

SPSC response to Independent Review of Hate Crime Legislation in Scotland

Contents

SPSC response to Independent Review of Hate Crime Legislation in Scotland.....	1
Introduction.....	1
1: The 'IHRA working definition on antisemitism': origin and wording	1
Defining antisemitism.....	1
The origins of the IHRA working definition	2
The 'new antisemitism'	2
IHRA 'working definition': wording lacks clarity, is confusing and carries dangers.....	4
2: The impact that adoption of this 'definition' can have in the fight against antisemitism.....	5
3: Freedom of Expression and Freedom of Assembly and Association	8
4: Conclusions	10

Introduction

This document, a response to the 'Independent Review of Hate Crime Legislation in Scotland', is submitted by Scottish Palestine Solidarity Campaign ('SPSC').

SPSC was established in September 2000 at the start of the second Palestinian uprising (intifada) against Israeli settler colonialism, occupation and apartheid. SPSC has members, branches, and affiliates across Scotland.

We are a voluntary unincorporated association and a membership organisation. Our work is political and we campaign to build effective solidarity in Scotland with the Palestinian people.

This submission primarily focuses on the section 'Perceived associations of certain groups'¹ and the reference to the so-called International Holocaust Remembrance Alliance ('IHRA') 'working definition of antisemitism'.

Our concerns centre around:

1. the origin and wording of this 'definition'
2. the impact that adoption of this 'definition' can have in the fight against antisemitism
3. implications for freedom of expression and freedom of assembly and association

1: The 'IHRA working definition on antisemitism': origin and wording

Defining antisemitism

In his 2015 report published by the All Party Parliamentary Group Against Antisemitism, Professor David Feldman, Director of the Pears Institute for the Study of Antisemitism, recommends Oxford

¹ pp26-27, https://consult.gov.scot/hate-crime/independent-review-of-hate-crime-legislation/user_uploads/final-paper-1.pdf

University philosopher Dr Brian Klug's definition of antisemitism as "a form of hostility towards Jews as Jews, in which Jews are perceived as something other than what they are".²

Stephen Sedley, former appeal court judge, also accepts Klug's definition, saying in addition that "Where it manifests itself in discriminatory acts or inflammatory speech it is generally illegal, lying beyond the bounds of freedom of speech and of action"³. SPSC supports this view and urge that Dr Klug's definition be adopted, if guidance is needed by the Scottish Government, Police Scotland, the Crown Office and Procurator Fiscal Service ('COPFS'), local authorities and other civil society organisations.

The origins of the IHRA working definition

The 'IHRA working definition of antisemitism' first came to life in 2004 as the 'EUMC working definition'⁴. The European Monitoring Centre on Racism and Xenophobia ('EUMC') was the predecessor to the European Union Agency for Fundamental Rights ('FRA')⁵.

In May 2016, the IHRA Plenary adopted the "non-legally binding working definition of antisemitism"⁶ which is almost identical to the wording of the discarded 'EUMC working definition'.

Interestingly, the authors of the EUMC and IHRA 'definitions' did not intend the documents to be legally binding, perhaps an acknowledgement of the lack of clarity in the text. Rather:

"The purpose of this document is to provide a practical guide for identifying incidents, collecting data, and supporting the implementation and enforcement of legislation dealing with antisemitism."

This is even more worrying, especially given that the Scottish Government and other bodies have adopted or are using these 'definitions' that are intended to affect policy.

The 'new antisemitism'

During the period of the Palestinian second Intifada (or 'uprising') against Israel's occupation and violations of Palestinian rights, Israeli and pro-Israel lobby groups and think tanks discussed how to counter the growing international awareness and sympathy for the Palestinian struggle for freedom. An indicator of public opinion at the time was the EU poll in 2003 that placed Israel as the top threat to world peace. In response to the poll, Alon Liel, former head of Israel's foreign ministry, said:

Do they hate us or are they truly frightened? Our natural predilection is to pull out of the drawer our usual weapon of self-defence - the weapon of anti-semitism - but this is probably the wrong place to do so.⁷

² Feldman, D., 2015, 'Sub Report Commissioned to Assist the Parliamentary Committee Inquiry into Antisemitism', published by the All Party Parliamentary Group Against Antisemitism, p3, <http://www.pearsinstitute.bbk.ac.uk/assets/DAVID-FELDMAN-SUBREPORT.pdf>

³ Sedley, S., 2017, 'Defining Anti-Semitism', London Review of Books, Vol. 39 No. 9, 4 May 2017, p8, <https://www.lrb.co.uk/v39/n09/stephen-sedley/defining-anti-semitism>

