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19 March 2026

Dear Government Legal Department

Proposed Claimant: The Free Speech Union Limited ("Free Speech Union")

Proposed Defendant: The Secretary of State for Housing, Communities and Local Government ("The Secretary of State")

Re: Definition of Anti-Muslim Hostility

1 Introduction

1.1 We act on behalf of the Free Speech Union Limited ("**FSU**"), a non-partisan, mass-membership public interest organisation that defends the speech rights of its members and advocates for freedom of expression more broadly. The FSU exists to protect the right of individuals from all backgrounds to express their views freely, without fear of sanction or reprisal.

1.2 The FSU has been consistently recognised by the courts for its specific expertise in, and knowledge of, freedom of speech. For example, it was the Claimant in *The Free Speech Union v The Secretary of State for Education* (AC-2024-LON-003012) where Chamberlain J granted permission. It was also granted permission to intervene in key cases concerning freedom of speech including by the Supreme Court in *Abbasi and another v Newcastle upon Tyne Hospitals NHS Foundation Trust; Haastrup v King's College Hospital NHS Foundation Trust* [2025] UKSC 15 [2025] 2 W.L.R. 815, the Court of Appeal in *Higgs v Farmor's School* [2025] EWCA Civ 109 [2025] 3 All E.R. 64, and most recently by the High Court in *The King (on the application of The University of Sussex) v The Office For Students* (AC-2025-LON-001462).

1.3 This letter is sent in accordance with the Pre-Action Protocol for Judicial Review under the Civil Procedure Rules.

1.4 The FSU is considering issuing judicial review proceedings challenging the Secretary of State's decision ("**the Decision**") to implement the Anti-Muslim Hatred/Islamophobia Definition Working Group's ("**the Working Group**") definition of Anti-Muslim Hostility ("**AMH**") ("**the Definition**"), which is to be read alongside the guidance ("**the Guidance**"). Implementing the Definition and the Guidance has the effect of imposing a non-statutory definition of AMH that the government "*will refer to when developing and revising relevant policy*".[1] The government is also encouraging "*relevant organisations, employers and sectors*" (whatever that means) to adopt and apply the Definition.[2]

2 Summary of claim

2.1 The Claimant seeks to challenge the Decision, the Definition and the Guidance on the following grounds:

2.1.1 Ground 1: *Ultra vires*: occupied field.

2.1.2 Ground 2: Unlawful interference with freedom of speech and rights under the European Convention on Human Rights ("**ECHR**")**.**

2.1.3 Ground 3: Abrogation of the constitutional right to freedom of speech without clear statutory authority.

2.1.4 Ground 4: Irrationality on the basis of incoherence and logical flaws, failure to take into account relevant consideration, and that the Definition serves no rational purpose.

2.1.5 Ground 5: Guidance or policy is unlawful in *R(A)* terms in that it misstates and/or provides inaccurate advice on freedom of speech.

2.1.6 Ground 6: Breach of the public sector equality duty ("**PSED**") under s.149 of the Equality Act 2010 ("**the EA 2010**").

3 Proposed claimant

3.1 The proposed Claimant is the Free Speech Union Limited (whose address is 85 Great Portland Street, London W1W 7LT).

3.2 We are authorised by the Claimant to receive all correspondence and court documents in connection with this matter, provided that all the below-named lawyers are included in all such correspondence. We are able to receive email messages and attachments up to a maximum size of 20MB. For files exceeding this limit, we are happy to accept service via a secure link.

3.3 The lawyers at Sharpe Pritchard LLP with conduct of this matter are as follows:

George McLellan, Partner	gmclellan@sharpepritchard.co.uk	07554 227732
Jack Trevella, Associate	jtrevella@sharpepritchard.co.uk	07345 416532
Christopher Watkins, Associate	cwatkins@sharpepritchard.co.uk	07425 333589

3.4 Our postal address is Elm Yard, 10-16 Elm Street, London, WC1X 0BJ.

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1 UK Government: "A Definition of Anti-Muslim Hostility" https://www.gov.uk/guidance/a-definition-of-anti-muslim-hostility (accessed 12 March 2026).

2 Ibid.

3.5 The FSU reserves the right to join additional claimants to these proceedings, including individuals with whose European Convention on Human Rights ("**ECHR**") rights, including under Articles 9, 10 and 14, are directly affected by the Decision, including:

3.5.1 The Women's Policy Centre and/or an individual so affected;

3.5.2 The Network of Sikh Organisations and/or an individual so affected;

3.5.3 The Christian Institute and/or an individual so affected;

3.5.4 Steven Greer, Emeritus Professor at the University of Bristol Law School and Research Director at the Oxford Institute for British Islam; and

3.5.5 Other organisations and/or individuals representing different perspectives (such as atheists, academics, authors, members of other faith groups, etc) as may be determined.

4 Proposed Defendant

4.1 The proposed Defendant is the Secretary of State. The Claimant reserves its right to serve proceedings on other decision makers as defendants or co-defendants should it become apparent that other public law decision makers were involved in making the Decision.

4.2 In response to previous pre-action correspondence, the Government Legal Department ("**GLD**") stated on 20 August 2025 that the Secretary of State is the proper Defendant in circumstances where he (including his predecessor) implemented the Working Group and has responsibility for the policy decision-making to which the Working Group will contribute by way of its advice.[3] GLD also stated that the Working Group is not a separate legal entity. Further, the Secretary of State made the Decision or otherwise communicated it to the public on 9 March 2026 by way of (a) his announcement to Parliament,[4] and (b) his publication of the Definition and the Guidance on the GOV.UK website.[5]

5 Interested Parties

5.1 We seek the Defendant's views on whether any additional persons should be served with proceedings as interested parties by way of his reply to this letter.

6 The decisions being challenged

6.1 The decision challenged is the Decision made or communicated to the public on 9 March 2026 to impose the Definition and the Guidance.

7 Background

The Genesis

7.1 On 3 March 2025, the then Secretary of State confirmed, by way of a Written Ministerial Statement to the House of Commons, that the Government had established a working group to advise the Government on developing a non-statutory definition of Anti-Muslim Hatred/Islamophobia.

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3 GLD Response to FSU Pre-Action Protocol Letter, 20 August 2025 [Z2508880/BDA/JD3].

4 UK Parliament, House of Commons: "Social Cohesion Action Plan," Hansard, vol. 782, 9 March 2026, https://hansard.parliament.uk/commons/2026-03-09/debates/7675E154-5277-444E-B837-D34D7495F562/SocialCohesionActionPlan (accessed 18 March 2026).

5 UK Government: "A Definition of Anti-Muslim Hostility".

7.2 In March 2025, the Terms of Reference for the Working Group were published ("**the Terms of Reference**"). These provided that the Working Group, described as an "*independent, non-statutory body*" that does not "*speak on behalf of HMG*", would deliver "*a working definition of Anti-Muslim Hatred/Islamophobia*".

7.3 The FSU has previously explained its concerns about the Terms of Reference and membership of the Working Group.

7.3.1 Firstly, the Terms of Reference required that all "*advice provided by the Group will be private for Ministers and will not be made public*". However, there is no pressing need for this secrecy, and it runs counter to the requirement within the Terms of Reference that members abide by the *Code of Conduct for Board Members of Public Bodies,* obliging openness and transparency.

