

Legal Guide
for Palestine
Solidarity
Student
Activists



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Contents

Introduction to this Guide.....3

Part 1: Campaigning on Campus

Registering and Funding for a Palestine Society:.....6
Holding a Speaking Event 8
Holding a Protest.....10
Passing a Motion 12

Part 2: Challenges

IHRA Working Definition of Anti-Semitism 15
The Prevent Duty 17
Escalation and Complaints 19

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Introduction to this Guide

This guide has been produced by Palestine Solidarity Campaign (PSC), with legal support from Bindmans LLP. It is a practical legal guide to help students in their campaigning in solidarity with the Palestinian struggle for freedom, justice and equality. The guide does not constitute formal legal advice, and cannot address every possible legal or factual issue. As noted below, should you need support, please contact Palestine Solidarity Campaign, who can assist with obtaining formal legal advice if necessary.

While most pro-Palestine events on campus happen without interference, a small number of events have come under pressure. This includes anti-Palestinian groups pressuring Universities and Students' Unions to close down events in support of Palestinian rights. This pressure is often grounded in inaccurate or misunderstood interpretations of the law.

This pressure is almost inevitably part of the growing assault on the Boycott, Divestment and Sanctions Movement in support of Palestinian human rights and international law.

When challenged, most attempts to restrict student campaigning are mitigated or have been reversed. With the adequate support, most threatened events will go ahead as planned.

What to do if you come under threat?

This guide seeks to inform you of your rights when campaigning for Palestinian rights. If any student event or campaigning activity is threatened, Palestine Solidarity Campaign, the largest organisation working in support of Palestinian rights in the UK, should be contacted.

The best way to ensure your campus organising is successful is to coordinate with others, especially those with experience. PSC has been co-ordinating with student organisers for decades. Working in coalition and communicating with us regularly helps our campaigning be more effective, strategic, and impactful, and also helps avoid unnecessary risks that will take you away from your work.

Where feasible, we will aim to provide you with the appropriate support and advice to defend your right to campaign for Palestine. Where practical, this can include obtaining professional legal support and advice.

PSC is currently working to strengthen our legal capacity in coalition with [the European Legal Support Centre \(ELSC\)](#), an independent organisation recently established to provide professional legal support and assistance to associations, groups and individuals advocating for Palestinian rights in Europe.

At present, the ELSC is conducting research into the ongoing repression of the right to freedom of expression and assembly of advocates for Palestinian human rights in the UK (2016 – 2020). In order to collect evidence of such, they are asking individuals, groups and organisations to document incidents [in the form attached here](#). This can be anything from universities imposing administrative barriers when organising events such as lengthy pre-vetting forms, imposing 'neutral chairs', or impacts on individual students on account of their advocacy for Palestinian human rights.

Where individual students come under attack due to their campaigning, please don't hesitate to contact us for additional support. Remember that the documentation of all incidents is essential in order to strengthen the overall response to these attacks. Where possible, this includes keeping a record of correspondences with the university and other parties, pre-vetting documents required, extra security requirements etc.

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Contact us:

E-mail: info@palestinecampaign.org

Phone: 020 7700 6192

Post: Palestine Solidarity Campaign, Box BM PSA, London, WC1N 3XX

Key Principles for Campaigning on Campus

Get to know friendly staff and faculty, and seek their support and advice from the start.

They've probably been on campus longer than you have, and may be able to help you navigate the system. Don't wait until something goes wrong...make this your first task!

Have clear objectives for your group, and clear decision-making processes.

Working collectively and democratically is not only better for reasons of principle. It also helps keep you safe! It means your decisions are better thought out, having gone through discussions, and you have more people on board for support in case something goes wrong.

Always keep records of everything: paperwork you've filed, emails, articles, etc.

If administrators or students' union officers call you in for meetings, tell them ahead of time (politely) that you would like to bring someone else along to take notes, and that you would like to confirm the notes with them afterwards to confirm mutual understanding. Ask for things in writing if they are told to you verbally.

Be kind to each other and to other students.

Having confrontations rarely achieves positive outcomes, and often results in painful and sometimes traumatic experiences for you and your group. Remember that you want to create a friendly and open environment, so don't get dragged into confrontation by opponents of justice.

Be in touch with PSC frequently.

We have lots of people with tonnes of experience in campus organising. We would love to help, hear what you're doing, and provide advice.

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Part 1:

Campaigning

on Campus

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Registering and Funding for a Palestine Society:

Key Rights:

- **You have the right to set up a Palestine society or BDS group. Most groups get resources from the Students' Union to help support their campaigns and activities.**
- **Students' Unions are legally able to make grants and provide resources to campaigning clubs or societies.**

Registering a Palestine Society:

Palestine campaigning societies exist on dozens of campuses across the UK. You have the right to set up a Palestine society and to campaign in solidarity with the BDS Movement on your campus.