⁴ <https://www.bod.org.uk/wp-content/uploads/2016/10/AS-WorkingDefinition-EUMC.pdf>

⁵ <http://fra.europa.eu/en/about-fra/who-we-are>

⁶ https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf

⁷ McGreal, C., 2003, EU poll sees Israel as peace threat, The Guardian, <https://www.theguardian.com/world/2003/nov/03/eu.israel>

Around this time, the concept of the 'new antisemitism' began to be propagated, particularly by pro-Israel authors, academics and lobby groups. In 2004 Dr Klug wrote about where the 'new' in the 'new antisemitism' comes from:

The answer, in a word, is anti-Zionism. The "vilification of Israel," Iganski and Kosmin argue, is "the core characteristic" of Judeophobia (their term for "new anti-Semitism").

Dr Klug continues:

Zuckerman argues, "Just as historic anti-Semitism has denied individual Jews the right to live as equal members of society, anti-Zionism would deny the collective expression of the Jewish people, the State of Israel, the right to live as an equal member of the family of nations." This is a variation on an argument that is a staple in the "new anti-Semitism" literature. It goes like this: "Given the principle of self-determination for nations, the Jewish people have a right to their own state, like everyone else. To deny that right, especially if this means singling Jews out, is anti-Semitic."

This argument assumes that Jews, or the Jewish people, constitute a nation in the relevant sense, the sense in which the principle of self-determination applies. But this question is no less a burning issue today—not least for Jews themselves—than it was in 1917...⁸

In December 2016, the same month that the British Government adopted the IHRA 'working definition', former Justice Secretary Michael Gove declared his view that "anti-Zionism is anti-Semitism"⁹ in an address at a Henry Jackson Society event. Gove reiterated his position at a Conservative Friends of Israel event in October 2017¹⁰. It should be noted that Gordon Brown confirmed the UK as the first government to endorse the EUMC 'working definition' by signing the 'London Declaration' in 2009.¹¹ Even though this concept of the 'new antisemitism' was given a fresh impetus at the start of the Second Intifada, it dates back decades. Abba Eban, Israel's Foreign Minister in 1973 and an early practitioner of Israel's *hasbara* (propaganda), wrote:

One of the chief tasks of any dialogue with the Gentile world is to prove that the distinction between anti-Semitism and anti-Zionism is not a distinction at all. Anti-Zionism is merely the new anti-Semitism.¹²

The 'new antisemitism' concept found a vehicle in 'EUMC working definition', which was drafted by pro-Israel lobby groups and placed on the EUMC website for further consultation and debate. It was never finalised, in 2010 FRA said that feedback on the document "drew attention to a number of issues which impacted on its effectiveness as a data collection support tool" and finally withdrew it from the FRA website¹³. In 2013, Israeli journalist Mira Bar Hillel was just one of the many Jewish and non-Jewish voices that welcomed the scrapping of the 'working definition' by the FRA¹⁴.

⁸ <https://www.thenation.com/article/myth-new-anti-semitism/>

⁹ <https://cfoi.co.uk/michael-gove-underlines-anti-zionism-is-anti-semitism-at-hjs-balfour-declaration-event/>

¹⁰ <http://jewishnews.timesofisrael.com/michael-gove-at-tory-conference-anti-zionism-is-anti-semitism/>

¹¹ <http://www.osce.org/odihr/39223?download=true>

¹² *Congress Bi-weekly*, American Jewish Congress, Vol. 40, Issues 2-14, 1973, p. xxv

¹³ EUMC did not produce or adopt a 'Working definition of antisemitism', <http://freespeechonisrael.org.uk/eumc-not-produce-adopt-working-definition-antisemitism/>

¹⁴ <http://www.independent.co.uk/voices/comment/the-eu-has-retired-its-working-definition-of-anti-semitism-its-about-time-8986565.html>

IHRA 'working definition': wording lacks clarity, is confusing and carries dangers

Adoption by a different body has not made the 'working definition' any more effective or acceptable. Professor David Feldman was clear that the EUMC 'working definition':

*"... points at issue included what the status of a 'working definition' actually was, whether the working definition was an effective and coherent definition at all, and, finally, controversy dogged the application of the working definition to debate on the State of Israel and its policies."*¹⁵

These same points also apply to the 'working definition' now promoted in the name of the IHRA.