7.3.2 Secondly, that every member of the Working Group except the Chairman is a Muslim or of Muslim heritage: Professor Javed Khan OBE, Baroness Shaista Gohir OBE, Akeela Ahmed MBE, and Asha Affi. We have previously expressed the FSU's concerns that in consequence, the Working Group lacked balance and was likely to produce subjective and one-sided advice to the Defendant.

The Consultation

7.4 On 7 May 2025, in response to a written Parliamentary question from Lord Pearson of Rannoch regarding the composition of the Working Group, Lord Khan of Burnley (the then Faith Minister) stated on behalf of the Ministry (emphasis added) that the Working Group "*will consult with a wide variety of stakeholders to ensure that the voices of all relevant stakeholders are heard and considered*" [emphasis added].

7.5 Despite this promise to consult *all* relevant stakeholders, the Working Group launched its consultation, entitled "*Islamophobia/Anti-Muslim Hatred Definition Working Group — Call for Evidence*", quietly at an unspecified date in June 2025. Questionnaires or invitations were distributed privately by the Working Group and/or the Ministry to a limited group of selected consultees. No public announcement was made in relation to this process, and no mechanism was provided for the general public's engagement so that "*all relevant stakeholders*" could have an opportunity to submit evidence.

7.6 The unavoidable conclusion is that the Working Group, at least initially, opted for selective engagement with a pre-approved list of stakeholders. As a result, many civil society, community, faith, academic, public authorities, and human rights organisations — all of which would have different opinions on this important issue — were initially excluded from participating in the consultation. The public at large was not informed of the consultation, nor invited to participate either.

7.7 As it transpired, the consultation materials, including the questionnaire, were leaked. The leaked consultation materials stated that the deadline for responses was Sunday 13 July 2025. And on 7 July 2025, the Ministry publicly announced, for the first time, that the consultation had been widened to include the general public. The deadline was extended by just seven days, to Sunday 20 July 2025. At the foot of the announcement, the Ministry directed members of the public to the Working Group's GOV.UK webpage. A new section entitled 'Call for Evidence' was added to this webpage, along with a link to an 11-page questionnaire. No draft definition or explanatory material accompanied the consultation, and no proposals or further documentation were made available to assist consultees in responding to the questions.

7.8 The questionnaire included five substantive questions relating to a proposed definition of Anti-Muslim Hatred/Islamophobia. Response formats were oddly restricted. For example:

7.8.1 in relation to Question 6, "*When referring to discrimination, prejudice, bigotry, hatred or violence directed at Muslims, which term do you think should be used? For example, "Islamophobia", "anti-Muslim hatred", "anti-Muslim racism", "anti-Muslim prejudice", "Muslimophobia", etc", only* 70 characters were allowed;

7.8.2 for Question 8, "*Do you think the UK Government should adopt a definition of Anti-Muslim Hatred/Islamophobia? (Any such definition would be non-statutory.)"* answers were limited to a binary Yes/No tick box; and

7.8.3 for Question 10, "*Do you think Anti-Muslim Hatred/Islamophobia is also a form of racism?",* answers were limited to a Yes/No tick box.

7.9 Despite the Working Group describing its call for evidence exercise as something that "*will help the Group to make evidence-based recommendations for Ministers to consider*", it is difficult to understand how any "*evidence-based recommendations*" could be made to Ministers when the call for evidence did not seek objective evidence from the public, including evidence about the potential risks of adopting a definition of Islamophobia/ Anti-Muslim Hatred. Whilst the Working Group asked consultees whether or not there should be a 'non-statutory' definition of Islamophobia/ Anti-Muslim Hatred, it did not help consultees understand the potential problems with adopting such a definition.

FSU's Concerns with the Working Group

7.10 Since the establishment of the Working Group, the FSU — through both formal pre-action letters under the Judicial Review Protocol and letters to senior ministers — raised these and other serious concerns about the manner in which the Working Group had been constituted and the way it carried out its consultation.

7.11 In formal pre-action correspondence under the Pre-Action Protocol for Judicial Review, the FSU set out its concerns that:

7.11.1 the consultation failed to meet well-established legal requirements governing consultations, as established in *R v North and East Devo*n *Health Authority ex p Coughlan* [2001] QB 213;[6]

7.11.2 the Working Group was biased in the public law sense, as no steps appeared to have been taken to ensure impartiality or balance in the composition of the Working Group. Its membership lacks visible ideological, political, or institutional diversity. Further, four of the five members have explicitly supported the controversial definition of Islamophobia adopted by the All-Party Parliamentary Group on British Muslims ("**APPG**") established on 18 July 2017;[7] and

7.11.3 there were potential breaches of PSED in respect of both the appointment of the Working Group's members and the design and conduct of the consultation.[8]

7.12 In a 25 June 2025 letter to the then Deputy Prime Minister, the FSU wrote to express its serious concerns about the Working Group. This letter primarily focused on, (i) the advice produced by the Working Group which would be sheltered from public scrutiny, (ii) the lack of engagement with the public and instead with a pre-selected group of organisations, and (iii) the decisions of the Working Group which

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6 FSU Pre-Action Protocol Letter, 21 July 2025 at [30]-[46] and FSU Pre-Action Protocol Letter, 1 September 2025 at [27].

7 FSU Pre-Action Protocol Letter, 21 July 2025 at [47]-[52]. See also FSU Pre-Action Protocol Letter, 23 July 2025 at [8]-[15] in respect of Ms Ahmed MBE, FSU Pre-Action Protocol Letter, 1 September 2025 at [21]-[26] and FSU Pre-Action Protocol Letter 14 September 2025 at [4]-[9].

8 At [53]-[61].

may not be perceived as being reflective of a wide range of perspectives and priorities and may be skewed to a particular point of view.

7.13 GLD responded to FSU's pre-action letters. Remarkably, in light of the Decision, and in response to the FSU's complaints as to the Working Group's compliance with public law principles of consultation, GLD stated that:[9]

> *Nothing the Working Group will do will involve any specific decision which will have any impact – let alone adverse impact – on any person or group of persons: all it will do is provide advice to the Secretary of State.*

7.14 That advice has apparently been provided to the Minister, but it has not been made public. As set out below, the duty of candour applies at this pre-action stage, and the Secretary of State is required to disclose that advice.

The Definition

7.15 On 9 March 2026, the Secretary of State made a Ministerial statement to Parliament on the Government's action plan for social cohesion ("**the Statement**"), entitled "*Protecting What Matters*".[10] He stated:

> *We have a duty to act, but we cannot tackle a problem if we cannot describe it, so today we are adopting a non-statutory definition of anti-Muslim hostility. This gives a clear explanation of unacceptable prejudice, discrimination and hatred targeting Muslims, so that we can take action to stop it. The definition safeguards our fundamental right to freedom of speech—about religion in general or any religion in particular—and ensures that concerns raised in the public interest are protected***.**

7.16 But, as set out further below, this statement to Parliament is contradicted by the facts.

7.16.1 First, the "*Definition*" does not "*safeguard our fundamental right to freedom of speech*" — to the contrary, it undermines it by creating a chilling effect;

7.16.2 Second, nor does the Definition give a "*clear explanation*". It has the opposite effect. The Definition obscures and confuses.

