended to be a student in one of my classes for which she was not registered, expressly for the purpose of political surveillance.

This is an age-old Israel lobby tactic imported from the US, where academics are routinely harassed for teaching about Zionism and its effects. To be clear, this

campaign of censorship, which has attacked British universities, political parties and public institutions, is directed by the State of Israel. Any similar attempt by another racist, militaristic foreign regime -- such as Israel's allies in Saudi Arabia or the UAE - - to decide what is taught and who is employed in British universities would be laughed out of the room. Israel and its advocates deserve the same treatment.”

15. The second *Tab* link is to an article of 19 February 2021 entitled “Bristol Uni ‘does not endorse’ David Miller’s comments about Jewish students”, with the strapline ““We are proud of our students for their independence and individual contributions to the University and wider society” in which Ben Bloch writes:

“Bristol Uni has responded to the outrage over Professor David Miller’s widely condemned comments about Jewish students, saying in a statement: ‘We do not endorse the comments made by Professor Miller about our Jewish students.’

Following huge public backlash to comments made by David Miller, a sociology professor at Bristol Uni, and ‘a significant number of calls for Professor David Miller to be dismissed’, the university has defended itself, saying that it cannot unilaterally fire a member of staff, adding: ‘Any action which we might take as an employer is a private matter.’

They cite employment law as the reason the member of staff cannot be dismissed, but did not comment on any potential internal processes as a result of these recent comments.

On Saturday, Miller launched an attack calling for the ‘the end’ [sic] of Zionism as well as claiming “its fundamental to Zionism to encourage Islamophobia and anti-Arab racism too’. He went on to criticise Jewish student groups, with Bristol JSoc targeted by Miller, leading to the president of Bristol JSoc being targeted for abuse online.

The All-Party Parliamentary Group Against Antisemitism (made up of Conservative, Labour, Lib Dem, SNP, and Plaid Cymru MPs) condemned Bristol Uni on Friday, saying in a letter to VC Hugh Brady: “For every day that this goes unaddressed, you will be giving a green light to anti-Jewish incitement.”

Miller’s recent comments come after two years of complaints made against the professor. He was widely condemned in 2019 when images emerged of presentation slides from his lectures claiming “Zionist movements (parts of) as being “one of the five pillars of Islamophobia””.

Bristol Uni has also been slammed in recent days by the Board of Deputies of British Jews, the Union of Jewish Students, the Community Security Trust, Bristol SU, Bristol JSoc, and students, staff and alumni from across the university.

Thangam Debonnaire, MP for Bristol West, also condemned Miller, telling The Bristol Tab: “There is absolutely no place for antisemitism in our universities, our city or anywhere and it must be dealt with.

‘I’ve spoken to members of the Jewish Society and others and I’ll be meeting with university authorities as soon as possible to discuss the situation.’

The Union of Jewish Students and Bristol JSoc is holding an online rally on Wednesday to call for action to be taken on Miller.

Edward Isaacs, President of the JSoc, told The Bristol Tab: ‘We welcome the opportunity to meet the university. However, these issues are not new and have been raised in multiple meetings previously and in formal complaints. Our message going into this meeting will be, action needs to be taken.’

A spokesperson for the University of Bristol said: ‘We have received a significant number of calls for Professor David Miller to be dismissed. UK law requires that we, like all employers, act in accordance with our internal procedures and the ACAS code of conduct. Any action which we might take as an employer is a private matter. We are under obligations of confidentiality in relation to all of our students and staff, which we will continue to comply with. We are speaking to JSoc, Bristol SU and UCU about how we can address students’ concerns swiftly, ensuring that we also protect the rights of our staff. We do not endorse the comments made by Professor Miller about our Jewish students. We are proud of our students for their independence and individual contributions to the University and wider society.’

In response to The Bristol Tab’s article detailing Miller’s statements last weekend, Miller said called Zionism a ‘racist, violent, imperialist ideology premised on ethnic cleansing’, ‘endemically anti-Arab and Islamophobic ideology,’ and said ‘it has no place in any society.’

He claimed the Union of Jewish Students (UJS) is obliged to ‘silence critics of Zionism or [sic] the State of Israel on British campuses’. He also said the Bristol JSoc, alongside all Jewish Societies and the UJS, are engaged in a ‘campaign of censorship’ which ‘renders Arab and Muslim students, as well as anti-Zionist Jewish students, particularly unsafe.’”

16. The article contained a link to a tweet sent by the Board of Deputies of British Jews exhibiting the text of a letter to the University’s Vice-Chancellor and the statement “It is with regret that we have felt the need to write the following letter... But the situation calls for it. We urge allies to join our community in standing with @BristolJsoc against the vile behaviour of David Miller”.

The Electronic Intifada

17. In this piece, entitled “We must resist Israel’s war on British universities”, Professor Miller wrote as follows:

Britain is in the grip of an assault on its public sphere by the state of Israel and its advocates.

Meaningful conversations about anti-Black racism and Islamophobia have been drowned out by a concerted lobbying campaign targeting universities, political parties, the equalities regulator and public institutions all over the country.

Earlier this month, the newly elected secretary-general of the Muslim Council of Britain, Zara Mohammed, was set upon by two of the most energetic Zionist campaigners in British public life (Laura Marks and BBC presenter Emma Barnett) within days of taking up her position.

This month American commentator Nathan J. Robinson revealed how *The Guardian* fired him as a columnist for a mere tweet referencing US military aid to Israel.

At the same time, the celebrated film director Ken Loach was smeared by Israel lobby groups such as the Board of Deputies of British Jews, who attempted to prevent him speaking to students at the Oxford college where he studied.

And this week, Israel's lobby in Britain has trained its guns on me.

In doing so, it is reviving its two-year campaign to have me sacked from the University of Bristol, where I teach political sociology, and in particular about corporate and state power, lobbying tactics and Islamophobia.

I established the UK's lobbying watchdog, Spinwatch, which has spent 15 years tracking the nefarious effects of the fossil fuel lobby, the pharmaceutical lobby, the tobacco lobby, as well as state lobbies that promote Islamophobia, such as those of Israel and the United Arab Emirates.

And it is this exposure of Zionist Islamophobia that most terrifies Israel's fanatical advocates, particularly as the Israel lobby repositions itself from *defending* against accusations of Israeli war crimes to an *offensive* designed to rebrand Zionism – absurdly and ahistorically - as a 'Jewish liberation movement.'

Israel's lobby is busily stealing the language of Black liberation to justify ethnic cleansing, racism and apartheid.

Fake anti-racism

Israel and its apologists internationally are particularly sensitive to their ideological Islamophobia coming under scrutiny now.

That's because in recent years, they have shifted their strategy – from relying on dry diplomatic talking points about the delineation of Israel's borders or defending the Zionist terrorism that led to Israel's establishment to talking almost exclusively about feelings and identity.

Criticism of Zionism or Israel 'hurts their feelings,' 'makes them feel unsafe' or 'uncomfortable in this space.' A newer fad is to dispute the idea that white European Jews are white at all.

And of course, there's the time-honored tactic of smearing any critic of Israel or Zionism as an 'anti-Semite' or a 'self-hating Jew' on the basis that Zionism is somehow a facet of Jewish identity rather than a racist, modern political ideology with secular origins premised on ethnic cleansing and anti-Arab racism.

The purpose of all this is to give cover to Zionist activists, allowing them to present themselves as part of a benighted ethnic minority facing racism when criticized and to mobilize those who would never previously have 'come out' as Zionists to do so, all the while feeling virtuous about it despite the bloodshed they would be advocating.

Given the size of Britain's Israel lobby and the extent to which it has already penetrated public institutions, this naturally has the effect of minimizing and sidelining genuine concerns about anti-Black racism and Islamophobia as well as shouting down the ways in which the state of Israel is deeply engaged in promoting both of those types of racism.

That's the point of the anti-Semitism smear tactic, not just an incidental consequence. But the facts about Zionism's endemic anti-Arab racism, which began with the ideology's founders, or about the sheer scale and prominence of funding from Zionist movements for Islamophobic causes, sits ill at ease with the desire of Israel's lobbyists to play identity politics.

Decade of Zionist hate

Since 2011, pro-Israel activists have attempted to smear me personally.

This began when I testified as an expert witness in the trial of Sheikh Raed Salah, a Palestinian religious leader who was arrested after landing in the UK, where he was due to speak at a Palestine Solidarity Campaign event alongside several Labour members of Parliament.

My evidence in the trial showed that the Community Security Trust – one of the UK's major Israel lobby groups which had secretly passed inaccurate 'evidence' about Sheikh Raed to the UK government leading to his arrest – had ulterior motives in the case.

The CST and the broader lobby's mission was to paint Sheikh Raed as 'provocative' and an 'anti-Semite' in a bid to have him banned from the UK, thereby instilling fear in pro-Palestinian campaigners, Arabs and Muslims.

In the intervening years, several far-right, pro-Israel blogs and media outlets have jumped on the bandwagon, publishing untrue allegations about me and distorting my public statements.

This included the renowned anti-Muslim hate site, the Gatestone Institute, which is run by Nina Rosenwald, one of the super-donors fuelling the rise of Islamophobia globally.

The irony is not lost on me – these disinformation efforts emerge precisely because I teach about propaganda campaigns and the harms they cause.

Over the past five years, with the rising popularity and effectiveness of the anti-Semitism smear after the Labour Party's capitulation to the tactic, Israel's apologists have been emboldened to intensify their use of it on university campuses.

Anti-Semitism smears

In February 2019, I delivered a lecture for a course I teach at Bristol explaining the five pillars theory of Islamophobia.

The theory details the mechanisms by which certain states, far-right movements, the neoconservative movement, the Zionist movement and the liberal New Atheist movement promote Islamophobia.

Within weeks, the pro-Israel Community Security Trust complained to Bristol university about the inclusion of the Zionist movement in my teaching.

This was followed by a complaint to university authorities against me drafted by the Union of Jewish Students, a group revealed in an undercover Al Jazeera investigation to be funded by the Israeli embassy in London.

The UJS oversees the UK and Ireland's university Jewish Societies (JSocs) and its constitution states that it expects its members to make 'an enduring commitment' to Israel and that 'engagement with Israel' is one of its 'core values.'

The UJS itself operates under the umbrella of the World Union of Jewish Students, which is affiliated to the World Zionist Organization.

The UJS acts as a gateway to British politics for the most hardcore pro-Israel campus warriors, grooming student activists for jobs in the Israeli embassy in London which it helps to arrange.

But the UJS appears to have been concerned that if it was discovered to have led the campaign to have me sacked, the charade of false anti-Semitism allegations could possibly be found out.

So the then president of the UJS Hannah Rose (sister of former Israeli embassy employee Ella Rose) who had been a co-signatory of the initial complaint against me along with the then president of Bristol university's JSoc, hastily had her name removed from the complaint.

The lobby is keen to maintain the fiction that its campaign of subversion on British campuses on behalf of a violent foreign regime is the work of independent students who are genuinely distressed.

Failure of British institutions

The lobby has been very clear. It wants me sacked and has been trying to achieve this for two years.

Because of a failure of Britain's institutions – political parties, media outlets, universities and public bodies – to properly investigate and understand how Israel's lobby works in practice and their failure to reject the tactic of manufacturing 'anti-Semitism' scandals as a cynical ploy, we are now in the position where fanatical advocates for one of the most dangerous states in the world attempt to demand a veto on who teaches in our universities.

There can be no doubt, too, about the threat Israel's campaign of censorship poses to Arab and Muslim students, who are silenced from expressing how the racism that targets them actually works.

Bristol university has seen several shocking racist incidents unfold in recent years, including far-right posters plastered over its campus and an event co-hosted by the Zionist Pinsker Centre at which the guest speakers included the proudly Islamophobic former British army colonel, Richard Kemp.

