



England and Wales

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Country Summary

The United Kingdom's freedom of expression framework is governed by the Human Rights Act 1998 (HRA), incorporating the European Convention on Human Rights (ECHR). The Brexit campaign led to hate speech concerns. The COVID-19 pandemic saw journalists blacklisted and prompted safety concerns for journalists due to online abuse. Between 2015 and 2022, three notable legislative developments included the Higher Education (Freedom of Speech) Act of 2023, aiming to protect free speech and academic freedom in universities and student unions, the Counterterrorism and Security Act of 2015, focusing on preventing extremism and radicalization while ensuring freedom of speech and academic freedom, and the Online Safety

Bill (since 2023 - the Online Safety Act) introducing responsibilities on online platforms and internet service providers to mitigate harmful content as well as an advisory committee on disinformation. Notable court cases include a Supreme Court decision on terrorism-related expression. Where 2023 legislative developments are mentioned, their passage towards becoming Acts of Parliament began in the 2015-22 period under review.

Introduction

The Freedom of Expression – Common Law and Statutory Protection

The right to freedom of expression has been codified into law by the HRA,²⁰³ which gives further effect to the articles of the European Convention on Human Rights (ECHR). Before ECHR rights were incorporated by the HRA, this right had been developed and protected by common law²⁰⁴ (with no equivalent statutory protection prior to 1998). The United Kingdom finds itself consistently on the higher levels of free speech scoring charts, not reaching, however, the points gained by its Scandinavian counterparts. The United Kingdom came 6th out of 33 countries on Justitia's 2021 Free Speech Index on the public's support for free speech with a score of 74.²⁰⁵ The country ranks 35 out of 161 countries in Article 19's 2022 Global Expression Report.²⁰⁶ In its 2022 Freedom on the Net report, Freedom House ranks the United Kingdom 6th out of 60 countries with a score of 79 on internet freedom.²⁰⁷ The 2022 World Press Freedom Index of Reporters without Borders places it at number 24 out of 180 countries.²⁰⁸

Exiting the European Union

On 1st February 2020 (00:00 Central European Time), the United Kingdom left the European Union. This followed a long Euroskeptic campaign and a referendum. The campaign and its result contributed to a heightening in a phenomenon discussed in this report, specifically hate speech. As noted by several stakeholders including enforcement agencies but also civil society organizations, hate speech was intertwined with the Brexit campaign.²⁰⁹ Further, due to Brexit, Regulations such as the Digital Services Act which will bring a major overhaul to platform liability in the EU no longer affect the country directly. However, as discussed in the section on

²⁰³ <https://www.legislation.gov.uk/ukpga/1998/42/contents>

²⁰⁴ For example, Lord Reid in *Brutus v Cozens*, where the Court did not punish the use of offensive language during an anti-apartheid demonstration at Wimbledon to, amongst others, protect the freedom of expression and the freedom of assembly. *Brutus v Cozens* UKHL 6, [1973] A.C. 853

²⁰⁵ <https://futurefreespeech.com/interactive-map/>

²⁰⁶ <https://www.article19.org/wp-content/uploads/2022/06/A19-GxR-Report-22.pdf>

²⁰⁷ <https://freedomhouse.org/sites/default/files/2022-10/FOTN2022Digital.pdf>

²⁰⁸ <https://rsf.org/en/index?year=2022>

²⁰⁹ <http://www.enareu.org/Alarming-post-Brexit-racist-incidents-require-action>

legislation, the country is steering towards enhancing platform liability through the Online Safety Act.

The Covid-19 Pandemic

During the pandemic period, journalists faced blacklisting from the government, an issue which was criticized by the Council of Europe. For example, in May 2020, the Prime Minister's Office banned a journalist of OpenDemocracy from taking part in the daily press conferences after the outlet issued a report on COVID-19 testing failures.²¹⁰ In relation to the safety of journalists, the 2019 National Action Plan on the safety of journalists notes that one of the most pressing safety challenges confronting journalists is online abuse. This type of abuse encompasses a broad spectrum, ranging from offensive messages to death and rape threats. Women and BAME (Black, Asian and Ethnic Minorities) journalists are often the primary targets of such abuse.²¹¹