7.17 Following the Statement, the Government published the "Definition" on the GOV.UK website alongside, and forming part of, the "*Guidance*".[11]

7.18 It is important to observe that this publication was not purporting to be political speech or polemic, nor was it a statement of a Minister in the House of Commons. Rather, it is an act of the executive, in purported furtherance of a power that was not authorised by Parliament. This act of the executive must, therefore, comply with the public law principles which form the bedrock of the administration of government and our democracy.

7.19 This obligation to comply with public law principles is heightened in the context of a decision which, notwithstanding protestation to the contrary, has the purpose of (a) treating one specific group

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9 GLD Response to FSU Pre-Action Protocol Letter, 20 August 2025 at [29].

10 UK Parliament, House of Commons: "Social Cohesion Plan" https://hansard.parliament.uk/commons/2026-03-09/debates/7675E154-5277-444E-B837-D34D7495F562/SocialCohesionActionPlan (accessed 18 March 2026).

11 UK Government: "A Definition of Anti-Muslim Hostility".

differently and more favourably because of their association with a belief in Islam, and (b) because of its chilling consequences for the constitutional and fundamental right to freedom of speech of all others.

7.20 The website page hosting the Definition has a header:

> *"Guidance*
>
> *A Definition of Anti-Muslim Hostility"*

7.21 The "*Guidance*" then has nine sections, including at section five: "*The definition*".

7.22 The Definition is as follows:

> *Anti-Muslim hostility is intentionally engaging in, assisting or encouraging criminal acts – including acts of violence, vandalism, harassment, or intimidation, whether physical, verbal, written or electronically communicated – that are directed at Muslims because of their religion or at those who are perceived to be Muslim, including where that perception is based on assumptions about ethnicity, race or appearance.*
>
> *It is also the prejudicial stereotyping of Muslims, or people perceived to be Muslim including because of their ethnic or racial backgrounds or their appearance, and treating them as a collective group defined by fixed and negative characteristics, with the intention of encouraging hatred against them, irrespective of their actual opinions, beliefs or actions as individuals.*
>
> *It is engaging in unlawful discrimination where the relevant conduct – including the creation or use of practices and biases within institutions – is intended to disadvantage Muslims in public and economic life.*

7.23 The Definition then has three elements:

7.23.1 The *first element* in the first paragraph describes AMH as engaging in, assisting or encouraging criminal acts directed at Muslims or those perceived to be Muslims.

7.23.2 The *second element* in the second paragraph is far broader, amorphous and concerning. On close reading, it appears to have three material sub-requirements, namely (i) "*prejudicial stereotyping*", (ii) "*with the intention of",* and (iii) *"encouraging hatred*". As expanded on further below, this is not clear and the FSU has significant concerns about the lawfulness of this paragraph in particular.

7.23.3 The *third element* in the third paragraph concerns "*unlawful discrimination*" but confusingly introduces a subclause after the term "*relevant conduct*" and before the limitation "*intended to disadvantage Muslims*". On one natural reading, the implication is that "*relevant conduct*" meets the definition of AMH regardless of whether it is "*unlawful discrimination*" or not, where it is "*the creation or use of practices and biases within institutions*", whatever that means. Moreover, "relevant conduct" has no defined outer boundary at all, leading to a frame of application that is of indeterminate scope.

8 Issues with the Guidance

8.1 The following specific observations are made about the Guidance, all of which inform the grounds of challenge as outlined below.

Devolution:

8.1.1 The Definition is said to apply only to England: "*Applies to England*". Why the Definition only applies to England is wholly unclear. Logically, it must be that (i) the Secretary of State acting

under a power that is devolved, or (ii) because the Devolved Nations did not agree to the Definition applying, or (iii) because only England is said to require the Definition, and not Northern Ireland, Scotland and Wales.

8.1.2 If it is (i), that goes to the *vires* challenge as an implicit acknowledgement by the Secretary of State that he is stepping into an occupied field, and if it is either of (ii) or (iii), the FSU will rely on the same as an element of its rationality challenge as set out below. In any event, the Secretary of State is required to provide an explanation as to why the Definition only applies to England.

Terms:

8.1.3 It uses the term "*hatred*" or "*hate*" repeatedly and materially both in the Definition (in the second element) and the Guidance more generally without defining its meaning: i.e. "*encouraging hatred*" (Definition, second element), "*growing hostility, discrimination, and hate*" (section 1, 2nd paragraph), "*anti-Muslim hate*" (section 2, 2nd and 3rd paragraph), "*anti-Muslim hatred*" (section 3, 1st paragraph), "*unacceptable hatred prejudice and discrimination*" (section 3, 2nd paragraph), "*stop hatred from taking root*" (section 3, final paragraph), "*unacceptable treatment, prejudice, discrimination and hate targeting Muslims*" (section 4, 1st paragraph), "*hostility with the intention of encouraging hatred*" (section 5, 2nd paragraph), "*encourage hatred*" (Section 5, 3rd paragraph), "*religious hatred*" (section 9, 1st paragraph), "*religiously motivated hate*" (section 9, final paragraph).

8.1.4 While there is no definition, it can be inferred that the term "*hate*" here is intended to mean something different from, and distinct to, "*hate crime*" which is also used in the Guidance as a specific term. Were it the intention that "*hate*" only referred to "*hate crime*" as defined, the Guidance would have said so, and the distinct terms would not be necessary (Section 1, 2nd paragraph, section 2, final paragraph). It must also mean something distinct from "*hostility*", "*unacceptable treatment*", "*prejudice*", and "*discrimination*" or its usage in the Guidance is tautological.

8.1.5 The term "*hostility*", as a distinct element of AMH, is not expressly defined in the Guidance either, although again it is plainly a material term. Rather, it is described in the Guidance in different ways, including as focusing on "*actions and conduct rather than simply holding beliefs*" (section 5, 2nd paragraph). However elsewhere, at section 5, 3rd paragraph, the Guidance indicates that there are different aspects of "*hostility*", which it lists as being "*criminal acts*" and "*discrimination*" (which are both straightforward enough), but, more opaquely and confusingly, "*the way in which Muslims can be treated as a collective group defined by fixed and negative characteristics with the intention to encourage hatred against them.*" The concept of "*hostility*", then, incorporates "*hatred*" as above — whatever that means — *and* how persons are "*treated*" as a "*collective group*".

8.1.6 While in the context of a "*hate crime*", the term "*hostility*" is the threshold for certain aggravating features of criminality (see for example s.28(1) (b) Crime and Disorder Act 1998), the Guidance could have, but does not expressly state, whether the term bears the same meaning. Were it so intended, the Guidance could have said so. That it does not leads to confusion and incoherence across these interrelated issues.

8.1.7 The term "*prejudice*" is also a material feature of the second element but is also not defined in the Guidance. In ordinary usage, prejudice is solely a mental element or emotion. But as explained further below, it is a logical flaw in the Definition and is inconsistent with the stated focus on "*actions and conduct*" to expressly include this mental element within the Definition. The Guidance then also seeks to expand the Definition in relation to "*prejudice*" and the second

element by stating that "*Context matters because of the various ways and settings that anti-Muslim hostility can manifest, from subtle forms of prejudice and discrimination to overtly criminal acts*." (section 8, 6th paragraph). This reference to "subtle forms of prejudice" is also inconsistent with the assertion that AMH is about actions and conduct.