If your request to set up a Palestine Society is denied, get in touch with PSC at the earliest possible opportunity. We have guided many students through the process of setting up a society, and can support you to do this.

Remember to keep any correspondence and records you have. If your request to set up a society is rejected, ask the union to set out in writing on what grounds they have made their decision.

Funding for a Palestine Society

[Section 22\(2\) \(i\) of the Education Act 1994](#) requires the university to take such steps as are reasonably practicable to ensure the students' union has a procedure for allocating resources to groups or clubs that is:

- fair;
- set down in writing; and
- freely accessible to all students.

The Charity Commission guidance on students' unions confirms that a students' union can make grants to political clubs or societies on campus to encourage students to develop their political awareness and acquire knowledge of, or debate, political issues. Any grants should be "*even-handed and non-discriminatory and for the purposes of the clubs or societies*". This reflects the court's decision in the case of *Attorney General v Ross and anor* [1985] 2 All ER 334. This guidance also confirms that there is nothing to prevent students from joining together outside of the students' union to collect their own funds.

In a handful of cases, Students' Unions have refused to provide any resources to Palestine societies. While this is wrong, they may have been misled by inaccurate information. If your access to funding is restricted, ask the Students' Union to set out on what grounds they are doing so in writing. While doing so, contact PSC at the earliest possible opportunity so we can support you in gaining the appropriate resources for your activities.

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Case Study

A University management informed the Palestine society that they could not meet with them. They also told the society both the Students' Union and University were prevented from affiliation to political causes and could not provide funding. With the support of Palestine Solidarity Campaign, the students wrote a legal letter reminding the university that legal guidance makes it clear that students' unions can financially support political clubs, provided doing so is in accordance with their charitable objectives. After this intervention, the society has been able to gain funding for speaking events and meetings.

Holding a Speaking Event

Key Rights:

- **You have a right to hold speaking events about Palestine and BDS. Events like this regularly take place across UK campuses, and most go ahead without problems.**
- **Students' Unions can, and do, spend money to facilitate the events. You can ask for money, as long as the expenditure is reasonable.**
- **PSC can support you in contacting great speakers on a range of issues, and help you hold a fantastic event.**

Speaking events hosted by Palestine societies or BDS campaigns can cover any topic. Palestine Societies' speaking events are not subject to any restrictions other than those imposed by the university's or students' union's own rules and regulations (which themselves must be in accordance with the law).

There are restrictions on the political activity a students' union can undertake. For example, students' unions can only campaign on issues that affect students in their capacity as students. However, this does not limit the topics on which speaking events can be held. While your university can put restrictions on events, and even cancel them, it must demonstrate that it has fulfilled its primary duty to protect freedom of speech.

If your university rejects or delays your paperwork on an event, the first thing to do is to ask the university to provide you in writing the grounds on which it made the decision. In the meantime, get in touch with us immediately so we can support you.

Student debate and discussion is an important part of furthering the education of students. As such, debates and speaking events do not have to be limited to issues that affect students as students, and can be held on a wide range of topics. In addition, students' unions can spend money facilitating speaking events, so long as their expenditure is reasonable.

The university has a duty to protect and secure freedom of speech under two sources:

- [Article 10 of the European Convention on Human Rights](#) protects freedom of expression;
- [Section 43 of the Education \(No 2\) Act 1986](#) imposes a duty on universities to secure freedom of speech for members, students, employees and visiting speakers.

The section 43 duty requires the university to take reasonably practicable steps to secure freedom of speech. In addition, the university must not restrict the use of its premises on the basis of an individual's beliefs.

There is debate about whether the section 43 duty applies to students' unions. It is likely that the university will impose rules and policies on them to ensure the university is discharging its duties to protect freedom of speech.

Case Study

Universities and Students' Unions have sometimes applied conditions to pro-Palestine events. This has included the imposition of "neutral" chairs, forcing the reading of a safer spaces policy, or asking for the content of speeches before a talk.

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These restrictions have been and can be challenged. In 2017, The University of Sussex attempted to impose a neutral chair on an event for Israel Apartheid Week. Sussex Friends of Palestine Society successfully challenged this, asking for the chair to be a Palestinian member of the society. While a safer spaces policy was read before the meeting began, this included reference to opposition to all forms of racism, including anti-Palestinian racism.