Professor Feldman has described the IHRA 'working definition' passage "*Antisemitism is a certain perception of Jews, which may be expressed as hatred towards Jews*" as "*bewilderingly imprecise*".

Stephen Sedley also highlights the indefiniteness of the sentence, which "*...invites a string of questions. Is anti-Semitism solely a matter of perception? What about discriminatory practices and policies? What about perceptions of Jews that are expressed otherwise than as hatred?*"¹⁶

A legal opinion by Hugh Tomlinson QC of Matrix Chambers, 'In the Matter of the Adoption and Potential Application of the IHRA Working Definition of Anti-Semitism', was published in March 2017¹⁷. Hugh Tomlinson QC states that:

"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."

In addition:

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". This does not work as a definition. In my view, the very least that is needed to clarify the IHRA Definition is to reformulate the first sentence so that it reads as follows:

"Antisemitism is a particular attitude towards Jews, which is expressed as hatred toward Jews".

Even in these amended terms the definition is unsatisfactory. 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.

¹⁵ Feldman, D., 2015, 'Sub Report Commissioned to Assist the Parliamentary Committee Inquiry into Antisemitism', published by the All Party Parliamentary Group Against Antisemitism, p4, <http://www.pearsinstitute.bbk.ac.uk/assets/DAVID-FELDMAN-SUBREPORT.pdf>

¹⁶ Sedley, S., 2017, 'Defining Anti-Semitism', London Review of Books, Vol. 39 No. 9, 4 May 2017, p8, <https://www.lrb.co.uk/v39/n09/stephen-sedley/defining-anti-semitism>

¹⁷ <http://freespeechonisrael.org.uk/wp-content/uploads/2017/03/TomlinsonGuidanceIHRA.pdf>

Importantly, Hugh Tomlinson QC argues that:

These problems with the wording of the IHRA Definition mean that it is very difficult to use as “tool”. It is obviously most unsatisfactory for the Government to “adopt” a definition which lacks clarity and comprehensiveness in this way. It means that there is likely to be lack of consistency in its application and a potential chilling effect on public bodies which, in the absence of definitional clarity, may seek to sanction or prohibit any conduct which has been labelled by third parties as antisemitic without applying any clear criterion of assessment.

There is also confusion as to what part of the text is supposed to be the ‘definition’. The EUMC version included the listed examples of manifestations of antisemitism and while the IHRA press release placed the initial passages within a text box, the ‘definition’ is clearly intended to be used with reference to the examples provided.

Some of the examples show clearly “a form of hostility towards Jews as Jews, in which Jews are perceived as something other than what they are”¹⁸. For example: “holding Jews collectively responsible for actions of the state of Israel” and “justifying the killing or harming of Jews in the name of a radical ideology”¹⁹.

However, according to Hugh Tomlinson QC, “in some cases, the examples do not explicitly refer to the “hatred” requirement and therefore need further elaboration”.

“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”. This must, again, be read in the light of the definition. 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.”²⁰

Professor Feldman also warns of the “dangers” carried by the text. Out of the eleven examples listed,

“Seven deal with criticism of Israel. Some of the points 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.”

2: The impact that adoption of this ‘definition’ can have in the fight against antisemitism

The theme that runs through the ‘IHRA working definition’ is the concept of the state of Israel as a “Jewish collectivity” and therefore an example of a manifestation of antisemitism is “Denying the

¹⁸ Feldman, D., 2015, 'Sub Report Commissioned to Assist the Parliamentary Committee Inquiry into Antisemitism', published by the All Party Parliamentary Group Against Antisemitism, p3, <http://www.pearsinstitute.bbk.ac.uk/assets/DAVID-FELDMAN-SUBREPORT.pdf>

¹⁹ https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf

²⁰ <http://freespeechonisrael.org.uk/wp-content/uploads/2017/03/TomlinsonGuidanceIHRA.pdf>

Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour”.

For Stephen Sedley, this example “*bristles with contentious assumptions about the racial identity of Jews, assumptions contested by many diaspora Jews but on which both Zionism and anti-Semitism fasten, and about Israel as the embodiment of a collective right of Jews to self-determination*”²¹.