Also speaking was Yossi Kuperwasser, the former 'head of research' of Israeli military intelligence and former director general of the Ministry of Strategic Affairs, the department in charge of overseeing manufactured anti-Semitism allegations internationally and of targeting pro-Palestinian activists around the world.

The Israel lobby's attack on me lays bare what is actually going on – a weaponization of bogus anti-Semitism claims to shut down and manipulate discussion of Islamophobia.

But the lobby's tactics are only so effective because they are rarely challenged. It is time for those who are concerned about Islamophobia, racism and academic freedom to make their voices heard.”

III. Relevant law and policies etc

A. The Law

i. Academic freedom

18. The Education Reform Act 1998 provides (s202) that:

- “(1) There shall be a body of Commissioners known as the University Commissioners ...who shall exercise, in accordance with subsection (2) below, in relation to qualifying institutions, the functions assigned to them by those sections.
- (2) In exercising those functions, the Commissioners shall have regard to the need—
 - (a) 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...”

19. The University Commissioners' role was to harmonise the statutes of pre-1992 Royal Charter higher education institutions in relation to the dismissal of members of academic staff. They no longer exist but s202 of the 1988 Act, which has never been repealed, was intended, according to the government of the time, to ensure the “freedom of individual academics from unwarranted pressure from their colleagues and seniors in their universities and colleges” and as “a general affirmation of Parliament's commitment to academic freedom”.¹

20. The same definition of academic freedom as is found in s202 of the 1998 Act also features in the Statutes of the University which provide that:

“Statute 32 - Academic Staff: Dismissal, Discipline, Grievance Procedures and related matters

1. Application and Scope

1.1 This Statute relates to the conduct and discipline, performance, dismissal, suspension and grievances of employees and shall apply to all employees of the University except the Vice-Chancellor

1.2 This Statute shall be construed to give effect to the following guiding principles:

- 1.2.1 to ensure that members of academic staff at the University 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;

¹ Parliamentary Debates HC Deb 19 July 1988 Vol 137 cc1027-1028

- 1.2.2 to enable the University to provide education, promote learning and engage in research efficiently and economically;
- 1.2.3 to apply the principles of justice and fairness and seek to advance the principles of equality and diversity.
- 1.3 In the case of conflict the provisions of this Statute shall prevail over those of any other Statute or of any Ordinance or procedure made under or to give effect to this Statute.
- 1.4 Nothing in any contract of employment entered into shall override or exclude the provisions of this Statute” (emphasis added).

ii. Freedom of expression

21. Section 43 of the Education (No. 2) Act 1986 provides, so far as relevant, that:

- “(1) 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.
- (2) The duty imposed by subsection (1) above includes (in particular) the duty to ensure, 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. Section 43(3) and (4) go on to provide that higher education institutions must adopt and enforce codes of practice setting out procedures for meetings and activities relevant to the duty but the duty itself is of a general nature, as seen above.

23. Also of importance is Article 10 of the ECHR, which is given partial effect in domestic law by the Human Rights Act 1998. Whether or not the University would be regarded by the courts as a public authority for the purposes of the 1998 Act, the courts themselves are bound so far as possible to give effect to the Convention in their reasoning. Article 10 provides, so far as relevant, that:

- “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure

of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

24. Article 10 is subject to the qualifications set out in Article 10(2). In addition, Article 17 ECHR provides that:

“Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

25. In *Erdoğan & Ors v Turkey* (App. Nos. 346/04 and 39779/04) [2014] ECHR 346/04 the ECtHR considered the compatibility with Article 10 ECHR of a judgment requiring the applicant, a professor of constitutional law, to pay damages in respect of defamation as a result of the publication of an article criticising a decision of Turkey’s Constitutional Court to dissolve a political party which questioned the professional competence and the impartiality of the majority of judges sitting on the bench of that court. The Court stated at §40 that it had:

“underlined the importance of academic freedom [²]and of academic works[³]). In this connection, academic freedom in research and in training should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction (see Recommendation 1762 (2006) of the Parliamentary Assembly of the Council of Europe). It is therefore consistent with the Court’s case-law to submit to careful scrutiny any restrictions on the freedom of academics to carry out research and to publish their findings ... This freedom, however, is not restricted to academic or scientific research, but also extends to the academics’ freedom to express freely their views and opinions, even if controversial or unpopular, in the areas of their research, professional expertise and competence. This may include an examination of the functioning of public institutions in a given political system, and a criticism thereof. The Court finds that the subject matter of the article in question, written by an academic, concerned an important and topical issue in a democratic society which the public had a legitimate interest in being informed of and therefore that the article in question contributed to a debate of general interest...”

26. In their concurring opinion Judges Sajó, Vučinić and Kūris stated that “in determining whether ‘speech’ has an ‘academic element’ it is necessary to establish: (a) whether the person making the speech can be considered an academic; (b) whether that person’s public comments or

² Citing previous decisions in *Sorguç v Turkey* [2009] ECHR 17089/03, §35; and *Sapan v Turkey* [2010] ECHR 44102/04, §34

³ Citing *Aksu v Turkey* [2012] ECHR 4149/04 and 41029/04, §71; and *Hertel v Switzerland* (1998) 5 BHRC 260, §50

utterances fall within the sphere of his or her research; and (c) whether that person's statements amount to conclusions or opinions based on his or her professional expertise and competence. These conditions being satisfied, an impugned statement must enjoy the utmost protection under art 10.... Where and how (*inter alia*, in what form of publication or to what audience) the 'speech' was given or was otherwise made public is a secondary, auxiliary and often not decisive factor".

iii. The Equality Act 2010

27. Reference is made above to the limitations on freedom of expression imposed by Article 10(2) and 17 ECHR. Of particular importance in determining the extent of those limitations in the present context is the Equality Act 2010 which regulates discrimination on grounds including religion, belief and race (Judaism is recognised as both a religion and an ethnicity for the purposes of the Act and both Zionism and anti-Zionism will have a measure of protection as "beliefs", though "beliefs" are protected only (*Nicholson v Grainger plc* [2010] ICR 360) where "worthy of respect in a civilised society").

28. The Equality Act defines discrimination and harassment as follows:

"13 Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others...
- (5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

19 Indirect discrimination

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
 - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
 - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
 - (c) it puts, or would put, B at that disadvantage, and
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.
- (3) The relevant protected characteristics are...
 - race;
 - religion or belief...

26 Harassment

- (1) A person (A) harasses another (B) if—
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B’s dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B...
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
 - (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.
- (5) The relevant protected characteristics are...
 - race;
 - religion or belief...”

29. The Act also prohibits victimisation which (s27) consists in subjecting someone to a detriment including because the person has alleged that the victimiser or another person has breached the Act. The does not prohibit discrimination, harassment etc in all circumstances, rather in particular contexts including (so far as relevant here) education. The application of the prohibitions in this context is as follows (so far as relevant):

“91 Students: admission and treatment, etc

- (2) The responsible body of [an institution to which this section applies] must not discriminate against a student—
 - (a) in the way it provides education for the student...
 - (b) in the way it affords the student access to a benefit, facility or service...
 - (f) by subjecting the student to any other detriment.
- (5) The responsible body of such an institution must not harass—
 - (a) a student....
- (10) In relation to England and Wales, this section applies to—
 - (a) a university...

94 Interpretation and exceptions

- (1) This section applies for the purposes of this Chapter.
- (2) Nothing in this Chapter applies to anything done in connection with the content of the curriculum.
- (3) A reference to a student, in relation to an institution, is a reference to a person for whom education is provided by the institution...”

30. The responsible body in an education-related case is the governing body of the institution (s91(12)) which in turn is liable for the actions of its employees and agents by virtue of s109 Equality Act:

“109 Liability of employers and principals

- (1) Anything done by a person (A) in the course of A’s employment must be treated as also done by the employer.
- (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.
- (3) It does not matter whether that thing is done with the employer’s or principal’s knowledge or approval.
- (4) In proceedings against A’s employer (B) in respect of anything alleged to have been done by A in the course of A’s employment it is a defence for B to show that B took all reasonable steps to prevent A—
 - (a) from doing that thing, or
 - (b) from doing anything of that description...”

31. Only where s109 of the 2010 Act applies is an individual (here Professor Miller) liable under the Equality Act, this by virtue of s110 of the Act which imposes liability on employees and agents for acts of theirs for which an employer or principal is liable by reason of s109. It follows from this that Professor Miller could be guilty of “harassment” or “discrimination” for the purposes of the Equality Act 2010 only in a case in which he is acting in his capacity as an employee of the University. This would not readily in my view extend to participation in a conference, the writing of articles or the provision of quotes to journalists, even where Professor Miller is acting as an academic in these contexts: there is an element to the role of academics as public intellectuals which in my view sits uneasily with the idea that outward-facing work of the sort in issue here is performed for the University as employer. This view is reinforced by the protection of academic freedom, which principle must entail that academics are not to be seen as the mouthpieces of the institutions by which they are employed. In any event, even if I am wrong about this, the Equality Act 2010 (so far as relevant here) protects students only in their capacity as students. A student may be outraged or offended by Professor Miller’s expressions of views but unless that expression results, or is accompanied by, less favourable treatment (direct or indirect), or harassment, of the student as a student, the Act does not apply.

32. I should also make reference to s149 of the Equality Act 2010 which provides, so far as relevant, that:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it...
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low...
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) tackle prejudice, and
 - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- (7) The relevant protected characteristics are...
 - race;
 - religion or belief...

33. Universities are public authorities for the purposes of s149 by reason of Schedule 19 Part 1. It is important to note that the duty is not one of outcome (the elimination of discrimination, advancement of equality, etc), rather one of process (paying due regard to the various statutory needs).

34. Finally, it is important to take into account Professor Miller's own rights under the Equality Act 2010 which entitles him to protection against discrimination on grounds of his "beliefs"; s39 of the Act provides, so far as relevant, that:

- “(2) An employer (A) must not discriminate against an employee of A's (B)...
 - (c) by dismissing B;
 - (d) by subjecting B to any other detriment.
- (7) In subsections (2)(c) ... the reference to dismissing B includes a reference to the termination of B's employment...
 - (b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice”.

35. Dismissing Professor Miller or subjecting him to detriment (including in the form of unwarranted disciplinary proceedings) because of his protected beliefs would breach s39 of the Equality Act 2010, though (see *Ladele v LB Islington* [2010] 1 WLR 955; *Ladele v UK* [2013] ECHR 37) Professor Miller's beliefs would not entitle him to discriminate against others because of their religion or beliefs. Further, as referred to above, "beliefs" are protected by the Act only (*Nicholson v Grainger plc* [2010] ICR 360) where "worthy of respect in a civilised society". While this respect would not extend to antisemitic beliefs, the boundary between protected and unprotected beliefs is likely to reflect the boundary between antisemitic and non-antisemitic beliefs and, in the instant case, to be interpreted bearing in mind Professor Miller's right to academic freedom, as well as his freedom of expression.

B. University policies etc

36. As above, the specific question I have been asked to consider is whether statements made by Professor Miller "exceed the boundaries of acceptable speech bearing in mind" "all relevant University policies, Ordinances and Statutes, all relevant law (including, but not limited to, the Equality Act 2010, Human Rights Act 1998 and Education (No 2) Act 1986)" and "bear[ing] in mind the University's adoption of the IHRA definition of anti-Semitism in November 2019".

37. At present, the University's "Equality and Diversity Policy" page states that "our full Equality, Diversity and Inclusion Policy is under review". It goes on to provide, *inter alia*, that "The University recognises that all of its staff and students have a duty to support and uphold the principles contained in its Equality and Diversity Policy and supporting policies" and that:

"It is the general expectation that all members of staff, including others who may be working on behalf of the University, will behave in an acceptable manner - treating others with courtesy, respect and consideration - and conducting themselves professionally when interacting with members of the University community.