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Holding a Protest

Key Rights:

- **You have the right to support pro-Palestine causes under [Article 9 of the European Convention on Human Rights](#), which protects your right to freedom of thought, conscience and belief. Many lively pro-Palestine protests happen across universities every year.**
- **Under UK law you have the right to protest in support of your beliefs under Articles 10 and 11.**
- **The university must consider everyone’s human rights, and must respect your right to protest as far as possible. If the university has made a decision without balancing the relevant rights, or without even considering your rights to protest and how to accommodate them, it may be acting unlawfully.**

First and foremost, you have the right to support pro-Palestine causes under [Article 9 of the European Convention on Human Rights](#), which protects your right to freedom of thought, conscience and belief.

Under English law you also have the right to protest in support of your beliefs. The right to protest is made up of two separate human rights:

- [Article 10 of the European Convention of Human Rights \(ECHR\)](#) protects your freedom of expression. This includes the freedom to hold opinions, receive ideas and information, and share them with others, without interference from public authorities;
- Under [Article 11 ECHR](#), you have the right to freedom of peaceful assembly, and to associate with others.

Together, these rights make up your freedom to protest, and on any protest you are likely to be exercising all three rights, by gathering together as a group (freedom of assembly), holding placards and shouting slogans or chants (freedom of expression) In respect of your beliefs (freedom of conscience).

Recently [Baldassi and Others v. France ECtHR](#) upheld the right to boycott as a protected right under Article 10, commenting “the boycott is above all a means of expressing protesting opinions. The call for a boycott, which aims to communicate these views while by calling for specific actions linked to them, therefore falls within the scope of the principle of the protection of Article 10 of the Convention.” (para 63)

Your rights under Articles 9, 10 and 11 are not unlimited, and can be restricted in certain circumstances.

On the other hand, Articles 10 and 11 include both a negative obligation not to unduly restrict your rights, and a positive obligation to ensure you can effectively exercise your rights. This may include a positive obligation to protect peaceful protests from disruption by violent counter-demonstrations.

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Broadly speaking, peaceful protest will require stronger protection by the university than violent or disruptive protest, which may in fact be breaking the law and therefore be outside the protection of the Human Rights Act.

The criminal offences you may be committing on a protest are beyond the scope of this guide, but if you are concerned that your proposed action is illegal, you are advised to seek legal advice in advance from a criminal defence solicitor, ideally specialising in protest law.

The university must consider everyone's human rights, and must respect your right to protest as far as possible. If the university has made a decision without balancing the relevant rights, or without even considering your rights to protest and how to accommodate them, it may be acting unlawfully.

You could ask the university to provide evidence of the balancing exercise undertaken, and reasons for its decision and/or proposed course of action. Remember to ensure this is in writing. As you are doing so, get in touch with PSC.

The university can only restrict your right to protest to the extent it is necessary and proportionate. For example, if the university is imposing requirements on your protest that are impossible or particularly difficult to fulfil, this may not be necessary and proportionate. If the university has imposed an outright ban on your protest, this may not be proportionate, and the university may be acting unlawfully.

If your right to assembly is restricted, get in touch with PSC at the earliest possible opportunity.

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Passing a Motion

Key Points:

- **Twenty-five individual students' unions, as well as the National Union of Students, have passed motions endorsing BDS at some point. Some unions have successfully pressured their universities to end contracts with companies targeted by BDS, such as G4S and Veolia.**
- **Students' unions have also adopted motions condemning Donald Trump moving the US embassy in Israel to Jerusalem, and to support the boycott of certain goods, such as HP computers.**
- **There is a question around how strategic BDS motions are, given they are often statements of position, and don't have an actionable outcome. If you are considering proposing a motion, contact us at the earliest possible opportunity to map a campaign strategy.**

What difficulties may you face when trying to pass a motion?

Many students' unions are charities, registered with the Charity Commission. As such, they are required to comply with charity law.

Under charity law, charities must have a charitable purpose and be for the public benefit. The charitable purposes of most students' unions will be "the advancement of education". Charities also have "objects". In the case of students' unions these must include:

- a. promoting the general interests of its members as students; or
- b. representing them in matters relating to the government of the university or college.

Charities are only permitted to act in ways that further their charitable objects. It is the responsibility of the Trustees to make sure that the charity does not act in ways which contravenes charity law.

This presents potential limitations on motions which aim to get the Union to take action on pro-Palestinian issues. For instance, a resolution that the Union will boycott all Israeli and settlement goods may require the Union to take action which falls outside its charitable objects. If a motion conflicts with charity law, it is the duty of the Trustees to prevent it being given effect

However, motions which do not commit the Union to action but which are a statement of opinion should not be subject to the same restrictions as they do not require the use of Union resources.