Academic Freedom

Academic Freedom is a theme that has been an important issue during the reporting period, with the most significant being the passing of a 2023 law on academic freedom which will be discussed below. Note that although Royal Assent was only given in 2023 (after our reporting period closes), the parliamentary discussions took two years. Given the significance of this piece of legislation to our current report we have therefore decided to include it in the narrative but not in the infographics. Recent events include a statement made in 2020 by Women and Equalities Minister that teaching "elements of political race theory as fact" or "promot[ing] partisan political views...without offering a balance treatment of opposing views"²¹² is illegal. In the same time period, the Department of Education issued guidance which referred to anti-capitalism as "an extreme political stance."²¹³ In May 2023,²¹⁴ hundreds of people gathered to protest against a talk by academic Kathleen Stock at Oxford University (at the Oxford Union). In 2021, Professor Stock left her employment at the University of Sussex after being at the center of a dispute over her position on gender identity and trans rights.²¹⁵ The British Prime Minister even commented on the matter saying that her talk should continue

²¹⁰ <https://www.opendemocracy.net/en/downing-street-has-banned-me-asking-questions-why/>

²¹¹ <https://www.gov.uk/government/publications/national-action-plan-for-the-safety-of-journalists/national-action-plan-for-the-safety-of-journalists#objective>

²¹² <https://www.theguardian.com/world/2020/oct/20/teaching-white-privilege-is-a-fact-breaks-the-law-minister-says>

²¹³ <https://www.theguardian.com/education/2020/sep/27/uk-schools-told-not-to-use-anti-capitalist-material-in-teaching>

²¹⁴ <https://www.bbc.com/news/education-65714821>

²¹⁵ <https://www.theguardian.com/education/2021/nov/03/kathleen-stock-says-she-quit-university-post-over-medieval-ostracism>

and that “agree or disagree with her, Professor Stock is an important figure in this argument. Students should be allowed to hear and debate her views.”²¹⁶

I. Legislation

Before looking at national legislation, it is important to note that the UK has not ratified the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) which allows individuals to take their cases to the monitoring body of the Covenant, namely the Human Rights Committee. As such, individuals cannot make complaints on the grounds of Article 20(2) on the prohibition of advocacy for hatred. On a European level (EU and Council of Europe), the country did not sign or ratify the Additional Protocol to the Convention on Cybercrime concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed through Computer Systems. When member of the EU, the UK did not pass or amend legislation for purposes of adopting the Framework Decision on Racism and Xenophobia on the grounds that it already had provisions which meet the document’s objectives. In fact, in comparison to other countries, this country has been effective in achieving the purpose of this Framework Decision. For example, it has a high criminal penalty for stirring up hate (its form of hate speech) when compared to EU countries,²¹⁷ and had provided the EU with case-law and detailed statistics which demonstrate that racist and xenophobic motivation is taken into consideration.

The Higher Education (Freedom of Speech) Act²¹⁸

After two years of debate, the Higher Education (Freedom of Speech) Act was adopted in May 2023. The Bill created much debate and controversy in both Houses of Parliament but also within the wider academic community. The Act seeks to protect freedom of speech, making provisions related to freedom of speech and academic freedom in universities and students’ unions. Whilst the existing Education (No.2) Act of 1986 requires that Higher Education Institutions “take such steps as are reasonable to uphold free speech’ for employees, students and visiting speakers” the 2023 Act also includes other frameworks. For example, student unions are now part of the equation and not only universities. Under the 2023 Act, Student Unions are required to take “reasonably practicable” steps to secure freedom of speech within the law for its members/students/staff/staff of constituent institutions and visiting speakers. Universities and student unions which fail to comply with the law may receive sanctions,

²¹⁶ <https://www.bbc.com/news/education-65714821>

²¹⁷ The maximum penalty in relation to hate speech ranges from 1 year (BE) to 7 years (UK, in the case of a conviction on indictment): Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law, COM/2014/027 final, para. 3.1.3

²¹⁸ <https://www.legislation.gov.uk/ukpga/2023/16/enacted>

including financial ones.²¹⁹ In June, Professor Arif Ahmed was appointed as the first director for freedom of speech and academic freedom at the Office for Students, claiming he will ensure that free speech within the law will be upheld “for all views and approaches – post-colonial theory as much as gender-critical feminism.”²²⁰ Whilst the Department for Education says that the Act will help protect the reputation of universities as centers of academic freedom, there is concern that the Law “would potentially allow the government to define acceptable speech at universities.”²²¹ As there is not yet any evidence of this Act’s application, it is unclear whether the potentially restrictive aspect of it will materialize.