Unacceptable behaviour including bullying, harassment and victimisation or discrimination - including but not limited to the protected characteristics covered by the Equality Act 2010 - will not be tolerated and any allegations will be taken seriously and dealt with appropriately under the relevant procedure."

38. The University's Acceptable Behaviour Policy states, so far as potentially relevant, that:

1 Policy statement

1.1 The University expects the highest standard of behaviour from its staff and for all staff to be aware of how their behaviour can affect others. To achieve this standard it is the general expectation that all members of staff, including others who may be working on behalf of the University, will behave in an acceptable manner - treating

others with courtesy, respect and consideration – and conducting themselves professionally when interacting with members of the University community. We are fully committed to creating and sustaining a positive and mutually supportive working environment where staff can work collaboratively and productively together, and where staff are equally valued and respected.

2. Acceptable Behaviour

- 2.1 The University expects that members of staff will conduct themselves in a professional and acceptable manner when interacting with and influencing others, or when managing colleagues. Frameworks setting out the expectations that the University has of its staff in terms of workplace behaviours have been developed. The Professional Behaviours were adopted as a way forward by the Vice Chancellor and Senior Team at the start of 2011/12. They provide guidance on key and valued behaviours that should be observed when interacting with and influencing others, or when managing colleagues. Leadership Attributes have also been developed to set out the behaviours expected of managers at the University.
- 2.2 All members of the University should be aware of their own behaviour and how it impacts on others. ...

3. Unacceptable behaviour

- 3.1 Unacceptable behaviour may involve actions, words or physical gestures that could reasonably be perceived to be the cause of another person's distress or discomfort. Unacceptable behaviour does not necessarily have to be face-to-face, and may take many forms such as written, telephone or e-mail communications or social media. Such behaviours may also contravene equality and/or employment legislation. For the avoidance of doubt and for the purposes of this policy, invoking University procedures connected to areas such as conduct, capability or discipline where such procedures are applied reasonably and appropriately will not constitute unacceptable behaviour.
- 3.2 Some examples of unacceptable behaviour are included below:
- Aggressive or abusive behaviour, such as shouting or personal insults
 - Spreading malicious rumours or gossip, or insulting someone
 - Lack of awareness or consideration of diversity, particularly when related to a protected characteristic under the Equality Act 2010
 - Overbearing supervision or other misuse of power or position
 - Unwanted physical contact
 - Offensive comments or body language...".

39. Also of significance are the legislative and policy provisions relating to freedom of expression.

The University's Freedom of Speech Code of Practice 2018-2019 states, so far as relevant, that:

"Freedom of expression and equality are foundational rights, whose realisation is essential for the enjoyment and protection of all human rights. The University of Bristol believes that freedom of expression and academic freedom are at the heart of its mission and must be fully reflected in both its policies and practices. Our approach is to enable and promote free speech and encourage debate of all kinds. The only exception is where there are serious concerns about public disorder or the direct incitement of violence or hatred.

This means that there must be an atmosphere of free and open discussion. The University supports the view of the European Court of Human Rights that freedom of expression constitutes one of the essential foundations of a democratic society and

that such freedom is applicable not only to information or ideas that are favourably received, but also to those that have the potential to offend, shock or disturb the listener. Staff and students primarily determine the subjects and topics of discussion that take place on campus. Pluralism, tolerance and broadmindedness are essential components of a democratic society, and all views, including those that can be difficult to hear, should be able to be expressed and heard with tolerance and mutual respect. The University supports the right to hold conferences and talks on controversial topics. There is freedom to challenge or debate the law, moral or other issues but this does not give permission to break the law.

The principle of free speech has the potential to be abused, including through incitement to violence or to breaches of the peace, or by the use of threatening words or behaviour (including the display of writing, signs or other visible representations) which are intended to provoke racial or religious hatred or hatred on grounds of sexual orientation, or to encourage or draw people into terrorism. All of our staff and students have a responsibility to consider these issues in the course of their work...”

40. In February 2018 the University issued a statement in response to controversy surrounding a meeting of Women’s Place, an organisation concerned with single sex spaces, on campus.⁴ The Chair of the University’s Equality, Diversity and Inclusion Group stated that:

“The University of Bristol is re-affirming its commitment to freedom of speech and to the rights of all our students and staff to discuss difficult and sensitive topics, and to being a place where all feel safe, welcomed and respected, regardless of gender, race, sexual orientation, disability or social background...”

While [the Women’s Place] event was not affiliated with or hosted by the University, it presents an opportune time to affirm our commitment to freedom of speech and to the rights of all our students and staff to discuss difficult and sensitive topics. Universities are places of research and learning, where debate and dissent are not only permitted but expected, and where controversial and even offensive ideas may be put forward, listened to and challenged. Intellectual freedom is fundamental to our mission and values. Our freedom of speech policy underlines the vital importance of our right, as members of a free and democratic society, to speak openly without fear of censorship or limitation, provided that this right is exercised responsibly, within the law, and with respect for others who may have differing views. We do not condone attempts to silence discussion before it has even taken place or the use of stereotyping or threatening language to prevent debate.

We also take this opportunity to affirm our equally strong commitment to making our University a place where all feel safe, welcomed and respected, regardless of gender, race, sexual orientation, disability or social background. We believe that calls for this event to be banned were largely founded on the sincere desire to show support and solidarity for transgender people in our society and in our university community. We regret however that this desire has been expressed by some in a manner which may

⁴ <https://www.bristol.ac.uk/news/2018/february/freedom-of-speech.html>.

have caused others to fear that their own right to meet and speak freely about matters of concern to them is not protected by the University.”

41. As above, I have not been asked to determine whether Professor Miller’s statements breached these or other policies of the University, rather to take these policies into account in determining whether the statements made by or attributed to him exceeded the boundaries of “acceptable speech”, which (see above) I take to mean speech which is *prima facie* protected by Article 10(1) ECHR and/ or the principle of academic freedom. In considering the boundaries of such speech I focus particularly on legal considerations, aware as I am that another investigator will address Professor Miller’s compliance with University rules and policies.

C. The IHRA “working definition of antisemitism”

42. I am asked to take into account the International Holocaust Remembrance Alliance (IHRA) “working definition of antisemitism”, which was adopted by the university in late 2019. The “working definition” states that:

“Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”

43. Following the definition is the statement that “[t]o guide IHRA in its work, the following examples may serve as illustrations:

“Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for ‘why things go wrong.’ It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.

Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.

- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.”

44. Concerns have been raised about aspects of the IHRA approach, the EHRC report on antisemitism in the Labour Party noting this and noting also “the approach of the Home Affairs Select Committee, namely that it is not antisemitic to hold the Israeli government to the same standards as other liberal democracies, to criticise the Israeli government, or to take a particular interest in the Israeli government’s policies or actions, without additional evidence to suggest antisemitic intent”.⁵ The EHRC further pointed out that the IHRA definition is not legally binding.

45. One reasoned critique of the IHRA definition was provided by Hugh Tomlinson QC in an Opinion for the Free Speech on Israel, Independent Jewish Voices, Jews for Justice for Palestinians and the Palestine Solidarity Campaign.⁶ The prominent human rights lawyer suggested that the IHRA definition:

45.1. is expressed to be a “non-legally binding working definition”. In other words, it cannot be construed in the same way as a statutory definition or one produced as part of statutory guidance. The IHRA Definition does not purport to provide a legal definition of antisemitism. It does not have the clarity which would be required from such a definition. It is perhaps worth pointing out that the fact that conduct is “contrary” to the IHRA Definition could not, of itself, render that conduct “illegal” in any sense;

⁵ <https://www.equalityhumanrights.com/sites/default/files/investigation-into-antisemitism-in-the-labour-party.pdf>. The Home Affairs report referred to is at

<https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/136/13602.htm>.

⁶ <https://freespeechonisrael.org.uk/ihra-opinion/#sthash.xRDaN66E.dpbs>

- 45.2. “The use of language is unusual and therefore potentially confusing. The phrase ‘a certain perception’ is vague and unclear in the context of a definition. The use of the word ‘may’ is also confusing. If it is understood in its usual sense of ‘possibility’ then the definition is of little value: antisemitism ‘may be expressed as hatred towards Jews but may also be expressed in other (unspecified) ways... The apparent confining of antisemitism to an attitude which is “expressed” as a hatred of Jews seems too narrow and not to capture conduct which, though not expressed as hatred of Jews is a clearly a manifestation of antisemitism. It does not, for example, include discriminatory social and institutional practices”;
- 45.3. “The ‘examples by way of illustration’ ... must be read in the light of the definition itself and cannot either expand or restrict its scope. All of them must be regarded as examples of activity which can properly be regarded as manifesting ‘hatred towards Jews’ [and whereas i]n many of the examples which are given the ‘hatred towards Jews’ is obvious and uncontroversial ... in some cases, the examples do not explicitly refer to the ‘hatred’ requirement and therefore need further elaboration”.
46. Mr Tomlinson discusses the illustrative examples of “Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations” and “Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor”, stating that these will only amount to antisemitism within the IHRA definition is motivated by hatred of Jews: “If, for example, the [first] accusation was motivated by a reasonable belief that a particular Jewish citizen or a group of citizens had by their words or actions showed that their loyalty to Israel was greater than their loyalty to their own nation, the accusation could not be properly regarded as antisemitic... A denial of a Jewish right to self-determination could be the result of a particular analysis of the nature of the Jewish people (motivated, for example, by religious considerations) which had nothing to do with the ‘hatred of Jews’. Furthermore, unless such a claim was informed by hatred to Jews, it would not be antisemitic to assert that as Israel defines itself as a Jewish state and thereby by race, and that because non-Jewish Israelis and non-Jews under its jurisdiction are discriminated against, the State of Israel is currently a racist endeavour.”
47. Mr Tomlinson goes on to discuss the decision of the ECtHR in *CICAD v Switzerland*⁷ in which the Court rejected an application by an NGO which campaigned against antisemitism and

⁷ Judgment of 6 June 2016 (in French only)

which had been successfully sued by an academic who it had condemned for using antisemitic language. The academic had edited a book entitled *Israel et l'autre* and had written a Preface which contained the following:

“By becoming very consciously the Jewish state, Israel brings together on its shoulders the weight of all these questions which explicate the basic Jewish question. (...) The identification of Israel with Judaism means that all political, diplomatic, military activity is considered as an examination of Judaism: let us see how (...). Under these conditions, it is perfectly futile to consider that Israel is a State like any other: its hands are bound by the definition it has set itself. When Israel is exposed on the international scene, it is Judaism that is exposed at the same time.

In the field of politics too, there are few such impressive examples of the active presence, at all levels, of a strong and interventionist state like the State of Israel. A state which assumes so completely the morality of ‘dirty hands’ (in particular the policy of closure of territories, destruction of civilians’ houses, targeted assassinations of alleged terrorist leaders) in the interests of the security of its citizens.”

48. Dealing specifically with the adoption of the IHRA definition by public bodies, which are bound by the ECHR and, in the case of academic institutions, by the principle of academic freedom, Mr Tomlinson warned that such a body would, if it adopted the IHRA definition:

“have to take active steps to ensure that it was applied in a way which was consistent with Article 10. It would, for example, be lawfully entitled to prohibit conduct which incited hatred or intolerance against Jews. It would not be lawfully entitled to prohibit conduct on the sole basis that supporters of the State of Israel found it upsetting or offensive...