Dr Klug elaborates on this idea of Israel as a ‘Jewish collectivity’:

*The first thing to say about these objections is that ‘anti-Zionism’ refers to several different positions concerning the existence of Israel as a Jewish state. These include the view that the state of Israel has no right to exist; that it should not have been created in the first place; that it ought not to continue to exist at all; or that it should not survive as a specifically Jewish polity. The objection lumps these positions together whereas each should be taken separately. Some people today, precisely because of the difference that history has made, reject the anti-Zionist stance that Israel should cease to exist, but still maintain the anti-Zionist view that it ought never to have been created. They might also harbour the anti-Zionist (or post-Zionist) hope that Israel one day will repeal the Law of Return and evolve into a society that ceases to define itself in ethnic terms or to see itself, in Harkin’s phrase, as ‘the state of the Jews’... there is nothing inherently or inevitably antisemitic about any of these anti-Zionist positions. To some extent, Zionism raises issues that are unique; to that extent it is legitimate to ‘single out’ the Jewish state.*²²

To accept the concept of the state of Israel as a “Jewish collectivity” is to accept the Zionist assertion that Israel is the state of the Jewish people everywhere, not a state of its citizens. To do so is to accept assertions by successive Israeli Prime Ministers that when Israel oppresses the Palestinians, demolishes yet another Palestinian home or launches an air strike on the Gazan civilian population, that it does so on behalf of all Jews²³. When addressing the US Congress in 2011, Israel’s Prime Minister Benjamin Netanyahu said that he spoke “on behalf of the Jewish people and the Jewish state”²⁴.

SPSC has always been clear that a key area of our work is to educate members of the public on the history of the Zionist movement and its colonisation of historic Palestine. We reject this conflation of Zionism/Israel and Jewish identity. We understand that our solidarity work with the Palestinian people takes place within a context where we reject racism within our society and communities. The same principles that inform our opposition to far right and fascist groups in Scotland inform our solidarity work with Palestinians.

Without the ability to discuss, debate, criticise and even oppose the assertions and ideas of the Zionist movement there can be no effective education that can ensure anger toward the actions of the state of Israel is not directed toward individuals or Jewish communities in Scotland.

²¹ Sedley, S., 2017, ‘Defining Anti-Semitism’, London Review of Books, Vol. 39 No. 9, 4 May 2017, p8,

<https://www.lrb.co.uk/v39/n09/stephen-sedley/defining-anti-semitism>

²² http://freespeechonisrael.org.uk/wp-content/uploads/2016/05/Klug_brian_collective-Jew.pdf

²³ <http://www.pmo.gov.il/English/MediaCenter/Speeches/Pages/speechujc070806.aspx>

²⁴ <http://www.algemeiner.com/2011/05/24/full-text-of-netanyahu-speech-to-congress/>

Whatever the claim of Israel lobby groups or the pro-Israel leadership of organisations that purport to represent their communities, there is no consensus amongst Jews and within Jewish communities on issues related to Israel/Palestine.

American Jewish playwright Dan Fishback had a public reading of his latest play cancelled following right-wing pressure. His play describes “the long years of alienation between two branches of a family, against the background of their disagreement over the Israeli-Palestinian conflict”. Fishback says: “I’ve been part of the Jewish cultural world all my adult life and I’ve seen how anti-Zionist Jewish voices are being blocked from different institutions:

As an anti-Zionist, I do not just condemn the occupation of the West Bank and Gaza. Rather, I think there is something fundamentally wrong with any state that privileges one ethno-religious group over another. In Israel, the national interests of the Jewish people are prioritized above all others. That is the country’s founding principle, and it manifests every time the state bulldozes a Palestinian home in Jerusalem to make room for a Jewish neighborhood, and every time a Bedouin village in the Negev is destroyed so the Jewish National Fund can plant trees. These terrors happen within Israel itself, and they are not simply a matter of bad policy. Rather, this violence is fundamental to the character of a supremacist state that distinguishes between ‘Jewish’ and ‘Arab’ nationalities, and gives different rights to each.²⁵

Former director of the Institute for Jewish Policy Research, Antony Lerman, wrote in 2008:

The redefinition of anti-Semitism has led to a further radical change in confronting the phenomenon. Many Jews are at the forefront of the growing number of anti-Israel or anti-Zionist groups. So, perceived manifestations of the “new anti-Semitism” increasingly result in Jews attacking other Jews for their alleged anti-Semitic anti-Zionism.²⁶

While noting the surge in interest in left-wing groups, such as Jews for Justice for the Palestinians, Professor Feldman drew attention to two “disturbing aspects” of Jewish responses during Operation Protective Edge:

First, the concern expressed by many spokespeople for the Jewish community often lacked perspective and, in this way, contributed to a climate of insecurity. We should recognise that the antisemitic portion of the opposition to Operation Protective Edge amounted to only a small part of a large body of opinion. Moreover, there was a want of perspective in assessing the current situation in comparison to the past. For example, the assertion from a leading communal figure that we are living through the most insecure time since the Jews’ restoration in the seventeenth century has no basis in fact and encourages Jews to imagine their situation as far less secure than it really is.