Counter-Terrorism and Security Act of 2015²²²

The Counter-Terrorism and Security Act of 2015 imposes, amongst others, a duty on a range of organizations to prevent people from being drawn into terrorism by monitoring and reporting signs of extremism and radicalization. The Act builds on the Prevent strategy published by the government in 2011²²³ as part of its overall counter-terrorism strategy CONTEST. The aim of Prevent is to reduce the threat to the UK from terrorism by “stopping people becoming terrorists or supporting terrorism.”²²⁴ Specifically, it requires “specified authorities” such as local government, school, child carers trusts/boards of the National Health System and universities to “prevent people from being drawn into terrorism.” In relation to universities, the Act provides that when carrying out its duties imposed under the law “it must have particular regard to the duty to ensure freedom of speech” and have “particular regard to the importance of academic freedom.” The Prevent strategy which forms the basis of the above provisions has been staunchly criticized by civil society. For example, the NGO Liberty notes that due to this strategy “the government is forcing teachers, doctors, social workers and others to monitor and report people they consider vulnerable to extremism, embedding discrimination in public services. Thousands have been swept up by it, including entirely innocent children. It must end.”²²⁵ The government launched an independent review of Prevent, mentioned in the section on non-legislative developments further down.

Online Safety Bill (Online Safety Act as of 2023)²²⁶

²¹⁹ For critique, see <https://blogs.lse.ac.uk/impactofsocialsciences/2021/09/21/in-legislating-for-freedom-of-speech-on-university-campuses-whose-opinions-will-the-government-protect/>

²²⁰ <https://www.thetimes.co.uk/article/arif-ahmed-seeking-the-truth-is-something-worth-fighting-for-9tw639blc>

²²¹ <https://freedomhouse.org/country/united-kingdom/freedom-world/2022>

²²² <https://www.legislation.gov.uk/ukpga/2015/6/contents/enacted>

²²³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf

²²⁴ https://www.legislation.gov.uk/ukdsi/2015/9780111133309/pdfs/ukdsiod_9780111133309_en.pdf

²²⁵ <https://www.libertyhumanrights.org.uk/fundamental/prevent/>

²²⁶ <https://bills.parliament.uk/bills/3137>

The Online Safety Bill (Act, as of October 2023) provides for a new regulatory framework which has the purpose of “making the use of internet services regulated by this Act safer for individuals in the United Kingdom.” To achieve this purpose, the proposed Act imposes duties on the providers such as social media platforms to “identify, mitigate and manage the risk of harm from illegal content and activities and content and activity that is harmful to children.” Amongst other duties, providers must “swiftly take down” any illegal content or prevent it from appearing and provide public risk assessments. The Communications Regulator (Ofcom will have the power to fine companies which do not follow the new rules with up to 18 million or 10% of their global turnover (whichever is greater). Criminal proceedings can be instigated against senior staff who do not follow information requests from Ofcom.

In terms of hateful content which is one strand of the illegal content referred to in the Online Safety Act, legislation has existed but not legislation particular to the online world. Specifically, the 2006 Racial and Religious Hatred Act makes it illegal to incite religious or racial hatred or violence. Engaging in threatening behavior, using intimidating language, or disseminating alarming material with the intention of inciting religious hatred is deemed an offense under this law. The Online Safety Act is a significant development from this in terms of imposing an obligation on private companies (IT companies) to remove not only content which is illegal (such as that which may fall under the Racial and Religious Hatred Act) but also that which is harmful. Initially the concept of harmful content extended to adults as well but now, after public pressure, this has been reserved only in terms of content viewed by children.

In terms of disinformation, the Bill provides for the appointment (by Ofcom) of an advisory committee on disinformation and misinformation. The duty of the Committee is to provide advice to Ofcom about how providers of regulated services should deal with disinformation and misinformation on such services, about Ofcom’s powers to request information about a matter relating to disinformation or misinformation and about Ofcom’s functions in relation to countering disinformation and misinformation. The committee is to publish a report 18 months after its composition.