... any public authority which sought to apply the IHRA Definition to decisions concerning the prohibition or sanctioning of activity which was critical of the State or Government of Israel would be acting unlawfully if it did not require such activity also to manifest or incite hatred or intolerance towards Jews. If an authority applied the IHRA Definition without such a requirement it would be in breach of Article 10 of the Convention and would, therefore, be acting unlawfully under domestic law in the United Kingdom.

A number of examples of conduct which have been criticised as antisemitic have been suggested in various publications. These include:

- Describing Israel as a state enacting policies of apartheid.
- Describing Israel as a state practising settler colonialism.
- Describing the establishment of the State of Israel and the actions associated with its establishment, as illegal or illegitimate.
- Campaigning for policies of boycott divestment or sanctions against Israel, Israeli companies or international companies complicit in violation of Palestinians human rights (unless the campaigner was also calling for similar actions against other states).

- Stating that the State of Israel and its defenders “use” the Holocaust to chill debate on Israel’s own behaviour towards Palestinians.

In my view, none of these statements or activities could, of themselves, be properly described as antisemitic. I do not think that any of them, without more (that is, without evidence of ‘hatred towards Jews’), fall within the terms of the IHRA Definition. If an event were to be banned by a university or other public authority on the grounds that such views were being expressed by the organisers or by speakers on a panel then, without more, such a ban would in my view be unlawful.”

49. Mr Tomlinson is not isolated in his views. Prominent former Court of Appeal Judge Sir Stephen Sedley wrote in the *London Review of Books* in May 2017 that:

“criticism (and equally defence) of Israel or of Zionism is not only generally lawful: it is affirmatively protected by law”; that the IMHA “definition” “fails the first test of any definition: it is indefinite” that it is “policy” rather than “law” and that “policy is required to operate within the law”, including s43 of the Education Act 1986 and Article 10 ECHR; and that the IHRA definition “offers encouragement to pro-Israel militants.”⁸

50. Kenneth Stern, one of the co-drafters of the definition adopted between 2005 and 2013 by the EU agency European Monitoring Centre on Racism and Xenophobia (EUMC), upon which the IHRA definition was modelled, told the US House of Representatives in 2017 that the definition “was not drafted, and was never intended, as a tool to target or chill speech on a college campus”.⁹ As Mr Stern (executive director of the Justus & Karin Rosenberg Foundation, which works to increase understanding of hatred and antisemitism, and how to combat them) made clear:

“The definition was drafted to make it easier for data collectors to know what to put in their reports and what to reject. It focused their attention away from the question of whether the actor hated Jews, and focused them on whether the actor selected Jews to be victims. This distinction between motive and intent was key, and was drawn from the wisdom and text of the U.S. Supreme Court case of *Wisconsin v. Mitchell*. You may recall the case of the young Jew who was kidnapped in France, held for ransom, tortured and ultimately killed, because his captors had a positive stereotype about Jews – they were rich. There was a debate in France whether this was an antisemitic act or not. Under the working definition, what the kidnappers thought about Jews wasn’t important – that they picked a Jew to target because he was a Jew settled the question” (emphasis added).

⁸ “Defining Anti-Semitism” Vol. 39 No. 9, 4 May 2017.

⁹ “Written testimony of Kenneth S. Stern before the United States House of Representatives Committee on the Judiciary: Hearing on examining anti-semitism on college campuses” <https://docs.house.gov/meetings/JU/JU00/20171107/106610/HHRG-115-JU00-Wstate-SternK-20171107.pdf>.

51. Mr Stern characterised as an “abuse” of the working definition its use in US universities:

“to restrict academic freedom and punish political speech. These cases complained, among other things, about educational programs about the occupation of the West Bank, films that promoted the Boycott/Divestment and Sanctions movement against Israel, classroom materials challenged as one-sided and anti-Israel, and a program entitled ‘Arabs and the Holocaust,’ which asserted that Israel’s creation was a “tragedy” for Palestinian Arabs”.

52. Professor David Feldman, professor of history and director of the Pears Institute for the Study of Antisemitism at Birkbeck, stated in 2016, in relation to the UK Government’s “adoption” of the IHRA definition, that some of the examples appended to it “are sensible, some are not. Crucially, there is a danger that the overall effect will place the onus on Israel’s critics to demonstrate they are not antisemitic. The home affairs committee advised that the definition required qualification ‘to ensure that freedom of speech is maintained in the context of discourse on Israel and Palestine’. It was ignored”.¹⁰

53. The IHRA definition is not without its supporters. In an Opinion prepared for the Campaign Against Antisemitism, David Wolfson QC and Jeremy Brier suggest that it is “clear, meaningful and workable” and is “an important development in terms of identifying and preventing antisemitism, in particular in its modern and non-traditional forms, which often reach beyond simple expressions of hatred for Jews and instead refer to Jewish people and Jewish associations in highly derogatory, veiled terms (e.g. ‘Zio’ or ‘Rothschilds’).”¹¹

54. Contrary to Mr Tomlinson’s view, Wolfson and Brier suggest that the use of the term “may” in the IHRA’s definition has the effect that it “may well” capture “[d]iscriminatory social and institutional practices” and that the definition “should be used by public bodies on the basis that it will ensure that the identification of antisemitism is clear, fair and accurate”. Wolfson and Brier also state, however, that “Criticism of Israel, even in robust terms, cannot be regarded as antisemitic *per se* and such criticism is not captured” by the IHRA’s definition though “criticisms of Israel in terms which are channels of expression for hatred towards Jewish people (such as by particular invocations of the Holocaust or Nazism) will in all likelihood be antisemitic”. Commenting specifically on the seventh illustrative example in the IHRA (“Denying the Jewish people their right to self-determination, e.g., by claiming that the

¹⁰ <https://www.theguardian.com/commentisfree/2016/dec/28/britain-definition-antisemitism-british-jews-jewish-people>.

¹¹ <https://antisemitism.org/wp-content/uploads/2017/07/Opinion-on-the-International-Definition-of-Antisemitism.pdf>

existence of a State of Israel is a racist endeavor”), Wolfson and Brier reiterate that “Criticism of Israel is not antisemitic *per se*, in much the same way that criticism of an African state would not be racist *per se*”, though:

“taking a stance against Israel which is objectively baseless and/or a vehicle for hate or offensiveness towards Jewish people will normally be antisemitic. In the example of accusing Israel of being a ‘racist endeavour’, we can imagine a case of how a form of scholarship leading to this conclusion could be written without antisemitic intent. However, one would expect such an author to use reasoned language and adopt a consistent view regarding other states with religious or ethnic dimensions. A failure to adopt such consistency and even-handedness as regards other nations (combined with an exclusive focus on Israel alone as a racist state) would, in all probability, be an example of antisemitism. Alternatively, where Israel is the subject of such criticism in a way which carries with it a desire to offend Jewish people (such as by invoking the language of Nazism or the Holocaust as per the above) or in a context where other states with a religious or racial dimension are exonerated and excused, it is not difficult to see how such a remark could be antisemitic”.

55. Further, whereas “[c]ontending that the State of Israel ‘uses’ the Holocaust to shut down debate or to silence critics, or describing Israel in terms of ‘apartheid’, is also **very likely** to be part of antisemitic discourse”¹² as, in the view of the authors, is “[r]eferring to Jewish people or supporters of the State of Israel as ‘Zios’, ‘Rothschilds’ or other names; invoking the traditional antisemitic meme of a Jewish world conspiracy or theories of Jews as puppet-masters or controllers of world events” and “[h]olding all Jews collectively responsible for perceived actions of the State of Israel”:

Criticising the policies of a particular Israeli government, for example in relation to settlements, protesting against the actions of the State of Israel or its treatment of Palestinians, are lawful expressions of political opinion and are **unlikely** to be antisemitic without further factors.

Reasoned critiques of Zionism are **unlikely** to be antisemitic without further factors” (original emphasis).

D. The “Jerusalem Declaration on Antisemitism”

56. Recognition of the difficulties posed by the IHRA definition have resulted in the development of the “Jerusalem Declaration on Antisemitism” which characterises itself as “a tool to identify, confront and raise awareness about antisemitism as it manifests in countries around the world today... developed by a group of scholars in the fields of Holocaust history, Jewish studies, and Middle East studies to meet what has become a growing challenge: providing clear

¹² Original emphasis

guidance to identify and fight antisemitism while protecting free expression.” The Declaration, which had over 200 signatories in late March 2021, states as follows:

Preamble

... The Jerusalem Declaration on Antisemitism responds to ‘the IHRA Definition,’ the document that was adopted by the International Holocaust Remembrance Alliance (IHRA) in 2016. Because the IHRA Definition is unclear in key respects and widely open to different interpretations, it has caused confusion and generated controversy, hence weakening the fight against antisemitism. Noting that it calls itself ‘a working definition,’ we have sought to improve on it by offering (a) a clearer core definition and (b) a coherent set of guidelines. We hope this will be helpful for monitoring and combating antisemitism, as well as for educational purposes. We propose our non-legally binding Declaration as an alternative to the IHRA Definition. Institutions that have already adopted the IHRA Definition can use our text as a tool for interpreting it.

The IHRA Definition includes 11 ‘examples’ of antisemitism, 7 of which focus on the State of Israel. While this puts undue emphasis on one arena, there is a widely-felt need for clarity on the limits of legitimate political speech and action concerning Zionism, Israel, and Palestine. Our aim is twofold: (1) to strengthen the fight against antisemitism by clarifying what it is and how it is manifested, (2) to protect a space for an open debate about the vexed question of the future of Israel/Palestine. We do not all share the same political views and we are not seeking to promote a partisan political agenda. Determining that a controversial view or action is not antisemitic implies neither that we endorse it nor that we do not.

The guidelines that focus on Israel-Palestine (numbers 6 to 15) should be taken together. In general, when applying the guidelines each should be read in the light of the others and always with a view to context. Context can include the intention behind an utterance, or a pattern of speech over time, or even the identity of the speaker, especially when the subject is Israel or Zionism. So, for example, hostility to Israel could be an expression of an antisemitic animus, or it could be a reaction to a human rights violation, or it could be the emotion that a Palestinian person feels on account of their experience at the hands of the State. In short, judgement and sensitivity are needed in applying these guidelines to concrete situations.

Definition

Antisemitism is discrimination, prejudice, hostility or violence against Jews as Jews (or Jewish institutions as Jewish).

Guidelines

A. General

1. It is racist to essentialize (treat a character trait as inherent) or to make sweeping negative generalizations about a given population. What is true of racism in general is true of antisemitism in particular.
2. What is particular in classic antisemitism is the idea that Jews are linked to the forces of evil. This stands at the core of many anti-Jewish fantasies, such as the

idea of a Jewish conspiracy in which ‘the Jews’ possess hidden power that they use to promote their own collective agenda at the expense of other people. This linkage between Jews and evil continues in the present: in the fantasy that ‘the Jews’ control governments with a ‘hidden hand,’ that they own the banks, control the media, act as ‘a state within a state,’ and are responsible for spreading disease (such as Covid-19). All these features can be instrumentalized by different (and even antagonistic) political causes.

3. Antisemitism can be manifested in words, visual images, and deeds. Examples of antisemitic words include utterances that all Jews are wealthy, inherently stingy, or unpatriotic. In antisemitic caricatures, Jews are often depicted as grotesque, with big noses and associated with wealth. Examples of antisemitic deeds are: assaulting someone because she or he is Jewish, attacking a synagogue, daubing swastikas on Jewish graves, or refusing to hire or promote people because they are Jewish.
4. Antisemitism can be direct or indirect, explicit or coded. For example, ‘The Rothschilds control the world’ is a coded statement about the alleged power of ‘the Jews’ over banks and international finance. Similarly, portraying Israel as the ultimate evil or grossly exaggerating its actual influence can be a coded way of racializing and stigmatizing Jews. In many cases, identifying coded speech is a matter of context and judgement, taking account of these guidelines.
5. Denying or minimizing the Holocaust by claiming that the deliberate Nazi genocide of the Jews did not take place, or that there were no extermination camps or gas chambers, or that the number of victims was a fraction of the actual total, is antisemitic.