8.1.8 Separately, the Guidance also refers to "*prejudicial stereotyping*". There is no explanation for the introduction of this concept, but it is simply asserted that AMH includes "*prejudicial stereotyping*" where it has the "*intention of encouraging hatred*". But, as noted above, "*hatred*" is not defined. The result is that the circumstances where "*prejudicial stereotyping*", which may be a wholly mental process, will amount to AMH, because there was an "*intention*" (also a mental process) of encouraging "*hatred*" (which is not defined), is wholly unclear and ambiguous.

8.1.9 The cumulative effect of these undefined and internally inconsistent terms is that the Definition and the Guidance fail to provide any ascertainable standard by which a person or organisation could determine whether particular conduct or expression falls within or outside AMH.

8.1.10 Further, the Guidance also refers to "racialisation" in two parts of the Guidance as follows:

> *"Assumptions are made about people from diverse ethnic, racial and cultural backgrounds and they are treated as a collective group and negatively stereotyped, irrespective of their actual opinions, beliefs or actions as individuals – a process sometimes described as racialisation."*
>
> *(section 1, final paragraph)*
>
> *These assumptions treat individuals as if they belong to a collective group with fixed negative traits - a process sometimes described as racialisation. Importantly, this definition makes clear that prejudicial stereotyping or racialisation constitute anti-Muslim hostility when combined with an intention to encourage hatred against Muslims*."
>
> *(section 5, final paragraph)*

8.1.11 Unhelpfully, then, while the Definition itself does not include the term "*racialisation*" the Guidance apparently seeks to expand the definition so as to include the concept of "*racialisation*". There are two key problems with this. First, "*racialisation*" is not a commonly used or understood term — it is a term that has emerged from academic literature (where its usage has been contested as unhelpful and unclear) and it is not further defined in the Guidance with any precision. Second, the only limit on the extent to which "*racialisation*" (whatever it does or does not mean, which is unclear) is said to amount to AMH is that it must be combined with an "*intention to encourage hatred*". However, the plain issue here is that, as outlined above, "*hatred*" is undefined and ambiguous.

Treatment and explanation of freedom of speech:

8.1.12 The Guidance attempts inadequately at various places to explain the right to freedom of speech as follows (with emphasis underlined):

> *"A definition must not and will not prohibit free speech nor stop issues being raised in the public interest. Rather, it should, through setting out clearer parameters, allow the development of a framework for understanding when legitimate debate crosses into unacceptable hatred, prejudice and discrimination of individuals."*
>
> (section 3, 2nd paragraph)

> *"the right to express hostility to others is part of our right to freedom of expression under law. But hostility with the intention of encouraging hatred against others because they are Muslim or perceived to be Muslim is conduct government is committed to challenging."*
>
> *(section 5, 2nd paragraph)*
>
> *"For instance, the second paragraph of the definition covers prejudicial stereotyping where the intention is to encourage hatred, no matter whether this behaviour would be capable of being a criminal offence or would be unlawful under the Equality Act 2010. Therefore, the second paragraph is intended to encompass behaviour that is not necessarily unlawful, but which is reprehensible in this context, because it extends beyond the bounds of protected free speech."*
>
> *(section 8, 4th paragraph)*
>
> *"Examples of expression that are protected include:*
>
> - *criticisms of a religion or belief, including Islam, or of its practices, or critical analyses of its historical development*
> - *ridiculing or insulting a religion or belief, including Islam, or portraying it in a manner that some of its adherents might find disrespectful or scandalous*
> - *criticism of the belief systems or practices of individual adherents of a religion or belief, including Islam*
> - *raising concerns in the public interest*
> - *contributing to debates in the public interest, including academic and political debate*
>
> *(section 6, final paragraph)*
>
> *"there is no right to always be protected from offence and indeed people may express views that others find uncomfortable or disagreeable."*
>
> *(section 8, 6th paragraph)*

8.1.13 Reading these paragraphs together, the public authority or organisation is left with an obviously inaccurate understanding of the rights of individuals to freedom of speech.

8.1.14 The inevitable impression given is that: (i) the right to freedom of speech is generally limited to speech with is "*in the public interest*" or academic debate; (ii) that "*prejudice*" is not protected; (iii) while speech which causes "offence" may be protected, that protection is limited to that which others find "*uncomfortable*" or "*disagreeable*", and not beyond those subjective standards, and (iv) that there is a right to be protected from "offence", i.e. use of the term "always" (section 8, 6th paragraph). And, most importantly, that speech which falls within the second element is not "*protected*" free speech. As set out below, this is inaccurate and gives a misleading impression of how the foundational and constitutional right to freedom of speech is or can be qualified.

Purpose and directions:

8.1.15 The purpose of the Definition is described at various places in the Guidance as follows:

> *"Practically, a definition can also serve as a tool for government and organisations to better understand, measure, prevent and address anti-Muslim hostility – whether empowering people to report incidents,*

> *informing staff training and guidance, enhancing education, or facilitating more effective and consistent policy responses and support."*
>
> (section 3, 4th paragraph)
>
> *"law can address offences, but a definition can be the foundations of the wider cultural, educational and preventative work needed to stop hatred from taking root."*
>
> (section 3, final paragraph)

8.1.16 Separately, in a media release published by the Ministry on the same day, it stated that the purpose was (with emphasis):[12]

> *"2. Provides clarity and consistency*
>
> *The definition provides a clear reference point so that organisations and communities understand what constitutes anti-Muslim hostility and where the boundaries lie."*

8.1.17 The Guidance contains the following directions as to the usage of the Definition:

> *"a tool for government and organisations to better understand, measure, prevent and address anti-Muslim hostility – whether empowering people to report incidents, informing staff training and guidance, enhancing education, or facilitating more effective and consistent policy responses and support."*
>
> (section 3, 4th paragraph)
>
> *"The government encourages the adoption of the definition across the public, private and third sectors, and them to consider how this definition applies in their contexts.*
>
> *"Reporting helplines and services should also consider how the definition can inform their processes, ensuring that incidents of anti-Muslim hostility are accurately identified, recorded, and addressed"*
>
> (section 9, 3rd and 4th paragraph)

Relevant Matters

8.2 Freedom of speech is an expansive concept and a foundational and fundamental value of our democracy.

8.3 The words from *Handyside v United Kingdom* (1976) 1 EHRR 737, 754 merit repetition in the present context:

> *Freedom of expression constitutes one of the essential foundations of a [democratic society], one of the basic conditions for its progress and for the development of every man. Subject to article 10(2), it 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. Such are the demands of that pluralism, tolerance and broad-mindedness without which there is no 'democratic society'.*

8.4 Its fundamental or constitutional nature has been repeatedly recognised by the courts:

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12 Ministry of Housing, Communities and Local Government: "Anti-Muslim Hostility Definition" https://mhclgmedia.blog.gov.uk/2026/03/10/anti-muslim-hostility-definition (accessed 13 March 2026).

8.4.1 In *Broome v Cassell & Co. Ltd*. [1972] A.C. 1027, 1133A Lord Kilbrandon stated that: "*one must be watchful against holding the profit-motive to be sufficient to justify punitive damages: to do so would be seriously to hamper what must be regarded, at least since the European Convention was ratified, as a constitutional right to free speech*."