II. Non-Legislative Developments

Prevent – Developments

As noted in the section on legislation and particularly in the description of the Counter-Terrorism and Security Act of 2015, the aim of Prevent is to reduce the threat to the UK from terrorism by “stopping people becoming terrorists or supporting terrorism.”²²⁷ In 2019, the government agreed to carry out an independent review of the Prevent Strategy. William Shawcross was appointed as the independent reviewer in 2021. Shawcross’s appointment was

²²⁷ https://www.legislation.gov.uk/ukdsi/2015/9780111133309/pdfs/ukdsiod_9780111133309_en.pdf

controversial as he had been accused of fostering “institutional bias against Muslims”²²⁸ in his previous role as the head of the UK’s Charity Commission. His recommendations (issued in 2023) do not provide for any substantial changes to the current concerns posed by civil society. Instead, recommendation 33 states that there must be “specific measures to counter the anti-Prevent campaign at universities.”²²⁹ Interestingly, recommendation 6 does refer to freedom of expression but in the framework of blasphemy. Specifically, the report notes that the government must “improve understanding of blasphemy as part of the wider Islamist threat. The Homeland Security Group should conduct research into understanding and countering Islamist violence, incitement and intimidation linked to blasphemy. It should feed a strong pro-free speech narrative into counter-narrative and community project work.”

National Action Plan (Safety of Journalists) ²³⁰

A National Action Plan including measures intended to enhance the safety of journalists was published in March 2021. The National Action Plan aims to ensure that “journalists operating in the UK are as safe as possible, reducing the number of attacks on and threats issued to journalists and ensuring those that are responsible for such are brought to justice.”²³¹ One of the ways which the Plan seeks to achieve this is by helping online platforms tackle the wider issue of abuse online.

III. Enforcement

A notable UK Supreme Court freedom of expression decision in the period under review is *Pwr v Director of Public Prosecutions* [2022].²³² The case concerned Section 13(1) of the Terrorism Act 2000, which creates an offense for a person in a public place to carry or display an article in a way which creates reasonable suspicion that he is a member or supporter of a proscribed organization. The appellants carried a flag of the Kurdistan Workers Party, a proscribed organization under the 2000 Act. The Supreme Court ruled that the protestors’ conviction under the Act was compatible with the freedom of expression as the interference was proportionate due to national security concerns. The Supreme Court rejected the appellants’ submission that the European Court of Human Rights (ECtHR) considers that expressive acts can only be criminalized where the expression includes an incitement to violence.

²²⁸ <https://www.theguardian.com/uk-news/2021/jan/26/william-shawcross-selection-for-prevent-role-strongly-criticised>

²²⁹ <https://www.gov.uk/government/publications/independent-review-of-prevents-report-and-government-response/independent-review-of-prevent-accessible#recommendations>

²³⁰ <https://www.gov.uk/government/publications/national-action-plan-for-the-safety-of-journalists/national-action-plan-for-the-safety-of-journalists>

²³¹ <https://www.gov.uk/government/publications/national-action-plan-for-the-safety-of-journalists/national-action-plan-for-the-safety-of-journalists#:~:text=that%20face%20us.-,Objective,such%20are%20brought%20to%20justice.>

²³² <https://www.bailii.org/uk/cases/UKSC/2022/2.html>

SLAPP (Strategic Lawsuits against Public Participation) issues also received judicial treatment in the jurisdiction. For example, the High Court dismissed a libel claim²³³ brought by a post-Soviet mining giant against a journalist's book about dirty money and corruption. English libel laws and associated legal costs have increasingly been seen as favorable to rich people and corporations seeking to silence public interest journalism²³⁴. This decision was therefore closely observed in legal circles.

The seemingly contradictory and unintended consequences of ballooning European hate speech laws can be seen in the case of the Bristolian Christian preachers. Two street preachers who read from the King James Bible, told Muslims their God "did not exist", and called LGBT people filthy, depraved and perverted²³⁵ were fined £300 each. They were convicted of a religiously-aggravated public order offense. On appeal, the Bristol Crown Court judge said it was not proved the offense was religiously aggravated²³⁶ and overruled the conviction, saying he was "conscious of the right of freedom of speech and freedom of expression"²³⁷. The preachers' civil suit against the police, including an argument on ECHR Article 10 grounds, however, did not succeed²³⁸.