B. Israel and Palestine: examples that, on the face of it, are antisemitic

6. Applying the symbols, images and negative stereotypes of classical antisemitism (see guidelines 2 and 3) to the State of Israel.
7. Holding Jews collectively responsible for Israel’s conduct or treating Jews, simply because they are Jewish, as agents of Israel.
8. Requiring people, because they are Jewish, publicly to condemn Israel or Zionism (for example, at a political meeting).
9. Assuming that non-Israeli Jews, simply because they are Jews, are necessarily more loyal to Israel than to their own countries.
10. Denying the right of Jews in the State of Israel to exist and flourish, collectively and individually, as Jews, in accordance with the principle of equality.

C. Israel and Palestine: examples that, on the face of it, are not antisemitic
(whether or not one approves of the view or action)

11. Supporting the Palestinian demand for justice and the full grant of their political, national, civil and human rights, as encapsulated in international law.
12. Criticizing or opposing Zionism as a form of nationalism, or arguing for a variety of constitutional arrangements for Jews and Palestinians in the area between the Jordan River and the Mediterranean. It is not antisemitic to support arrangements that accord full equality to all inhabitants ‘between the river and the sea,’ whether

in two states, a binational state, unitary democratic state, federal state, or in whatever form.

13. Evidence-based criticism of Israel as a state. This includes its institutions and founding principles. It also includes its policies and practices, domestic and abroad, such as the conduct of Israel in the West Bank and Gaza, the role Israel plays in the region, or any other way in which, as a state, it influences events in the world. It is not antisemitic to point out systematic racial discrimination. In general, the same norms of debate that apply to other states and to other conflicts over national self-determination apply in the case of Israel and Palestine. Thus, even if contentious, it is not antisemitic, in and of itself, to compare Israel with other historical cases, including settler-colonialism or apartheid.
14. Boycott, divestment and sanctions are commonplace, non-violent forms of political protest against states. In the Israeli case they are not, in and of themselves, antisemitic.
15. Political speech does not have to be measured, proportional, tempered, or reasonable to be protected under Article 19 of the Universal Declaration of Human Rights or Article 10 of the European Convention on Human Rights and other human rights instruments. Criticism that some may see as excessive or contentious, or as reflecting a 'double standard,' is not, in and of itself, antisemitic. In general, the line between antisemitic and non-antisemitic speech is different from the line between unreasonable and reasonable speech."

IV. Analytical Framework

57. Whether Professor Miller's statements can be said to have "exceed[ed] the boundaries of acceptable speech" will turn on whether the statements which I have been asked to consider exceed the boundaries of academic freedom as protected by the Education (No 2) Act 1986 and the Education Reform Act 1998, read in light of Article 10 of the European Convention on Human Rights, and taking into account any obligations placed on Professor Miller and/or the University by the Equality Act 2010, Professor Miller's rights under the Equality Act 2010, and the University's policies. I reiterate that in considering this question I am not seeking to determine whether in all the circumstances Professor Miller's entitlement to speak as he did outweighed the interests of others, to which effect may be given by University policies and expectations which might otherwise be placed upon Professor Miller as a senior member of the University: speech which is protected by Article 10(1) ECHR, in particular, may nevertheless be subject to lawful limitations and restrictions by reason of Article 10(2). My concern is whether Professor Miller's statements were *prima facie* acceptable in the sense that they could not properly be characterised as antisemitic or as breaching the Equality Act 2010.

58. As an academic, Professor Miller could breach the Equality Act 2010 if he discriminated, directly or indirectly, against Jewish students or if his behaviour constituted harassment as defined in the Act. Taking first the question of direct discrimination, what is complained about in relation to Professor Miller is not (save as regards his criticism of the complainants and his statements about Bristol JSoc), his actions towards University students as students. It is not said, for example, that he has graded students unfairly because they are Jewish, or members of Bristol JSoc, even because they are advocates of Zionism or Israel, though it has been said (albeit by the *Jewish News*, rather than students) that his public statements “ma[k]e [Jewish students] ... feel unsafe and uncomfortable within their own university community”. The only possible exception to this relates to his criticism of the J Soc President but that criticism was not in my view because of race or religion/belief.
59. Direct discrimination occurs (see §28 above) where (so far as relevant here) a student is treated less favourably because of a protected characteristic (which would include Jewishness or Zionism) than the alleged discriminator would treat others, and that treatment is because of the protected characteristic. In my view, none of the statements to which my attention is drawn amount to or involve direct discrimination against students as students of the University, that is, less favourable treatment in the way in which a student is provided with education, or afforded access to a benefit, facility or service, or otherwise subjected to detriment. Any less favourable treatment by Professor Miller would consist of making public criticism of the individuals who complained about him, and suggesting that students who join Jewish societies affiliated to the UJS (who will inevitably be Jewish¹³) are being used as political pawns. The former in my view, however, would not amount to less favourable treatment because of a protected characteristic, as distinct from because of the complaint. The latter does not involve less favourable treatment of individual students in their capacity as students. While it is the case (see below) that the publication of such comments might well make Jewish students feel alienated from the University, this will not in my view fall within s91 of the Equality Act 2010 unless it amounts to or involves harassment of, or indirect discrimination against, Jewish students. Such discrimination or harassment would relate to the educational environment experienced by Jewish students, rather than to Professor Miller’s treatment of individual students (other than Nina Freedman).

¹³ Membership of the UJS and JSocs is “open to all Jewish students” :https://www.ujsofuk.org.uk/about_us#:~:text=Like%20UJS%2C%20J%2DSocs%20are,our%20member%20J%2DSocs%20here.

60. Turning first to consider indirect discrimination, the question would be whether the University has, through Professor Miller, subjected students generally to a “provision, criterion or practice” which placed Jewish (or Zionist) students at a “particular disadvantage when compared with” non-Jewish students and which cannot be shown to be a “proportionate means of achieving a legitimate aim”. This could apply both to Professor Miller’s suggestion that students who are members of UJS-affiliated organisations as “pawns” of Israel and, more generally, to the statements in respect of which complaints have been made. The “particular disadvantage” might consist of feelings of discomfort, alienation or unsafeness.
61. The main question which falls to be determined as regards any such analysis is whether Professor Miller’s comments fall within the sphere of academic freedom and/or speech protected by Article 10. If they do then Professor Miller’s ability to make such statements without disciplinary action by the University will, to the extent that it could be characterised as amounting to or involving any “provision, criterion or practice” applied by the University, be a “proportionate means of achieving a legitimate aim” (the protection of academic freedom and/or Article 10-protected speech).
62. The same is true in my analysis in relation to harassment as it relates to Jewish students in general. This is not a case in which Professor Miller is alleged to have singled out Jewish (or Zionist) students in class and subjected them to offensive, humiliating, degrading or hostile speech or conduct. The “harassment”, if any, would consist in the situation of studying at the University at which Professor Miller continues to be employed, possibly even studying a course taught by Professor Miller, in circumstances in which Professor Miller holds and has publicly espoused particular views. There being no case for alleging that Professor Miller’s statements were intended to violate the dignity of students at the University as students, or to expose them to an intimidating, hostile, degrading, humiliating or offensive environment as students, the question will be whether it is reasonable to regard Professor Miller’s making of the statements to which my attention is drawn as having the effect of violating the dignity of students at the University as students, or exposing them to an intimidating, hostile, degrading, humiliating or offensive environment as students, having regard to the students’ perception, and “the other circumstances of the case”. Assuming that the perception of at least some students is that Professor Miller’s statements did have the relevant effect, the question whether this perception is reasonable will turn on whether Professor Miller’s statements were protected by academic freedom and/or his Article 10 rights.

63. I note the statement in the University's "Equality and Diversity Policy" and "Acceptable Behaviour Policy" that staff are expected to "behave in an acceptable manner - treating others with courtesy, respect and consideration - and conducting themselves professionally when interacting with members of the University community" and that the former makes clear that "unacceptable behaviour" includes bullying as well as harassment. I note also the statement in the Acceptable Behaviour Policy that "unacceptable behaviour" "may involve actions, words or physical gestures that could reasonably be perceived to be the cause of another person's distress or discomfort" and includes "Lack of awareness or consideration of diversity, particularly when related to a protected characteristic under the Equality Act 2010" and "Offensive comments". I note that the University's Freedom of Speech Code of Practice 2018-2019 states that "all views, including those that can be difficult to hear, should be able to be expressed and heard with tolerance and mutual respect" and that staff "have a responsibility to consider" the potential for the abuse of the principle of free speech", though I note that the examples provided there concern "incitement to violence or to breaches of the peace, or by the use of threatening words or behaviour (including the display of writing, signs or other visible representations) which are intended to provoke racial or religious hatred or hatred on grounds of sexual orientation, or to encourage or draw people into terrorism". Finally, I note the references in the February 2018 University statement on freedom of speech to universities as "places of research and learning, where debate and dissent are not only permitted but expected, and where controversial and even offensive ideas may be put forward, listened to and challenged, and to freedom of speech as a right which should be "exercised responsibly, within the law, and with respect for others who may have differing views."
64. Policies are not law and must not be treated as such. Policies cannot determine what amount to discrimination or harassment for the purposes of the Equality Act 2010. Nor can the IHRA definition of antisemitism to which my attention is drawn determine what speech is protected by Article 10(1) ECHR. I note that the IHRA itself states that "criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic", and the observation of the Home Affairs Select Committee that "it is not antisemitic to hold the Israeli government to the same standards as other liberal democracies, to criticise the Israeli government, or to take a particular interest in the Israeli government's policies or actions, without additional evidence to suggest antisemitic intent". I agree with the view of Hugh Tomlinson QC that the reconciliation of the IHRA approach with the obligations of Article 10 ECHR, by which the University is bound, requires that the "illustrative examples" are interpreted as antisemitic only to the extent that they manifest "hatred towards Jews", and I agree with his view that the

examples he sets out at §48 above cannot without more be classified, consistent with Article 10 ECHR, as antisemitic. I also agree with the statement of Sir Stephen Sedley that that “policy is required to operate within the law”, including s43 of the Education Act 1986 and Article 10 ECHR.”¹⁴

65. I note the acceptance by Wolfson and Brier at §54 above that “Criticism of Israel is not antisemitic *per se*, in much the same way that criticism of an African state would not be racist *per se*” and that “we can imagine a case of how a form of scholarship leading to th[e] conclusion [that Israel is a ‘racist endeavour’] could be written without antisemitic intent [though] ... one would expect such an author to use reasoned language and adopt a consistent view regarding other states with religious or ethnic dimensions”, further (§55) that “Criticising the policies of a particular Israeli government, for example in relation to settlements, protesting against the actions of the State of Israel or its treatment of Palestinians, are lawful expressions of political opinion and are **unlikely** to be antisemitic without further factors” and that “Reasoned critiques of Zionism are **unlikely** to be antisemitic without further factors” (original emphasis).
66. I note also the criticism levelled at the IHRA definition by the drafters of the “Jerusalem Declaration on Antisemitism”, which states that “[s]upporting the Palestinian demand for justice and the full grant of their political, national, civil and human rights, as encapsulated in international law”; [c]riticizing or opposing Zionism as a form of nationalism, or arguing for a variety of constitutional arrangements for Jews and Palestinians in the area between the Jordan River and the Mediterranean”; “[e]vidence-based criticism of Israel as a state ... includ[ing] its institutions and founding principles [and] ... its policies and practices, domestic and abroad, such as the conduct of Israel in the West Bank and Gaza, the role Israel plays in the region, or any other way in which, as a state, it influences events in the world”; “compar[ison of] Israel with other historical cases, including settler-colonialism or apartheid” or “[b]oycott, divestment and sanctions” against Israel. Further:
- “Political speech does not have to be measured, proportional, tempered, or reasonable to be protected under Article 19 of the Universal Declaration of Human Rights or Article 10 of the European Convention on Human Rights and other human rights instruments. Criticism that some may see as excessive or contentious, or as reflecting a ‘double standard,’ is not, in and of itself, antisemitic. In general, the line between antisemitic and non-antisemitic speech is different from the line between unreasonable and reasonable speech.”