8.4.2 In *Regina v Chief Metropolitan Stipendiary Magistrate, Ex parte Choudhury* [1991] 1 Q.B. 429 434G, "*If the law of blasphemy were to protect all religions there would be conflict with the fundamental right of free expression under the common law*: see *Broome v. Cassell & Co. Ltd*. [1972] A.C. 1027 , 1133A and *Attorney-General v. Guardian Newspapers Ltd. (No. 2)* [1990] 1 A.C. 109."

8.4.3 In *Reynolds v Times Newspapers Ltd* [2001] 2 A.C. 127 (H.L.) at [207] Lord Steyn declared that: "*there is a constitutional right to freedom of expression in England*: see *Broome v Cassell & Co Ltd* [1972] AC 1027,1133A—B, per Lord Kilbrandon. *By categorising this basic and fundamental right as a constitutional right its higher normative force is emphasised. These are perhaps some of the considerations which enabled Lord Goff in 1988 and Lord Keith in 1993 to hold that article 10 of the Convention and the English law on the point are in material respects the same. Now the Human Rights Act 1998, which will incorporate the Convention into our legal order, is on the statute book. And the Government has announced that it will come into force on 2 October 2000. The constitutional dimension of freedom of expression is reinforced*."

8.4.4 In *R v Shayler* [2002] UKHL 11, [2003] 1 A.C. 247 [21] Lord Bingham stated that: "*The fundamental right of free expression has been recognised at common law for very many years*: see, among many other statements to similar effect, *Attorney General v Guardian Newspapers Ltd* [1987] I WLR 1248, 1269E, 13 2OG; *Attorney General v Guardian Newspapers Ltd (No 2)* [1990] I AC 109, 178E, 218D, 22oc, 2.26A, 283E; *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115, 26E; *McCartan Turkington Breen v Times Newspapers Ltd* [2001] z AC 277, 290-291."

8.5 And <u>all</u> speech is protected by that right except where that speech falls within Article 17 of the ECHR (i.e. will be excluded entirely from the protection of Article 10) where it constitutes an activity or act "*aimed at the destruction of any of the rights and freedoms set forth*" in the ECHR. That is by virtue of Article 17, which provides that: "*Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention*."

8.6 As explained by Choudhury P in *<u>Forstater v CGD Europe</u>* [2022] ICR 1 ("*Forstater*"), speech which constitutes "*the gravest form of hate speech*" which "*incites violence*" or which is "*as antithetical to Convention principles as Nazism or totalitarianism*" (at [82]) falls outside the freedoms in Article 10(1). In other words, and as noted at [59], people "*cannot rely on the right to freedom of expression to espouse hatred, violence or a totalitarian ideology that is wholly incompatible with the principles of democracy*."

8.7 Nevertheless, and as explained in *Forstater* at [59]:

> *[…] The level at which Article 17 becomes relevant is clearly (and necessarily) a high one. The fundamental freedoms and rights conferred by the Convention would be seriously diminished if Article 17 , and the effective denial of a Convention right, could be too readily invoked: see Vajnai v Hungary (2010) 50 EHRR 44 at paras 21 to 26 . Thus, when the ECtHR refers to Article 17 (as it did in Campbell and Cosans v United Kingdom) in considering whether a philosophical conviction is worthy of respect in a democratic society and not in conflict with the fundamental rights of others, it would have had in mind that it is only a conviction that, e.g, challenges the very notion of democracy that would not command such respect. To maintain*

> *the plurality that is the hallmark of a functioning democracy, the range of beliefs and convictions that must be tolerated is very broad. It is not enough that a belief or a statement has the potential to "offend, shock or disturb" (see Vajnai at para 46) a section (or even most) of society that it should be deprived of protection under Articles 9 (freedom of thought conscience and belief) or Article 10 (freedom of expression). The stipulation that the conviction or belief must not be in conflict with the fundamental rights of others must also be viewed with regard to Article 17. The conflict between rights in this context of satisfying threshold requirements is not merely that which would arise in any case where the exercise of one right might have an impact on the ECHR rights of another; in order for a conviction or belief to satisfy threshold requirements to qualify for protection, it need only be established that it does not have the effect of destroying the rights of others.*

8.7.1 As the Court of Appeal held at [69] in *Miller:*

> *The fact that Mr Miller's tweets were "for the most part, either opaque, profane or unsophisticated" did not rob them of the protection of article 10(1) (para 251).*

9 Proposed Grounds of Judicial Review

Ground 1: *Ultra vires: occupied field*

9.1 The Secretary of State is only entitled to adopt the Definition if he has the *vires* to do so.[13] There are three sources of *vires* — statute, the prerogative, and the common law. The Secretary of State apparently accepts that the power he relies upon is not statutory, but notwithstanding correspondence including our letter of 1 September, has declined to clarify explicitly the claimed *vires*.

9.2 As noted above, that the Definition only applies to England requires explanation by the Secretary of State. In particular, if it is because the Secretary of State accepts that he does not have the power to publish the Definition and require it be adopted in the Devolved Nations, the Secretary of State is required to confirm the same as it goes to the nature and extent of the claimed *vires*.

9.3 In *Shrewsbury and Atcham BC v Secretary of State for Communities and Local Government* [2008] EWCA Civ 148 [2008] 3 All E.R. 548 ("**Shrewsbury**"), the third source of these powers was explained. That case concerned whether a non-statutory source of power was available to the Government in the context of a proposed local government reorganisation (which, by the time of the Court of Appeal hearing, had been given a statutory basis). It would not be if to recognise it as available would be inconsistent with statute.

9.4 Carnwath LJ explained the "inconsistency principle" — also referred to as the principle of "occupying the field" — as follows:

> *50. There is no dispute that, whatever the scope of the Secretary of State's "common law" powers, they may be expressly or implicitly excluded by a statutory scheme covering the same subject-matter. This "inconsistency" principle, as the judge noted, is traditionally associated with the De Keyser case in 1920.[14] The speeches in that case give several different formulations. More recently, in R v Home Secretary Ex p Fire Brigades Union [1995] 2 A.C. 513, 552, Lord Browne-Wilkinson summarised the principle thus:*
>
> > *"... if Parliament has conferred on the executive statutory powers to do a particular act, that act can only thereafter be*

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13 This is a trite proposition, stemming from the case of *Entick v Carrington (1765)* 19 State Tr 1029, where Lord Camden CJ held that the exercise of governmental authority directly affecting individual interests must rest on legal foundations.

14 *Attorney General v De Keyser's Hotel* [1920] A.C. 508.

> *done under the statutory powers so conferred: any pre-existing prerogative power to do the same act is pro tanto excluded".*
>
> *51. In the passage immediately preceding his reference to De Keyser Lord Browne-Wilkinson said:*
>
> > *"My Lords, it would be most surprising if, at the present day, prerogative powers could be validly exercised by the executive so as to frustrate the will of Parliament expressed in a statute and, to an extent, to pre-empt the decision of Parliament whether or not to continue with the statutory scheme even though the old scheme has been abandoned. It is not for the executive, as the Lord Advocate accepted, to state as it did in the White Paper (paragraph 38) that the provisions in the Act of 1988 'will accordingly be repealed when a suitable legislative opportunity occurs.' It is for Parliament, not the executive, to repeal legislation. The constitutional history of this country is the history of the prerogative powers of the Crown being made subject to the overriding powers of the democratically elected legislature as the sovereign body. The prerogative powers of the Crown remain in existence to the extent that Parliament has not expressly or by implication extinguished them."*

<u>*Application to the Decision*</u>

9.5 The Secretary of State has imposed the Definition which the Government will not only refer to when "*developing and revising relevant policy",* but is actively encouraging the "*public, private and third sectors*" in England to adopt the Definition and consider how the Definition "*applies in their contexts*".