Second, there are signs of a change in the way British Jews consider the relationship between antisemitism and controversy over Israel. In the past, it was customary for British Jewish leaders as well as non-Jews to draw a distinction between antisemitism and the debate on Israel. They argued that criticism of the Israeli government should not be regarded as antisemitic by definition. In the summer of 2014 the extent to which many British Jews conflated opposition to antisemitism with support for Israel, therefore, was a departure. Most visibly this could be witnessed at rallies against antisemitism when many

²⁵ <https://www.haaretz.com/us-news/.premium-1.818808>

²⁶ <https://www.haaretz.com/jews-attacking-jews-1.253684>

people arrived bearing the Israeli flag. This identification of support for Israel with opposition to antisemitism was novel in its scale of expression. It was also dangerous. One point which we have tried to highlight in this report is that Jews hold a variety of opinions on Israel and the policies pursued by its government. Consequently, while it is correct to speak of a pro-Israel lobby, there is no Jewish lobby. Yet in the course of the summer many Jews appeared to suggest that support for Israel during Operation Protective Edge and opposition to antisemitism were one and the same thing. This is a hazardous move, not least because it might easily be taken to justify the antisemitic idea that Jews in the diaspora are collectively responsible for the policies of the State of Israel.²⁷

It has certainly been noticeable in Scotland that since 2014 some Jewish community organisations are working overtly as an Israel lobby, working together with the Israeli embassy and pro-Israel groups, including Christian Zionists, set up to tackle the growing campaign for boycott, divestment and sanctions (BDS) against the state of Israel and complicit institutions.

In November 2017, giving testimony before the House Judiciary Committee in the United States, Barry Trachtenberg (Rubin Presidential Chair of Jewish History and the Director of the Jewish Studies Program at Wake Forest University) raised the alarm:

It is increasingly common to hear reports that a “new anti-Semitism” threatens to endanger Jews on a scale not seen since the second World War and the Holocaust. Studies from several major Jewish organizations have sounded the alarm that anti-Semitism is a “clear and present danger,” while a number of commentators have argued that yet another “war against the Jews” is upon us.

As much as these sort of statements try to call our attention to a looming catastrophe, they are motivated less by an actual threat facing American or world Jewry than they are part of a persistent campaign to thwart debates, conversations, scholarly research, and political activism (all of which often occur within the Jewish community itself) that is critical of the State of Israel.

Since Israel lobby groups are promoting the ‘EUMC/IHRA working definition’ worldwide, and the testimony is in response to attempts to codify the definition, Trachtenberg goes on to challenge the examples and assertions of the document. He goes on to clarify that our priority should be to oppose actual antisemitism:

The truth is that the “old anti-Semitism” — such as we saw in Charlottesville this summer, where torch-bearing marchers carried Nazi and Confederate flags, chanted “You/Jews will not replace us,” and murdered a protester — is still alive in the United States and in many places around the world and requires vigilance and persistent resistance. It is a poor use of our time to distract ourselves by crafting legislation that dictates what can and cannot be said on college campuses regarding the State of Israel.²⁸

3: Freedom of Expression and Freedom of Assembly and Association

SPSC opposes the adoption of the ‘IHRA working definition’ within any legislation, or even as guidance to legislation. We also believe that, given what we know of the origin, wording and

²⁷ <http://www.pearsinstitute.bbk.ac.uk/assets/DAVID-FELDMAN-SUBREPORT.pdf>

²⁸ <http://forward.com/opinion/387016/expanding-the-definition-of-anti-semitism-hurts-jews-testimony-before-the-h>

construction and promoters, of the definition that the use of the 'working definition', whether in its IHRA or EUMC incarnation, also holds serious implications for the rights to free speech and to freedom of assembly and association.

Hugh Tomlinson QC outlines the effects of the UK government's 'decision to adopt':

The Government has decided to "adopt" the IHRA Definition. This is not a decision made in accordance with any statutory power but is a freestanding statement of policy. It cannot, and does not purport to, have any binding effect on any public body and no public body is under a resulting obligation to adopt or use this definition. It is simply a "suggestion" by the Government as to a "definition of antisemitism" which public bodies might wish to use. No public body could properly be criticized for refusing to adopt the IHRA Definition. On the contrary, in view of the unsatisfactory nature of the IHRA Definition, it is my view that a public body should give very careful consideration to its suitability for use as a guide to decision making and should, if it is adopted, give careful guidance as to its application.

