

High Court rules on Prevent Duty Guidance issued to higher education institutions

26/07/2017 (Public Law)

Salman Butt v Secretary of State for the Home Department

S.26(1) of the Counter-Terrorism and Security Act 2015, CTSA, imposes a duty on “specified authorities”, when exercising their functions, to have due regard to the need to prevent people from being drawn into terrorism. Certain higher education bodies (“Relevant Higher Education Bodies”, or “RHEBs”) are subject to the s.26 duty. The Secretary of State for the Home Department has issued general guidance contained in the *Revised Prevent Duty Guidance* and sector specific guidance, *Prevent Duty Guidance for higher education institutions in England and Wales*, which explains how universities and other further educational institutions should give effect to their duty under s.26 CTSA.

The Claimant brought a claim for judicial review challenging the lawfulness of the Guidance documents on a number of grounds, and challenging the compatibility with Article 8 ECHR of the Extremism Analysis Unit’s collection, storage and dissemination of data.

First, the Guidance was challenged on the basis that elements of it were ultra vires the SSHD’s power under s.29 CTSA to give guidance about the s.26 duty. The Guidance applies to non-violent extremism, defined as “*vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs*”, which the Claimant argued went beyond the need to prevent people from being drawn into terrorism. In rejecting this challenge, Ouseley J made an important qualification that “*the active opposition to fundamental British values must in some respect risk drawing others into terrorism before the guidance applies to it. If there is some non-violent extremism, however intrinsically undesirable, which does not create a risk that others will be drawn into terrorism, the guidance does not apply to it*” [31].

Second, the Guidance was challenged on the basis that it fails to comply with the RHEBs’ duty in s.31 CTSA to have “particular regard” to the duty to ensure free speech and protect academic freedom. Ouseley J accepted that the sector specific guidance does say that where risks in relation to an external speaker cannot be mitigated so that they are eliminated, the meeting should be cancelled. However, despite the mandatory language of the Guidance in that regard, Ouseley J held that RHEBs are not obliged to follow it but are required to give it regard as part of a balancing exercise that would include having “due regard” to the need to prevent people being drawn into terrorism and “particular regard” to freedom of speech and academic freedom. This means that the institutions are entitled to say, in a particular case, “*that the freedom of speech duties and the academic freedom duties to which they have to pay particular regard, are more important*” [62]. This construction of the scope of the Guidance and its place in the RHEBs’ decision-making process also underpinned Ouseley J’s decision that the Guidance does not breach common law and ECHR rights in relation to free speech.

Finally, the Claimant challenged the collection, storage and dissemination of his personal data by the Extremism Analysis Unit, a department within the Home Office that carries out research into extremism. Ouseley J held that although the work of the EAU could engage Article 8, it did not do so on the facts of this case, on the basis that the Claimant had no reasonable expectation of privacy in relation to material he had published while participating in a public debate.

The judgment appears under external links.

BRICK COURT CHAMBERS

BARRISTERS

Paul Bowen QC and Zahra Al-Rikabi acted for Dr Salman Butt, instructed by Saimo Chahal, QC (Hon), partner at Bindmans LLP.

RELATED BARRISTERS

- Zahra Al-Rikabi
- Paul Bowen QC