9.6 The Secretary of State's powers will depend upon whether his actions are consistent with provision already made in statute for a statutory body to do the same thing. The Secretary of State's common law power is not available insofar as its exercise would cut across such statutory provision and the intention of Parliament to confer *vires*. But, in publishing this Definition this is precisely what the Secretary of State is seeking to do. This is for at least two key reasons.

9.7 First, the Guidance expressly uses the Definition in relation to "*prejudice*" (the second element) and "*discrimination*" (the third element), the latter of which is mentioned 14 times in the Guidance. In imposing the Definition and the Guidance, the Secretary of State is plainly providing guidance as to compliance with discrimination law, or even as to "*good practice in relation to equality and diversity*", that is to trespass into the field which Parliament has conferred by legislation upon the Commission for Equality and Human Rights (more commonly known as the Equality and Human Rights Commission ("**EHRC**")) — not upon the Secretary of State.

9.8 The EHRC is given functions in the Equality Act 2006 ("**EA 2006**"). Section 8 sets out its duties in relation to equality and diversity:

> *(1) The Commission shall, by exercising the powers conferred by this Part —*
>
> *(a) promote understanding of the importance of equality and diversity*
>
> *(b) encourage good practice in relation to equality and diversity,*
>
> *(c) promote equality of opportunity,*
>
> *(d) promote awareness and understanding of rights under the Equality Act 2010,*

(e) enforce that Act,

(f) work towards the elimination of unlawful discrimination, and

(g) work towards the elimination of unlawful harassment".

9.9 Section 9 EA 2006 sets out similar duties in relation to human rights, requiring the EHRC to promote understanding of the importance of human rights, encourage good practice in relation to human rights, and promote awareness, understanding and protection of human rights, as well as to encourage public authorities to comply with section 6 of the Human Rights Act 1998 ("**HRA**") which prohibits them from acting in a way which is incompatible with the Convention rights as defined in section 1 of the HRA.

9.10 Section 13 then provides that:

(1) In pursuance of its duties under sections 8 and 9 the Commission may —

(a) publish or otherwise disseminate ideas or information;

(b) undertake research;

(c) provide education or training;

(d) give advice or guidance (whether about the effect or operation of an enactment or otherwise);

(e) arrange for a person to do anything within paragraphs (a) to (d);

(f) act jointly with, co-operate with or assist a person doing anything within paragraphs (a) to (d)

9.11 Section 14(1) further provides that "*The Commission may issue a code of practice in connection with any matter addressed by the Equality Act 2010*".

9.12 This is a detailed and comprehensive statutory regime which confers onto the EHRC *vires* to issue guidance and information on matters concerning unlawful discrimination as defined under the EA 2010.

9.13 Parliament has provided a scheme under which those functions fall to be performed by the EHRC. It is squarely within the EHRC's functions to provide general advice or guidance to enable an understanding of when treatment is "*discriminatory*". While a Minister of the Crown does have powers under the EA 2010 to issue guidance on specific limited matters, those powers are limited to guidance regarding the meaning of disability under s.6(5), or accessibility strategies (paragraph 2(1), schedule 10) and the Secretary of State was rightly not purporting to rely on those powers when deciding to issue the Definition. It is to be noted that under the EA 2010 the powers of the Secretary of State to issue such Guidance under s.6(5) are subject to a defined scheme which includes consultation on a draft (paragraph 13 of schedule 1) and direct oversight by Parliament with a negative resolution procedure (paragraph 14 of Schedule 1). Thus, Parliament has decided that where the Minister is to issue guidance on equalities matters, it should be strictly limited and be subject to Parliamentary oversight.

9.14 Indeed, from a practical policy-making perspective, having one independent body charged with providing guidance on equalities issues serves an important purpose — namely to avoid regulatory confusion and inconsistency in the guidance that is provided to the public. That there are some very limited circumstances where the Minister may publish guidance (subject to Parliamentary oversight) which does not undermine this purpose, as the delineation of responsibilities is clear.

9.15 The Secretary of State has procured and implemented advice from the Working Group covering the EHRC's ground. This is *ultra vires* and so is *pro tanto* excluded. The Decision is unlawful on this basis alone. That other statutory guidance published by the Government (such as Keeping Children Safe in Education 2025, or the Homelessness Code of Guidance for Local Authorities 2025) referred to or explained discrimination law, is nothing to the point.[15] There, the power to publish the statutory guidance was conferred by Parliament, and different principles apply. So too with the Government Equality Office, now the Women and Equalities Unit, where, for example, it is acting under the statutory powers conferred by the EA 2010, as above.

9.16 There are numerous other fields which the Definition and the Guidance will unlawfully occupy. While the Free Speech Union reserves the right to add in further fields/areas that will be unlawfully occupied by the Definition and the Guidance, some of the fields are outlined below. These include:

9.16.1 To the extent the Decision and the Guidance seeks to impose new requirements as to discrimination and freedom of speech in relation to higher education providers as public institutions, they also interfere with — and therefore trespass on — the field occupied by the Office for Students ("**OfS**") (and by extension the higher education providers it regulates). The Higher Education and Research Act 2017 ("**the HERA**") sets out the functions of the OfS, one of which, s 2(1)(aa), is to have regard to the need to promote the importance of freedom of speech within the law in the provision of higher education by English higher education providers. And under s 75 of the HERA, the OfS must publish a regulatory framework that, amongst other things, consists of guidance for registered higher education providers on the general ongoing registration conditions.

9.16.2 The OfS has accordingly published statutory guidance ("**the OfS Guidance**") relating to freedom of speech in the higher education context[16]. The OfS' Guidance on freedom of speech is, unlike the Definition and the Guidance (which is explained below), more consistent with the governing law and grapples with some common issues that may arise in relation to the conflict between free speech and the rights of others in the higher education setting. To the extent the Definition and the Guidance imposes additional requirements on the OfS and indeed the institutions it regulates, it trespasses on yet another field Parliament has designated to a particular body — the OfS. The OfS has occupied the statutory field concerning the appropriate 'framework' for balancing the protection of freedom of speech (and academic freedom) versus preventing harassment of Muslim students.

9.16.3 The framework imposed by the Definition and the Guidance is also inconsistent with that put in place by the OfS. The standard implied by the former, insofar as it can be determined at all, is concerned with 'intention', and further explicitly extends this to conduct which may be lawful but 'reprehensible'. The OfS, on the other hand, handles the question of conduct on which EA 2010 duties do not bite differently — framing the analysis quite properly in accordance with the relevant statute, in terms of the "reasonably practicable steps" that a Higher Education Provider might take to secure the speech in question.

9.16.4 Further, to the extent that applying the Definition and the Guidance will entail policing expressions of extreme Anti-Muslim Hostility, it will trespass on the field occupied by the Counter-Terrorism and Security Act 2015, specifically: the duty for specified authorities to have due regard to the need to prevent people from being drawn into terrorism (s 26(1)) and

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15 GLD Response to FSU Pre-Action Protocol Letter, 15 September 2025.