Conclusion

2015-22 was a politically polarized period for England and Wales, bookended by the upheaval of the Brexit referendum result and a turbulent 2022. The UK had five prime ministers in six years during this period. Political polarization, culture wars and populist administrations are arguably reflected in legislation such as the Higher Education (Freedom of Speech) Act. The ongoing terrorist threat, with deadly consequences, as in the 2017 Islamist Manchester Arena bombing and Far Right murder of Member of Parliament Jo Cox, is echoed in the legislative and non-legislative developments cited above. Broader regional and global trends towards increasing duties on online platforms can be seen in the passage of the controversial Online Safety Act. The strength and contribution of civil society in the jurisdiction, in part, accounts for the country's (UK) relatively strong standing in free speech indexes. It remains to be seen whether civil liberties organizations' objections to recent

²³³ <https://www.judiciary.uk/wp-content/uploads/2022/03/ENRC-v-Burgis-Another-judgment-020322.pdf>

²³⁴ <https://fpc.org.uk/wp-content/uploads/2022/04/London-Calling-Publication-February-2023.pdf>; <https://www.theguardian.com/media/2023/nov/03/designed-to-distress-and-deter-the-impact-of-slapp-lawsuits-on-journalists-and-free-speech>

²³⁵ <https://www.bristolpost.co.uk/news/bristol-news/christian-street-preachers-who-read-4603>

²³⁶ <https://www.bbc.co.uk/news/uk-england-bristol-40448925>

²³⁷ <https://www.bbc.co.uk/news/uk-england-bristol-40448925>

²³⁸ *Overd & Ors v The Chief Constable of Avon and Somerset Constabulary* [2021] EWHC 3100 (QB) <https://www.bailii.org/ew/cases/EWHC/QB/2021/3100.html>

government curbs²³⁹ on protestors' rights (drafted with groups like Just Stop Oil²⁴⁰ in mind) will carry much political or legal²⁴¹ weight. Alike some other Commonwealth countries, the jurisdiction's plaintiff friendly defamation laws have increasingly been seen as a cause for concern, especially in the context of heightened scrutiny of oligarchic wealth in "Londongrad," following Russia's full-scale invasion of Ukraine.²⁴² Encouragingly, in 2023 UK judges have been given new powers²⁴³ to dismiss lawsuits attempting to silence those speaking out about economic crime.

Note: The UK has three legal systems. These are English Law, which is the generic term used for the law governing England and Wales, Northern Irish Law, which applies in Northern Ireland, and Scots Law, applied in Scotland. The first two emanate from principles of common law and the latter is a *mélange* of civil and common law. In relation to the judiciary, the Supreme Court of the UK is the ultimate Court for England, Wales and Northern Ireland on all civil and criminal matters and for Scotland on civil matters only.²⁴⁴ Furthermore, in relation to criminal law, it is the Crown Prosecution Service²⁴⁵ (CPS), which is responsible for the prosecution of criminal cases investigated by the police in England and Wales. Thus, the competent authority which decides on issues such as whether particular conduct is racially hateful, has jurisdiction over England and Wales only. For this purpose and given that *quantification and trend assessment on a cross-country level is central for the overall report*, only England and Wales, as one entity and one jurisdiction, will be assessed.

²³⁹ <https://verfassungsblog.de/civil-disobedience-in-the-uk/>;

<https://www.youtube.com/watch?v=VqDr1jXPXVo>

²⁴⁰ <https://www.independent.co.uk/topic/just-stop-oil>

²⁴¹ <https://www.bbc.co.uk/news/uk-66786938>

²⁴² <https://www.investigate-europe.eu/posts/londongrad-a-citys-addiction-to-russian-oligarchs-and-easy-money>

²⁴³ <https://bills.parliament.uk/bills/3339>

²⁴⁴ Brice Dickson, *'Human Rights and the United Kingdom Supreme Court'* (Oxford Scholarship Online 2013) Introduction

²⁴⁵ <http://www.cps.gov.uk/index.html>