He goes on to outline the general obligation of a public authority if it were to apply the 'IHRA working definition':

Public authorities cannot lawfully act in a manner which is inconsistent with rights under the European Convention on Human Rights ("the Convention").

This means that, for example, a public authority cannot interfere with freedom of expression unless this is justified under Article 10(2) of the Convention or with freedom of assembly unless this is justified under Article 11(2).

Such justifications must be "convincingly established". It is, of course, fundamental that freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that "offend, shock or disturb the State or any sector of the population"....

In addition to the "negative obligation" on public authorities not to interfere with freedom of expression unless such interference is justified under Article 10(2) of the Convention, they are also under a "positive obligation":

"to create a favourable environment for participation in public debates for all concerned, allowing them to express their opinions and ideas without fear, even if these opinions and ideas are contrary to those defended by the official authorities or by a large part of public opinion, or even if those opinions and ideas are irritating or offensive to the public"

Hugh Tomlinson QC's warns that universities, polytechnics and colleges also have a statutory "duty to ensure freedom of speech", specifically to "take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees... and visiting speakers". In other words, public authorities "would not be lawfully entitled to prohibit conduct on the sole basis that supporters of the State of Israel found it upsetting or offensive".

Regarding protests and actions critical of Israel or in support of Palestinian rights, Hugh Tomlinson QC states that:

In my view 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...

The starting point should be that events which seek to protest against the actions of the State of Israel or the treatment of Palestinians are lawful expressions of political opinion. There is no justification in law for treating such events any differently from any other political protests. Any policy which a public authority adopts for the regulation of political meetings or protests should be applied consistently to all events and protests. In particular, the organisers of events of the kind mentioned should not be required to justify them or prove that they are not motivated by antisemitism and should not be subject to special restrictions or conditions. In the absence of positive evidence of antisemitism such restrictions or conditions would be unlawful.²⁹

4: Conclusions

We are concerned that the 'IHRA working definition' should have been considered at all as part of a process to review hate crime legislation in Scotland. We also question why the Consultation Paper highlighted only the 'IHRA working definition' examples that related to the state of Israel.

In Conclusion:

1. The 'IHRA working definition' wording does not have the clarity required to be effective as a definition
2. That there is confusion about the status of the definitions and the associated list/text
3. The purpose of these definitions appear to be motivated by Israel lobby group that wish to see governments and public authorities sanction individuals and organisations that oppose Zionism and support Palestinian rights
4. That there are dangers inherent in the way the definitions are worded and presented that could make it harder for communities to identify antisemitism as "*a form of hostility towards Jews as Jews, in which Jews are perceived as something other than what they are*".³⁰
5. That adoption and application of the definitions, even informally, breaches the right of Palestinians to describe and oppose the ongoing violations of their rights as a result of Israel's occupation and settler colonial project
6. There is no one communal voice that can speak on behalf of Jews and Jewish communities on Zionism and Israel
7. That anti-Zionist Jewish voices are being excluded from institutions and are themselves being attacked as antisemitic for their political opinions on Zionism and Israel and their support for Palestinian equality, justice and freedom

²⁹ <http://freespeechonisrael.org.uk/wp-content/uploads/2017/03/TomlinsonGuidanceIHRA.pdf>

³⁰ Feldman, D., 2015, 'Sub Report Commissioned to Assist the Parliamentary Committee Inquiry into Antisemitism', published by the All Party Parliamentary Group Against Antisemitism, p3, <http://www.pearsinstitute.bbk.ac.uk/assets/DAVID-FELDMAN-SUBREPORT.pdf>

8. That these 'definitions' have been and is still being used to prevent Palestine solidarity groups on campuses and elsewhere organise meeting, protests and campaigns, particularly those in support of the Palestinian call for BDS
9. That the Scottish Government, Police Scotland, and any other body that is currently using the IHRA or EUMC 'working definitions' or have adopted it in any way, should immediately cease their use and distance itself from them
10. That the Scottish Government, Police Scotland, and any other concerned body should also investigate whether statistics on anti-Semitic incidents and hate crime, particularly those gathered by the Community Security Trust³¹, use these definitions to collate their data

Sofiah MacLeod
Chair, Scottish Palestine Solidarity Campaign
23 November 2017

³¹ <https://antonylerman.com/2014/08/08/combating-antisemitism-and-defending-israel-a-potentially-explosive-mix/>