Academic Boycott Motion

A common complaint is that academic boycotts, or other actions targeting Israeli institutions, are discriminatory and/or anti-Semitic.

In responding to complaints such as this, it is essential to distinguish actions that target Israeli institutions from actions which target Jewish people. That latter is clearly discrimination and is likely to be unlawful.

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Discrimination involves negative treatment which is related to a “protected characteristic”: being Jewish or being of Israeli origin are protected characteristics; being the employee of an Israeli university is not protected characteristics. Discrimination based on religion or national origin is not only illegal, but contrary to everything PSC and the BDS Movement stands for, which targets institutional complicity and systems of oppression, not an individual’s identity.

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Part 2: Challenges

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IHRA Working Definition of Anti-Semitism

Key Points:

- **The definition has been “adopted” by the UK government, but this does not give it any legal effect. Any public authority is free to adopt the definition as part of its anti-racism policies, for example King’s College London has done so, but is under no obligation to do so.**
- **If the definition is adopted, it must be interpreted in accordance with the University’s statutory obligations to protect freedom of speech. The definition cannot be used to proscribe forms of speech which would otherwise be lawful.**
- **Most universities have to date withstood pressure to adopt the IHRA definition in full, although they are under renewed pressure from the Government to do so.**

The most well-known definition of anti-Semitism comes from the International Holocaust Remembrance Association (IHRA).

The definition itself reads as follows:

“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”.

The IHRA then provides a list of examples which “may serve as illustrations” of anti-Semitic behaviour. The definition distinguishes anti-Semitism from criticism of Israel, stating that “criticism of Israel similar to that levelled against any other country cannot be regarded as anti-Semitic.”

This definition, or more specifically the illustrative examples attached to it which conflate criticism of Israel with antisemitism, is highly controversial . It has been heavily criticised by the [Institute of Race Relations](#), eminent legal expert, leading academic experts on anti-Semitism, global [Jewish social justice](#) organisations , and more than [80 UK based BAME groups](#).

Palestinians have long warned that the definition is being used to pressure institutions to prevent Palestinians bringing the facts about their oppression into the public domain. As “use by public bodies of the IHRA examples on antisemitism that either inhibits discussion relating to our dispossession by ethnic cleansing, when Israel was established, or attempts to silence public discussions on current or past practices of [Israeli] settler colonialism, apartheid, racism and discrimination, and the ongoing violent military occupation, directly contravenes core rights.”

Several of the definition’s illustrative examples of antisemitism are obvious and uncontroversial, such as “charging Jews with conspiring to harm humanity”. However, in some cases, the examples do not refer explicitly to the “hatred of Jews” cited in the definition. Seven of them concern criticism of Israel. Two are of particular concern:

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- “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 behaviour not expected or demanded of any other democratic nation”

The former has been used to suggest that describing the policies, laws, and actions of the state of Israel as racist, or defining Israel as a state practicing apartheid, is inherently anti-Semitic. The latter has been used to suggest that supporting BDS campaigns is inherently anti-Semitic because it is focusing upon Israel rather than other states violating international law or human rights. Neither of these arguments is supportable in law nor bear any rational scrutiny.

A legal opinion from eminent human rights lawyer Hugh Thomlinson QC, obtained by PSC, alongside Jews for Justice for Palestinians, Free Speech on Israel, and Independent Jewish Voices, stated clearly:

“Properly understood in its own terms the IHRA Definition does not mean that activities such as describing Israel as a state enacting policies of apartheid, as practicing settler colonialism or calling for policies of boycott divestment or sanctions against Israel can properly be characterized as anti-Semitic. A public authority which sought to apply the IHRA Definition to prohibit or sanction such activities would be acting unlawfully”. This opinion was sent by Universities UK to all Vice Chancellors.

However, in withstanding attempts to mischaracterise and suppress the BDS movement for Palestinian rights, it is important to remember that there is no known case of any university directly citing the IHRA definition to close down an event that is legitimately critical of Israel and is therefore not anti-Semitic in the proper sense of manifesting hatred, discrimination or prejudice, towards Jewish people as Jews. If this were to occur this would be likely to be legally challengeable.

Part of the strategy of pro Israel groups is to create a chilling effect so that Palestinians and their allies are deterred from bringing the facts about their oppression into the public domain. This must be resisted by being clear about the anti-racist foundations of our advocacy and the legal protections that exist to protect campaigning on campus.

Case Study

Universities have been under huge pressure to adopt the IHRA definition in full. However, many have withstood pressure. For example, the University of Warwick Vice Chancellor announced in January 2020 that the University would not support the IHRA. A letter of support from academics followed. PSC also asked supporters to write to the Vice-Chancellor, supporting his decision. The university has stood by the Vice-Chancellor’s decision, and has not adopted the IHRA.