¹⁴ “Defining Anti-Semitism” Vol. 39 No. 9, 4 May 2017.

67. The starting point is that Professor Miller is entitled to say what he pleases unless and to the extent that the statements are contrary to law or to obligations lawfully imposed on him by virtue of his position in the University. I accept that statements which are properly regarded as antisemitic are not protected in the sense that the taking of (proportionate) action against individuals who have made such statements will not breach their rights to freedom of expression or under the Equality Act 2010.¹⁵ I also assume for present purposes, without deciding, that statements properly regarded as antisemitic may be unprotected by the principle of academic freedom. But the question whether a statement is properly regarded as antisemitic or not is one which requires to be determined taking into account Article 10 ECHR, the principle of academic freedom and the Equality Act 2010. That being the case, I agree with Hugh Tomlinson's view that speech cannot properly be regarded as antisemitic unless it manifests 'hatred towards Jews'. I note that this approach is consistent with the definition adopted in the Jerusalem Declaration of defines antisemitism as "discrimination, prejudice, hostility or violence against Jews as Jews (or Jewish institutions as Jewish)".
68. I have considered whether the various statements made by or attributed to Professor Miller can be considered antisemitic in isolation in the first instance (at §§70-82 below) and then consider whether the position is any different taken in the round in view, *inter alia*, of the obligations imposed on the University by the Equality Act 2010. In considering whether comments and statements can properly be considered antisemitic I have broadly followed the IHRA examples with the proviso that, in order to be antisemitic, words or conduct must manifest or amount to hatred, discrimination, prejudice or hostility against Jews as Jews, or Jewish institutions as Jewish institutions, and have taken into account the Jerusalem Declaration.

V. Conclusions

69. Dealing with each of the matters in turn, my conclusions are that there is no formal case to answer against Professor Miller in connection with any of the statements made by or attributed to him on the basis that these statements have exceeded the boundaries of unacceptable speech. Nor in my view is there a case for any of these matters to be considered under paragraph 2 of Ordinance 28 (Early Action). I have reached these conclusions for the reasons set out in detail below. I should make clear at this point that my conclusions do not, for the

¹⁵ Some antisemitic speech will be incompatible with Article 17 ECHR and so will fall entirely outside the protection of Article 10(1). Article 17 has a very high threshold however and some antisemitic speech will likely fall within Article 10(1), though its restriction is likely to be relatively easy to justify under Article 10(2).

reasons set out at §6 above, determine the answers to the other questions raised in the Terms of Reference; I have been invited to address only one of these five questions.

Speech by Professor Miller on 13 February 2021

70. The statements made by Professor Miller which have attracted negative comment in one or more of the articles which have been drawn to my attention are as follows:

70.1. “the enemy we face here is Zionism and the imperial policies of the Israeli state” (*Jewish News* and *Jewish Chronicle*);

70.2. There is “an all-out onslaught by the Israeli government – mainly through the Ministry of Strategic Affairs but also other ministries, too – on the left *globally*”. “This is an all-out attack by the Israeli government, it’s not something to do with the Labour Party. Really, the Labour Party is a mere detail of this attempt by the Israelis to impose their will all over the world. And that’s, I think, what we should recognise” (*Jewish Chronicle* and *Jewish News*, the latter characterising this and the preceding comment as “Soviet antisemitism, the assertion that there’s a global Zionist conspiracy against the left”);

70.3. “It’s not just a question of being allowed to say, ‘Zionism’s bad’ or ‘Zionism’s racism’ – which, of course, we should be allowed to say because it *is*. But it’s not just a question of that; it’s a question of how we defeat the ideology of Zionism in practice. How do we make sure that Zionism is ended, essentially?” (*Jewish News* and *Jewish Chronicle*);

70.4. “It’s not enough for us to say, ‘Zionism is racism’, ‘Israel is a settler-colonial society’. These are arguments we might make, yes, but the aim of this is not just to *say* things but to *end* settler-colonialism in Palestine and to *end* Zionism as a functioning ideology of the world” (*Jewish News* and *Tab*);

70.5. “what we will be faced with here is especially a liberal-Zionist case for suggesting that there is a serious problem of antisemitism or Judeophobia in this country, when there isn’t a serious problem, and they will try and get that back on the agenda” (*Jewish Chronicle*);

70.6. “I’ve been attacked and complained about by the head of the Bristol JSoc (the Jewish Society) along with the President of the Union of Jewish Students” (*Jewish Chronicle*, *Tab*, the latter complaining that his criticism of Jewish student groups had led to the president of Bristol JSoc being “targeted for abuse online”);

70.7. “both of which organisations are of course formally members of the Zionist movement. JSocs are a part of the UJS, the UJS is a member of the World Union of Jewish Students, which is a direct member of the World Zionist Organization” (*Tab*);

70.8. “It’s fundamental to Zionism to encourage Islamophobia and anti-Arab racism, too” (*Tab*).

71. Professor Miller’s statements were made in a conference on free speech in which he was addressing “the university sector and the alleged antisemitism ‘crisis’”. The thrust of his argument, which is expressly rooted in his academic research as well as his articulation of his personal experience, appears to me to be that the subject he has been invited to address is merely a symptom of a wider problem which on his analysis is a concerted effort by the Israeli government to challenge left wing ideology globally, in part by a deliberate tactic of conflating criticism of Israel and/or of Zionism with antisemitism and by suggesting that antisemitism (as distinct from anti-Zionism and/or criticism of Israel as a state) is a significant problem in the UK (which Professor Miller denies). Professor Miller further argues that his own experience, which has been to have been subject to complaint by the heads of the Bristol JSoc and the President of the Union of Jewish Students, is reflective of complaints made in other universities, and that this is part of an “attempt to drive the possibility of anybody speaking out about Palestine, or about what Zionism is, or about having any kind of critical account of Zionism as racism or settler-colonialism, etcetera”, and to “get us to stop teaching this stuff, to stop writing about it and speaking about it in public, and indeed to stop researching it so we can’t properly go about researching Zionism, or the Israeli state, or the Ministry of Strategic Affairs (which is of course behind this whole ‘antisemitism crisis’) because to do so will be somehow, in some way ‘antisemitic’”.

72. Turning to the statements set out above:

72.1. The assertion that “the enemy we face here is Zionism and the imperial policies of the Israeli state” was made in the context of a discussion of freedom of expression within universities in which Professor Miller drew on his own research and on his personal experience of having been the subject of complaints. It does not appear to me that the statement requires of Israel “behavior not expected or demanded of any other democratic nation”, “[h]old[s] Jews collectively responsible for actions of the state of Israel.” It might be said that the assertion carries the implication that “the State of Israel is a racist endeavour” but in my view this cannot properly be characterised as antisemitic without more, not least in light of the acknowledgment of Wolfson and Brier and the approach set out in the Jerusalem Declaration.

It does not appear to me that the references to “Zionism” or to the “Israeli state” are code for “Jewish” here such that the assertion evinces hostility towards or hatred of Jews as Jews, taking into account the suggestion in the Jerusalem Declaration that “portraying

Israel as the ultimate evil or grossly exaggerating its actual influence can be a coded way of racializing and stigmatizing Jews” though I am conscious that, as someone who is not Jewish, I do not bring to this question an insider’s perspective. Nor in my view does the assertion that “the enemy we face here is Zionism and the imperial policies of the Israeli state”, made in the specific context of a discussion about academic freedom in which Professor Miller was one of a number of contributors, amount to or involve “portraying Israel as the ultimate evil or grossly exaggerating its actual influence”.

72.2. Professor Miller’s references to “an all-out onslaught by the Israeli government ... on the left *globally*”, also to an “attempt by the Israelis to impose their will all over the world”, is particularised to some extent by references to France and Germany as well as the US “as we saw with Bernie Sanders and Ilhan Omar, etcetera”. I am not in a position to judge whether this statement is true but I note that Professor Miller’s research interest, as described on his website, is in:

“concentrations of power in society and how they might be democratised and made accountable. He works on corporate and state power and how they are (re)produced in particular through policy and expert processes and via social movements from both above and below. Recent work has focused on terrorism and counter terrorism, the sociology of expertise, lobbying, public relations and propaganda - especially of the British government, think tanks, Islamophobia, the Zionist movement, corporate influences on health and science, conflict of interest and the financing of the conservative movement”.

Professor Miller’s statement appears, on its face, to be one which pertains to his area of academic research. The *Jewish News* characterises Professor Miller’s statements as “Soviet antisemitism, the assertion that there’s a global Zionist conspiracy against the left”, but Professor Miller’s references are specifically to the Israeli government (in particular, to “the Ministry of Strategic Affairs”, though also to “other ministries” and it does not appear to me that the statement bears the hallmarks of generalisation and vagueness characteristic of antisemitic conspiracy tropes.

72.3. In an internal response to one of the CST’s complaints to the University about him, Professor Miller offered a definition of Zionism as:

“a set of ideas and an accompanying movement dedicated to establishing a nation state/homeland for the Jews in historic Palestine. I would be quite happy, as I imagine would the CST, with the description *The Zionist Movement*, first published in the UK in 1945, which is that “The aim of Zionism is to re-establish the Jews as a nation in Palestine. The movement was founded in the closing years of the

nineteenth century.’ As things turned out, the movement continued to exist after the foundation of the state of Israel in 1948 and exists to this day... [1⁶]

Judaism is one of the world’s oldest monotheistic religions. Discrimination against its adherents, the Jewish people, is just as abhorrent as any other form of racial or religious discrimination. For that reason, anti-Semitism must always be opposed vigorously. Zionism, on the other hand, is a political ideology dating back to the nineteenth century. It was initially unpopular in Jewish communities, in the US and Europe, only reaching an ascendancy, according to most historical accounts, shortly before the creation of the state of Israel. Numerous Jews have rejected Zionism”.¹⁷

Professor Miller’s call for an end to Zionism and to “settler-colonialism in Palestine” is, however offensive it is likely to be, not in my view antisemitic for the reasons set out at §§64-66 above.

72.4. The statement that there is not “a serious problem of antisemitism or Judeophobia in this country” is intrinsically connected to Professor Miller’s stated view that anti-Zionism and anti-Israeli sentiment is being wrongly characterised as antisemitism. While one certainly have a debate about what level of antisemitism or Judeophobia can properly be regarded as “not a serious problem”, this statement cannot in my view reasonably be categorised as antisemitic, not least in light of the contested nature of what amounts to antisemitism. This being the case, it cannot in my view be regarded as having “exceeded the boundaries of acceptable speech” given the protections to which that speech is entitled by reason of Article 10 and, at least arguably, Professor Miller’s academic freedom. The same is true in my analysis of the statements at §70.1-70.3, discussed at §72.1-72.3 above.

72.5. The statement that Professor Miller had been “attacked and complained about by the head of the Bristol JSoc (the Jewish Society) along with the President of the Union of Jewish Students” is a statement of fact insofar as it refers to the complaint made about him to the University. That complaint, further, was made in conjunction with the Community Security Trust whose free-standing complaint had been rejected by the University on the grounds that it had no “formal process for responding to complaints from third parties”, though it made clear to the CST that it would investigate any complaints from students such as those who the CST said had raised their concerns with the CST.