16 Office for Students: "Regulatory Advice 24: Guidance related to freedom of speech" https://www.officeforstudents.org.uk/media/o53foutl/regulatory_advice_24_free_speech_guidance.pdf (accessed 18 March 2026).

the guidance the Secretary of State may issue to specified authorities about the exercise of their duty under s 26(1) (s 29(1).[17]

9.17 Second, as to the first element and the references to "*hate crimes*", "*hate crime*" is a term used to describe criminal offences which are perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic, such as their religion or perceived religion. In the case of those convicted of certain criminal offences referred to in section 28 to 32 of the Crime and Disorder Act 1998 ("**CDA 1998**"), or otherwise by dint of section 66 of the Sentencing Act 2020, prosecutors may apply for an uplift in the perpetrator's sentence. The College of Policing published updated guidance on how police forces should respond to hate crime in October 2020.[18] This includes information on what can be covered by the concept of "hate crime".

9.18 The Guidance makes it clear that the Definition "***is not intended to be an authoritative or exhaustive statement or summary of criminal law*** *or a guide to particular criminal offences.* ***The definition does not change what is or is not a crime,*** *nor does it equate anti-Muslim hostility with crime*" (bold wording original). Given these directions, and the fact that the interpretation of the criminal law is a constitutional responsibility reserved to the courts, it is unclear in what capacity the Secretary of State is supposing that a non-statutory definition of 'anti-Muslim hostility' could have utility in relation to the concept of "hate crime", unless it is proposing to advise or direct the courts or the Crown Prosecution Service ("**the CPS**") when exercising their functions on sentencing and prosecuting.

9.19 If that is the case, the Decision trespasses into the field which Parliament has through enacting legislation conferred upon the Sentencing Council. By Chapter 1 of Part 4 of the Coroners and Justice Act 2009, the Sentencing Council is given broad powers to issue guidelines on sentencing, including in relation to particular types of offence, such as, for instance, those in ss.29-32 of the CDA 1998.

9.20 And in relation to prosecuting, the Decision trespasses into the field reserved to the CPS. Section 10 of the Prosecution of Offences Act 1985 states that the Director of Public Prosecutions shall issue a Code for Crown Prosecutors ("**the Code**") giving guidance on general principles to be applied by them in determining whether proceedings for an offence should be instituted, what charges should be preferred and the mode of trial suitable for that case. Paragraph 2.10 of the Code states that prosecutors must comply with any guidance issued by the CPS, which contains further evidential and public interest factors for specific offences and offenders.

9.21 The CPS has issued guidance on racist and religious hate crime for the purposes of prosecuting under the two key pieces of legislation used to prosecute these crimes, notably the Crime and Disorder Act 1998 and the Public Order Act 1986.[19] Relevantly, that guidance states that hostility is not defined in the legislation but that consideration should be given to "ordinary dictionary definitions, which include ill-will, ill-feeling, spite, prejudice, unfriendliness, antagonism, resentment, and dislike." Clearly, the CPS is best placed to issue such guidance and Parliament has recognised this. To the extent, then, that the Definition and the Guidance seeks to carve out a new interpretation of "hostility" — which it clearly does — it trespasses into the CPS' field.

9.22 For these reasons the Decision is *ultra vires*, unconstitutional, and falls to be quashed.

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17 HM Government: "Prevent duty guidance: Guidance for specified authorities in England and Wales" https://assets.publishing.service.gov.uk/media/65e84b6008eef600115a5679/14.258_HO_Prevent+Duty+Guidance_v5d_Final_Print.pdf

18 College of Policing, "Hate crime": https://www.college.police.uk/app/major-investigation-and-public-protection/hate-crime (accessed 13 March 2026).

19 Crown Prosecution Service: "Racist and Religious Hate Crime — Prosecution Guidance" https://www.cps.gov.uk/prosecution-guidance/racist-and-religious-hate-crime-prosecution-guidance#a16 (accessed 18 March 2026).

Ground 2: Unlawful interference with freedom of speech and ECHR rights

9.23 The Guidance directs that public and private organisations "*adopt*" (section 9, 3rd paragraph) the Definition and apply it as set out above at 8.1.15-8.1.17, and in particular that "*Reporting helplines and services should also consider how the definition can inform their processes, ensuring that incidents of anti-Muslim hostility are accurately identified, recorded, and addressed*" (Section 9, 4th paragraph). "*Reporting helplines*" is not defined, but can only be a reference to, or at its lowest must include, crime reporting helplines operated centrally and by local police forces. The Guidance then contains the express direction to those "*reporting helplines*" that they "*should*" be "*ensuring that incidents of anti-Muslim hostility are accurately identified, recorded, and addressed*" ("**recording direction**").

9.24 The publication of the Definition and the Guidance on AMH is unlawful in that it breaches the individual proposed Claimants' Article 10 rights to freely express views about Islam and the adherents to it, found in Article 10 of the Convention and the common law.

9.25 It will interfere with a protected right through a "*chilling effect*", which is unjustified, and, without prejudice to the generality, the recording direction is unlawful for the following reasons:

9.25.1 The direction is to the police as well as other agencies. It requires that police forces "*ensure*" the "*recording*" of all incidents of reported AMH and that AMH is "*addressed*". Yet as above, AMH includes matters which are not criminal offences, i.e. the second and third element.

9.25.2 The direction is to *record* those reports of AMH uncritically without any investigation or inquiry as to their veracity and regardless of whether there is any objective evidence to support the complaint that is made or their relevance to an actual investigation of a criminal offence or other matter. How that record by the "*reporting helpline*" is made or who it might subsequently be disclosed to is unclear, but the direction is unambiguous.

9.25.3 Any public body that is a "*reporting helpline*", such as a police force, is required to comply with the ECHR under s.6 of the HRA. The actions of such a body including the police, and guidance issued by the Secretary of State in respect of those actions must: (i) be sufficiently foreseeable as to be prescribed by law; (ii) include "safeguards" against arbitrary interference with Convention rights and abuse of power (*In Re Gallagher* [2020] AC 185 [39]; *Beghal v DPP* [2016] AC 88, §31, [88]-[89]); and (iii) any intrusion into freedom of expression falls to be analysed under Article 10(2) and justified under the *Bank Mellat* test as proportionate.

9.25.4 The Definition and the above directions will have a chilling effect on freedom of expression. It is an interference with the right to freedom of speech. As the Court of Appeal at [68] explained in *R(Miller) v College of Policing* [2022] 1WLR 4987, the "*concept of a chilling effect in the context of freedom of expression is an extremely important one*". The recording in that case of Non-Crime Hate Incidents, and so to here AMH (which, as above, is expressly tied to and associated with the ambiguous concept of "*hate*") "*is plainly an interference with freedom of expression and knowledge that such matters are being recorded and stored in a police database is likely to have a serious "chilling effect" on public debate*." *Miller* [73], citing *Altugø Taner Ak am v Turkey* (2011) 62 EHRR 12 at [74]-[76]. Further, and as the Court noted at [102]:

> *knowledge that the police are categorising and recording as non-crime hate speech, speech of the kind with which we are concerned, has the potential to create a chilling effect on public debate on issues of controversy and public importance in an area of expression where the scope for lawfully restricting such debate is very limited.*

So too would the knowledge that the police or other "*reporting helplines*" or organisations are recording AMH have the potential to create a "*chilling effect*" on public debates of significant

importance and controversy. The precise venue of the "recording" and its implications (e.g. disclosure) are also not specified within the Guidance compounding the chilling effect further.