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The Prevent Duty

Key Points:

- **The Prevent duty is highly controversial. It has been criticised by a large variety of bodies for restricting academic freedom, imbedding Islamophobia on campus, and fostering a culture of censorship.**
- **The University has a positive duty to protect freedom of speech, as well as a negative duty not to interfere disproportionately with the right to freedom of expression. [Section 31 of the Counter-Terrorism and Security Act 2015](#) requires that Universities have regard to these duties in discharging the Prevent Duty.**

Under [section 26\(1\) of the Counter-Terrorism and Security Act 2015](#), the University must “in the exercise of their functions, have due regard to the need to prevent people from being drawn into terrorism.” This duty must be balanced with its duties to protect freedom of speech and academic freedom.

This Prevent duty, making up part of the government’s CONTEST counter-terrorism strategy is highly controversial. It has been criticised by groups such as [Liberty](#) for embedding Islamophobia in public services, fostering a culture of censorship, and sweeping up thousands of people for innocuous conduct.

As PSC [warned in 2015](#), the duty contributes to an environment where students could be prevented from expressing legitimate support for Palestinian human rights on campus.

The University and College Union (UCU), representing many academic staff on campus “has a number of objections to the Prevent duty, including its threat to academic freedom and freedom of speech, the risk that the broad definition of terrorism could stifle campus activism, damage staff/student relations and discrimination against BME and Muslim staff and students.”

The duty does not currently apply to students’ unions directly, but the University is likely to have a policy with which they require the Students’ Union to comply.

If your events are threatened using Prevent, it is vital you get in touch with PSC at the earliest possible opportunity, so your rights to campaign for Palestinian human rights are safeguarded.

Freedom of Speech and Prevent

The University has a positive duty to protect freedom of speech, as well as a negative duty not to interfere disproportionately with the right to freedom of expression. [Section 31 of the Counter-Terrorism and Security Act 2015](#) requires that Universities have regard to these duties in discharging the Prevent Duty.

It is possible that the Prevent Duty and the duty to protect freedom of speech may come into conflict.

It is arguable that the duty to protect freedom of speech should take precedence, as the Prevent Duty is a duty to “have regard to” the need to prevent people from being drawn into terrorism, and the University is therefore entitled to take into account other considerations, such as its duty to protect freedom of speech.

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The case of [*R \(Butt\) v Secretary of State for the Home Department* \[2017\] EWHC 1930 \(Admin\)](#) at paragraphs 60 – 61 confirmed that the duty to protect freedom of speech and academic freedom may take precedence over the Prevent duty, for example when deciding whether to cancel a speaker event.

However this is a complex subject and you should contact PSC at the earliest possible opportunity.

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Escalation and Complaints

Key Points:

- **If you feel that the decisions of the students' union are discriminatory, in breach of charity law, or in breach of their own internal procedures, you can make a complaint.**
- **The University should have an internal complaints procedure which you should follow. If there is no applicable complaints procedure you can write directly to the Vice Chancellor.**

If you feel that the University or Students' Union has failed to meet its obligations or has acted in breach of its duties, you may wish to make a complaint.

Complaining about the student's union

If you feel that the decisions of the student's union are discriminatory, in breach of charity law, or in breach of their own internal procedures, you can make a complaint.

The complaints procedure

Student's unions normally have their own formal complaints procedure which should be available on their website. You should follow this procedure, but if you believe that the Union's conduct is actually unlawful then please also see the section below.

The procedure should include provision for review by an independent person nominated by the University – if this is not in place, you can complain to the University.

The University has various obligations in respect of the Union, and so it may be appropriate to raise your complaint against the University as well, as detailed below.

Unlawful conduct

As a charity, the Union will have a board of Trustees. If you believe the Union is acting unlawfully you can write to the Trustees. A complaint that a Union has failed to follow its own procedures is better raised through the formal complaints procedure, unless you think the breach is so severe that it warrants escalation.

An email address for the Trustees is often available on the Union's website, or you can request this from the Chief Executive of the Union.

Complaining about the University

You can also complain about the University if you think it is breaching its obligations under the law.

The University should have an internal complaints procedure which you should follow. If there is no applicable complaints procedure, you can write directly to the Vice Chancellor.

If you are dissatisfied with the way that your complaint has been handled, you can appeal to the Office of the Independent Adjudicator. There is a 12-month time limit from the conduct of which complaint is made.

If you wish to make a complaint, contact us at the earliest possible opportunity, so we can support you through the process.

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