¹⁶ Citing Israel Cohen, *The Zionist Movement* (edited and revised by Bernard Richards). New York: Zionist Organization of America, 1946, p19.

¹⁷ Citing David Cronin, Sarah Marusek and David Miller, *The Israel Lobby and the European Union*, Glasgow: Spinwatch & Europol, 2016: p. 7.
<http://powerbase.info/images/0/06/PIIIIsraelLobbyEUreport2016CroninMursakMiller.pdf>

The fact that the former head of Bristol JSoc had made a complaint to the University was publicised by her in September 2019 in an article in the *Jewish Chronicle*, “CST calls Bristol University an ‘utter disgrace’ for response to complaint about lecture”:¹⁸

“Nina Freedman said, as president of the Jewish Society at the university, she had complained to it on behalf of students who had attended Professor Miller’s lecture. She was ‘severely disappointed’ with the university’s response and ‘their refusal to use the IHRA definition of antisemitism to judge this case. I firmly believe that the university should adopt this definition in order to safeguard their students against anti-Jewish racism’.”

I note that Hannah Rose, who Professor Miller states to have been initially involved in the complaint, was not a student at the University at the time of the complaint, or since. I further note, as regards Professor Miller’s statement that “those kinds of complaints are being made across the country in different places: one against me in Bristol, there’s been one in Warwick – again made by a UJS or JSoc person – and there have been several others” appears to be supported by reports that the-then President of Warwick’s Jewish Israeli society had submitted a complaint about sociology professor Dr Goldie Osuri on behalf of another student.¹⁹

For the reasons set out above it does not appear to me that referring to this complaint, or linking it to complaints made at other universities, involves or amounts to antisemitism in the form, for example, of Jewish conspiracy theories. Nor for reasons I cannot set out here without referring to the content of that complaint do I accept that Professor Miller’s statement amounts to victimisation. I do not otherwise pass comment on whether this statement may have amounted to or involved any breach of confidentiality by Professor Miller, or undermined relationships or constituted a breach of the University’s Rules of Conduct for Staff, Acceptable Behaviours Policy or Freedom of Speech Code of Practice”, in view of the focus of my TORs; as I have endeavoured to stress throughout this report, my focus is on whether any or all of Professor Miller’s statements were *prima facie* unacceptable, in the sense of being antisemitic or inconsistent with the obligations imposed by the Equality Act 2010. Speech which is *prima facie* acceptable in this sense may nevertheless be incompatible with an employee’s obligations.

¹⁸ 9 September, available at <https://www.thejc.com/news/uk/cst-condemns-bristol-university-s-response-to-complaint-it-made-about-lecture-linking-it-to-islamoph-1.488385>

¹⁹ <https://theboar.org/2020/12/warwick-student-investigated-after-complaining-about-antisemitism/>

72.6. The statement that the Bristol JSoc and the UJS are “formally members of the Zionist movement” in that “JSocs are a part of the UJS, the UJS is a member of the World Union of Jewish Students, which is a direct member of the World Zionist Organization” is a statement of fact which appears to be accurate and about which I do not accept that there is any basis for categorising it as antisemitic. It cannot therefore in my view be regarded as antisemitic or as having “exceeded the boundaries of acceptable speech”.

72.7. “It’s fundamental to Zionism to encourage Islamophobia and anti-Arab racism, too” (*Tab*). I note that the full quote is that “the Zionist movement, parts of it, are engaged in deliberately fostering Islamophobia. It’s fundamental to Zionism to encourage Islamophobia and anti-Arab racism, too” (emphasis added). I also note that in his response to the initial CST complaint to the University Professor Miller stated that the evidence that “sections of the Zionist movement have engaged in funding Islamophobic activities... is clear:

“Take only the example of the most extreme Islamophobic groups those which self describe as the ‘Counterjihad’ movement. In my recent research work my colleagues and I have examined the funding of these groups including in the UK, Germany and France. We have demonstrated that many millions of US Dollars are flowing from particular Zionist foundations in the US to the far right in Europe. Our findings on this have not been challenged and the evidence for them is contained in our reports, the most recent of which was published in March this year.^[20] I would also point to the work of two of my colleagues who have written about this issue, providing extensive further evidence”.²¹

Returning to Professor Miller’s suggested definition of Zionism as “a set of ideas and an accompanying movement dedicated to establishing a nation state/homeland for the Jews in historic Palestine”,²² this statement appears to be on all fours with the view that Israel is a “racist endeavour” in that it is a state established by reference to “religious or ethnic dimensions” (see Wolfson and Brier at §54 above). Accordingly, it cannot in my view be regarded, without more, as antisemitic or, accordingly, as having “exceeded the boundaries

²⁰ Citing Hilary Aked, Mel Jones and David Miller (2019) Islamophobia in Europe: How governments are enabling the far-right ‘counter-jihad’ movement, Bristol: Public Interest Investigations <http://powerbase.info/images/6/6c/Aked-Jones-Miller-Counterjihadreport-2019.pdf>

²¹ Citing Hilary Aked The undeniable overlap: right-wing Zionism and Islamophobia *Open Democracy*, 29 September 2015. <https://www.opendemocracy.net/en/undeniable-overlap-right-wing-zionism-and-islamophobia>; Sarah Marusek (2017) ‘The transatlantic network: Funding Islamophobia and Israeli settlements’ in Massoumi, N., Mills, T. and Miller, D. (eds) What is Islamophobia? Racism, Social Movements and the State. London: Pluto Press.

²² Citing Israel Cohen, *The Zionist Movement* (edited and revised by Bernard Richards). New York: Zionist Organization of America, 1946, p19.

of acceptable speech” given the protections to which that speech is entitled by reason of Article 10 and, at least arguably, Professor Miller’s academic freedom.

The Jewish News 16 February 2021

73. The only statement said to have been made by Professor Miller to the *Jewish News* is that “he believed there ‘is a censorship campaign by a foreign regime targeting Britain’s universities, political parties and public institutions to shut down criticism of it.’ He also denied singling out the Jewish Society.” This statement does not in my view add to the statements discussed at §§70-72 above, none of which in my view exceed the boundaries of acceptable speech for reasons there explained.

The Jewish Chronicle 18 February 2021

74. The *Jewish Chronicle* article of 18 February 2021 complained about Professor Miller’s later defence of his comments of 13 February in his alleged statement to the *Jewish Chronicle* that Jewish students were being used as “political pawns by a violent, racist foreign regime”. This alleged statement was first referred to in a *JC* article of the same day, entitled “Now ‘end of Zionism’ academic says Bristol JSoc is ‘Israel’s pawn’”:

“The Bristol University academic facing demands to be sacked after he called for ‘the end of Zionism’ has doubled down on his comments, adding that Jewish students were being used as ‘political pawns by a violent, racist foreign regime’...

Responding to the *JC*, Professor Miller was unrepentant, suggesting he was the victim of attempted censorship and accusing the Union of Jewish Students of endangering the safety of Muslim students on campus.

He said: “The ‘Jewish student groups’ you refer to are political lobby groups overseen by the Union of Jewish Students, which is constitutionally bound to promoting Israel.

“There is a real question of abuse here — of Jewish students on British campuses being used as political pawns by a violent, racist foreign regime engaged in ethnic cleansing.

“The UJS’ lobbying for Israel is a threat to the safety of Arab and Muslim students as well as of Jewish students and indeed of all critics of Israel.”

75. I include this text not to add to the matters under investigation, but to contextualise the “political pawns” statement. The extract makes it clear that what is being said is that groups such as Bristol JSoc were in Professor Miller’s view not “Jewish student groups” (emphasis added) but “political lobby groups overseen by the Union of Jewish Students, which is constitutionally bound to promoting Israel”, and that Jewish students on British campuses were, by virtue of their membership of JSocs/ UJS, “being used as political pawns by a violent, racist foreign regime engaged in ethnic cleansing”; in other words, in my view Professor

Miller's criticism were not targeted at Jewish student groups *as Jewish groups*, rather as (demonstrably) Zionist-affiliated organisations.

76. This statement is obviously one which will be offensive to many, including many members of Bristol JSoc and other student organisations affiliated to the UJS. I note, however, that the core of the assertion is that JSocs are, through the UJS and its membership of the WUS, formally affiliated with the World Zionist Organisation, and that the UJS has as one of its objects (§2.1) “the advancement of Jewish students in the United Kingdom and Ireland for the public benefit by: 2.1.1. Creating meaningful Jewish campus experiences and inspiring Jewish students to make an enduring commitment to their Jewish identity, Israel, and the community” (emphasis added). The statement that this renders members of such student groups “political pawns [of] a violent, racist foreign regime” is extremely offensive, but it does not in my view involve “[a]ccusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations”; “[h]olding Jews collectively responsible for actions of the state of Israel”, or otherwise employing antisemitic tropes. Further, describing Israel as a “violent, racist ... regime” does not in my view involve “applying double standards [to it] by requiring of it a behavior not expected or demanded of any other democratic nation”. To the extent that it does involve “[d]enying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor”, I do not accept that this is properly characterised as antisemitic without more (see §§46, 54 & 71 above). This being the case, it cannot in my view be regarded as having “exceeded the boundaries of acceptable speech” though, as above, this does not mean that it is necessarily compatible with Professor Miller's obligations as a senior member of University staff.

The Bristol Tab

77. In addition to making the objections listed above, the *Tab* articles stated that Professor Miller had:

77.1. “called Zionism a ‘racist, violent, imperialist ideology premised on ethnic cleansing’, ‘endemically anti-Arab and Islamophobic ideology,’ and said ‘it has no place in any society’”;

77.2. “claimed the Union of Jewish Students (UJS) is obliged to ‘silence critics of Zionism o[f] the State of Israel on British campuses’”;

- 77.3. “said the Bristol JSoc, alongside all Jewish Societies and the UJS, are engaged in a ‘campaign of censorship’ which ‘renders Arab and Muslim students, as well as anti-Zionist Jewish students, particularly unsafe.’”
78. The text at §77.1 is an accurate representation of the email from Professor Miller of 18 February with which I have been provided. It is in my view properly categorised as a statement, however extreme, about Zionism rather than Jewishness. It falls to be regarded, in the words of the Jerusalem Declaration, as “[p]olitical speech” which certainly is not, but which “does not have to be[,] measured, proportional, tempered, or reasonable to be protected under Article 19 of the Universal Declaration of Human Rights or Article 10 of the European Convention on Human Rights and other human rights instruments”. While Professor Miller’s words may well amount to “[c]riticism that some may see as excessive or contentious”, this is “not, in and of itself, antisemitic. In general, the line between antisemitic and non-antisemitic speech is different from the line between unreasonable and reasonable speech.”
79. The statement at §77.2 is not an accurate representation of Professor Miller’s email which in fact states that “The UJS is constitutionally bound to promoting Israel and campaigns to silence critics of Zionism or the State of Israel on British campuses.” The first part of this sentence is an accurate reflection of UJS’s constitution (see §76 above). The second is consistent with Professor Miller’s own experience which he suggests (see §72.5 above) is not a solitary one and, whether or not it is accurate (which will turn on varying definitions of “antisemitism”, anti-Zionism and criticism of Israel, does not in my view extend beyond the boundaries of acceptable speech as defined above.
80. The statement at §77.3 that what Professor Miller characterises as a campaign by the UJS “to silence critics of Zionism or the State of Israel on British campuses” “renders Arab and Muslim students, as well as anti-Zionist Jewish students, particularly unsafe” may be the subject of debate and disagreement but it does not appear to me to amount to or involve “[m]aking mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective”; “[a]ccusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews”; “[a]ccusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations”; “[d]enying the Jewish people their right to self-determination”; “[a]pplying double standards by requiring of it a behavior not expected or demanded of any other democratic nations” or “[h]olding Jews collectively responsible for actions of the state of Israel.” This being the case, the statements

complained of do not in my view amount to or involve antisemitism however inflammatory they may appear and do not, accordingly, exceed the boundaries of acceptable speech as defined above.

The Electronic Intifada

81. The elements of this article which in my view require consideration are the following:

81.1. “Britain is in the grip of an assault on its public sphere by the state of Israel and its advocates”. This statement is particularised by reference to:

81.1.1. the “drown[ing] out” of “[m]eaningful conversations about anti-Black racism and Islamophobia ... by a concerted lobbying campaign targeting universities, political parties, the equalities regulator and public institutions all over the country”;

81.1.2. the “set[ting] upon” of the “newly elected secretary-general of the Muslim Council of Britain, Zara Mohammed... by two of the most energetic Zionist campaigners in British public life (Laura Marks and BBC presenter Emma Barnett) within days of taking up her position”;

81.1.3. the firing by the *Guardian* of American commentator Nathan J. Robinson over “a mere tweet referencing US military aid to Israel”;

81.1.4. the “smear[ing]” of Ken Loach “by Israel lobby groups such as the Board of Deputies of British Jews, who attempted to prevent him speaking to students at the Oxford college where he studied”;

81.2. The statement that “Israel’s lobby in Britain has trained its guns on me”;

81.3. The references to Zionism as “a racist, modern political ideology with secular origins premised on ethnic cleansing and anti-Arab racism”, to “Zionism’s endemic anti-Arab racism, which began with the ideology’s founders” and to the “sheer scale and prominence of funding from Zionist movements for Islamophobic causes”;

81.4. The statement that the Union of Jewish Students was “revealed in an undercover Al Jazeera investigation to be funded by the Israeli embassy in London” and that it “acts as a gateway to British politics for the most hardcore pro-Israel campus warriors, grooming student activists for jobs in the Israeli embassy in London which it helps to arrange”.

82. Taking these in turn and applying the same approach as I have applied to the other materials I have been asked to consider, my conclusions are as follows:

82.1. The statement that “Britain is in the grip of an assault on its public sphere by the state of Israel and its advocates” is particularised rather than general. References to a concerted campaign against universities and political parties are rooted in Professor Miller’s research and documented experience. I am not in a position to judge whether Professor Miller’s characterisation of Laura Marks and Emma Barnett as “energetic Zionist campaigners” is accurate but I note that their treatment of Zara Mohammed was the subject of much public comment and an open letter to the BBC signed by over 100 people including Baronesses Sayeeda Warsi and Uddin; Sir Iqbal Sacranie OBE; MPs Naz Shah, Zarah Sultana, Diane Abbott and Apsana Begum, journalists and writers; academics, activists and Christian clerics.²³ Links are provided in the article to sources of information relied upon by Professor Miller articles covering the dismissal of Nathan J. Robinson and the “smear[ing]” of Ken Loach.²⁴ All this being the case, the statement does not in my view amount to or involve (for example) reliance on “the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions”; “[a]ccusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations”; or “[a]pplying double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation. They do not in my view reach the threshold of antisemitism (defined to include the manifestation of hatred, discrimination, prejudice or hostility against Jews as Jews, or Jewish institutions as Jewish institutions), and do not exceed the boundaries of acceptable speech as defined above.

82.2. The statement that “Israel’s lobby in Britain has trained its guns on me” would appear to be a reference to the involvement of the CST and the UJS, in complaints made against Professor Miller.²⁵ As pointed out at §76 above, the UJS’s constitution has as one of its objects (§2.1) “the advancement of Jewish students in the United Kingdom and Ireland for the public benefit by: 2.1.1. Creating meaningful Jewish campus experiences and inspiring Jewish students to make an enduring commitment to their Jewish identity, Israel, and the community” (emphasis added). In Professor Miller’s internal response to complaints made by CST about him in 2019 he wrote that the Trust ““has been

²³ <https://gal-dem.com/open-letter-to-the-bbc-on-zara-mohammed-mistreatment-on-womans-hour/>

²⁴ <https://www.currentaffairs.org/2021/02/how-the-media-cracks-down-on-critics-of-israel> and, inter alia, <https://www.wsws.org/en/articles/2021/02/17/loac-f17.html>

²⁵ The article provides links to <https://jewishnews.timesofisrael.com/action-urged-over-bristol-academic-who-called-for-end-zionism-as-an-ideology/>, <https://twitter.com/hendopolis/status/1362472323962519556>, <https://www.thejc.com/news/uk/now-end-of-zionism-academic-says-bristol-jsoc-is-israel-s-pawn-1.511915>, <https://jewishnews.timesofisrael.com/bristol-professor-cst-is-a-case-of-influence-peddling-by-a-foreign-state/>.

controversial for expanding its operationalisation of the notion of anti-Semitism to include criticism of the state of Israel; for physically ejecting anti-Zionist British Jews from Jewish communal events it polices; for links with Mossad the Israeli secret intelligence service; for collecting files on critics of Israel and for falsely claiming to ‘represent’ the Jewish community’.”²⁶ I am not in a position to judge the accuracy of these claims but they do indicate that the apparent characterisation of the CST as “Israel’s lobby in Britain” is not based on any assumption of an identity of interest between Jewish people or organisations and the state of Israel. The same is true as regards the UJS. The statements are not in my view antisemitic and do not exceed the boundaries of acceptable speech as defined above.

82.3. The references to Zionism as “a racist, modern political ideology with secular origins premised on ethnic cleansing and anti-Arab racism”, and to “Zionism’s endemic anti-Arab racism, which began with the ideology’s founders” do not in my view amount to antisemitism for the reasons set out at §§46, 54 & 71 above. Professor Miller expressly challenges the characterisation of Zionism as a “facet of Jewish identity”. Nor in my view does his reference to the “sheer scale and prominence of funding from Zionist movements for Islamophobic causes” in view of the fact that this statement is related to academic research (I take into account Professor Miller’s internal response to the first CST complaint). In my view the references are not antisemitic and do not, accordingly, exceed the boundaries of acceptable speech as defined above.

82.4. Professor Miller links the statement that the UJS was “revealed in an undercover Al Jazeera investigation to be funded by the Israeli embassy in London” to an article on the *Electronic Intifada* by Asa Winstanley dated 12 January 2017 which refers to an *Al Jazeera* film (*The Lobby*).²⁷ Former President of UCL’s UJS, who ran for election as President of the UJS in December 2016, told an undercover reporter in the film that “Once you’re involved with the Union of Jewish Students, they then connect you... My sister worked for the embassy for a bit, as her first job. It’s a good platform to do for like a year.” Asa Winstanley’s article also stated that “one previous UJS president, Ella Rose, later went on to work as an officer

²⁶ Citing respectively Anthony Lerman. “Combating antisemitism and defending Israel: a potentially explosive mix” antonylerman.com 8 August 2014. <https://antonylerman.com/2014/08/08/combating-antisemitism-and-defending-israel-a-potentially-explosive-mix/>; Tony Greenstein, The Community Security Trust - Policeman of the Jewish Community asvsas.blogspot.com, 1 March 2009. <http://azvsas.blogspot.com/2009/03/community-security-trust-policeman-of.html>; Asa Winstanley, “El Exclusive: UK Charity with Mossad links secretly denounced anti-Zionist Jews to government” The Electronic Intifada, 21 December <https://electronicintifada.net/content/ei-exclusive-uk-charity-mossad-links-secretly-denounced-anti-zionist-jews-government/10717> and Geoffrey Alderman, “Our unrepresentative security” The JC, 18 April 2011 <https://www.thejc.com/comment/columnists/our-unrepresentative-security-1.68486>.

²⁷ <https://electronicintifada.net/blogs/asa-winstanley/israeli-government-cash-uks-union-jewish-students-exposed>

at the Israeli embassy [and] moved straight on from there to her current position at the Jewish Labour Movement”. The statements made by Professor Miller do not in my view rely on Jewish conspiracy theories or tropes or otherwise amount to antisemitism (defined as above) and do not, accordingly, exceed the boundaries of acceptable speech as defined above.

Professor Miller’s comments taken in the round

83. I suggested above that Jewish (and/or Zionist) students could complain of indirect discrimination if the University had, through Professor Miller, subjected students generally to a “provision, criterion or practice” which placed Jewish (or Zionist) students at a “particular disadvantage when compared with” non-Jewish students and which cannot be shown to be a “proportionate means of achieving a legitimate aim”. The “particular disadvantage” might consist of feelings of discomfort, alienation or unsafeness resulting from a situation in which Professor Miller is free to make statements such as those considered in this document which are regarded as deeply offensive to Jewish people, many of whom regard the comments as antisemitic. Even assuming, however, that the University could properly be regarded as having applied a “provision, criterion or practice” regarding the making of controversial statements by academics (or Professor Miller in particular), it is my view that any such “provision, criterion or practice” would be a “proportionate means of achieving a legitimate aim” when it served to protect academic freedom and/or freedom of expression, not least in circumstances in which the University had addressed itself conscientiously to the balance between the various competing interests and rights in issue.
84. The situation might be different if the University was confronted with particular students who were expressing a wish not to be taught by Professor Miller and who were not being permitted to opt out of (for example) a tutor group despite an alternative being available. In such circumstances a proportionate response to an expression of concern might be to allow a degree of flexibility, though not to the extent of creating additional tutor groups or courses.
85. The same is true in my analysis in relation to harassment as it relates to Jewish (or Zionist) students in general. In my view, given the rights in issue, it is unlikely that a claim of harassment would succeed on the basis that the mere continued presence of Professor Miller at the University violated the dignity of one or more Jewish (or Zionist, or Israeli) students, or rendered his, her or their educational environment intimidating, hostile, degrading, humiliating or offensive. If, on the other hand, such students were placed in a position in which they were

required to be taught by Professor Miller (eg in a tutorial group in a compulsory module, in which alternative arrangements could be made, but were refused), it is not impossible that a different approach might be taken. In either case, however, my view is that no obligation is imposed on the University by the Equality Act 2010 to seek to deter or punish Professor Miller's speech. The Public Sector Equality Duty imposed by s149 of the 2010 Act does not in my view alter this position in view of the process, rather than outcome-related, nature of the duty; the competing interests in play and the evident care which the University has taken to seek to respond to concerns raised about Professor Miller.

Final remarks

86. I reiterate the point I have made in the introductory section and throughout my report that I have been concerned to answer the question whether Professor Miller's statements, or any of them, are *prima facie* unacceptable in the sense that they are antisemitic or amount to or involve discrimination or harassment of a form which threatens to breach the Equality Act 2010. I have concluded that they are not. But employees, even academics, owe obligations to their employers by virtue of their status as employees, and employers are entitled to impose reasonable standards of behaviour on their staff. These standards will include restrictions on expression which is lawful and protected under Article 10(1) ECHR, and on the manner in which information or opinions which would fall within an academic's area of expertise is conveyed. By way of example, Article 10(1) would apply to a statement by a University employee that a senior member of University management is corrupt, incompetent and/or absurd. That member of staff could nevertheless be subject to disciplinary action by reason of the limitations permitted by Article 10(2), provided such action was governed by law (which would include contractual obligations and policy) and proportionate in pursuit of "the protection of the reputation or rights of others, including the University itself." Care would need to be taken where criticism was rooted in academic disagreement but academic freedom would not in my view extend to the protection of personalised or vitriolic abuse, as distinct from a robust expression of professional disagreements.




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