9.25.5 Whether a statement made will be recorded as an instance of AMH is not sufficiently foreseeable to be prescribed by law. First, as set out above, the meaning of the Definition and the Guidance is "*obscure and open to differing interpretations*" (*In Re Gallagher* [21] and see [22]-[23]), and second, at the time of publishing the Definition and the Guidance there is no sufficient clarity as to the scope of any restrictions on the application of the Definition or safeguards enabling the proportionality of any interference to be adequately examined.

9.25.6 The onus is on the Secretary of State to justify the interference, which includes a consideration of whether there were less intrusive means of achieving any claimed legitimate aim. He has not done so. Absent any such justification the Guidance is unlawful. Here the Court would be required to consider as it did in *Miller* [105] whether the test in *R (A) v Secretary of State for the Home Department* [2021] 1 WLR 3931, paras 38—48 and in *R (BF (Eritrea)) v Secretary of State for the Home Department* [2021] 1 WLR 39676 is satisfied: ie. does the Definition and the Guidance sanction or positively approve or encourage unlawful conduct — that is, conduct which violates Article 10? As in *Miller*, here, that test is satisfied in relation to the interference with Article 10 through the "*chilling effect*", which is unjustified.

9.26 Further, the Definition and the Guidance capture activities and speech that would directly infringe upon the ECHR Article 9, 10 and 14 rights of a wide range of groups. For example:

9.26.1 Sikhs are a group that is particularly vulnerable to an all-encompassing definition of anti-Muslim hatred given their religious beliefs and practices. Last year, Sikhs around the world marked the 350th anniversary of the martyrdom of the ninth Guru of Sikhism, Guru Tegh Bahadur, who gave his life defending the freedom of belief of Hindus who were being forced to convert to Islam under the sword by one of India's Mughal rulers. However, simply recounting this historical matter could be deemed a form of AMH, especially if it made, say, a Muslim person feel unsafe or unprotected in the workplace or while accessing public services. The Definition could likewise capture images of Sikh martyrs (including two Gurus) which are routinely displayed in many gurdwaras across the United Kingdom. These are central to Sikh ethos, history and belief and indeed Sikh communities commemorate the martyrdom anniversaries (shaheedi purab) of the two Gurus (Guru Tegh Bahadur and Guru Arjan - 5th Guru) and many other historically significant figures, including the sons of the 10th Guru.

9.26.2 Likewise, Sikhs are strictly forbidden to consume halal slaughtered meat, because halal slaughter, especially non-stun slaughter, is inhumane, and praying over an animal at the time of slaughter is an act of superstition. It is consistent with Sikh beliefs for Sikhs to freely express these views in public settings, even if doing so causes offence or discomfort. Yet, just asserting these facts and alternative beliefs has the potential to engage the Definition and the Guidance should a devout Muslim perceive the criticism of halal slaughter to be directed at them in a manner which they subjectively perceive is hostile to them or to their faith. That the Definition purports to constrain the meaning of AMH to where there is adverse intent is nothing to the point. In practice, accusations of AMH will be made on the basis of perception, and the chilling effect operates at the point of accusation and not at the point of adjudication.

9.26.3 More significantly, some verses in the *Sri Guru Granth Sahib* (the Sikh scriptures), not least *Babar Baani* — Guru Nanak's (Sikhism's founder) account of the consequences of Babar's (the first Mughal) invasion and the brutalities he witnessed firsthand — could well be brought into question and captured by the Definition.

9.26.4 Clearly, though, these Sikh practices are protected by Articles 9 and 10 of the ECHR. Further, Article 14 applies. As to that:

(a) the Definition and the Guidance fall within the ambit of both Article 9 and 10 of the Convention.

(b) a "belief" and "race" are protected statuses under Article 14, as suspect grounds: *R (SC) v Secretary of State for Work and Pensions* [2022] AC 223 [51] ("SC") [100]-[113] normally requiring "*very weighty reasons*" for any interference.

(c) the Definition and the Guidance disadvantages Sikhs as compared with persons in the same or an analogous situation without such a status — for example, someone from another religion whose beliefs have not historically been deemed to be contrary to Muslim belief systems, or alternatively someone who expresses critical views of other religions (eg Christianity or Hinduism) for whom no equivalent definition of hostility has been adopted and no recording direction has been issued.

(d) to justify this discriminatory effect, the Secretary of State would have to demonstrate that (1) the objective is sufficiently important to justify the limitation of a protected right, (2) the measure is rationally connected to the objective, (3) a less intrusive measure could not have been used without unacceptably compromising the achievement of the objective, and (4) balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter taking account of the public interest (*Bank Mellat* at [20] and [74]). But, as a matter of principle it cannot be right to interfere with the religious freedom of one group — Sikhs — to defend the sensibilities of Muslims from subjective forms of offence. To do so would be to place one faith above the rest. This is particularly so where the Definition and the Guidance includes as AMH acts which are not criminal offences and which are protected free speech.

9.26.5 So too does the Definition and the Guidance have a chilling effect on women's ability to comment on, and critique, aspects of Islam and the fact acts of those that follow it that are deeply harmful for women in particular. For example, women, and indeed Muslim women (in particular) may feel inhibited from speaking about actions such as so-called "honour killings" where such speech may be labelled and regulated as AMH. Similarly, individuals and organisations which work to draw attention to practices such as female genital mutilation ("**FGM**"), predatory grooming gangs, the rights of women to make independent decisions as to aspects of their lives, and who draw evidence-based connections between these concerns and aspects of Islamic scripture/law/culture/practice, may be charged with accusations of AMH. The work of these individuals and organisations involves or requires them to directly confront practices that are prevalent in Muslim communities, and which are associated with Islamic doctrine, and to coordinate their activities with public authorities in doing so. However, the Definition and the Guidance will only empower critics to pursue and silence women activists through ad hoc threats that they are propagating AMH as part of racist campaigns against Islam in general.

9.26.6 One only has to look at how some women who have criticised aspects of Islam have been treated in the past *without a definition of anti-Muslim hatred* to understand that the Definition and the Guidance will only serve to further silence women's voices and legitimise the agendas of those that seek to do so. For example, in 2014, UK women's activist and secular Muslim Mina Topia was hounded and accused of "reinterpreting orthodox Islam for right-wing neocons" by

the Islamist group *5Pillars.* This was after Topia appeared on a BBC panel show to support secular democracy over the theocratic religious state. Equally, activist Kellie-Jay Keen Minshull has been publicly stigmatised in the most recent report compiled by the organisation *Hope Not Hate* as having found support from "the far right" for posting supposedly "anti-Muslim tweets".[20]

9.26.7 Equally, the philosophical beliefs of atheists such as Professor Richard Dawkins could also be captured and regulated by the Definition and the Guidance, despite their unquestionable contribution to a free and democratic society, and their views falling squarely within Articles 9 and 10. Dawkins, for example, regularly criticises Islam, including what he believes to be its oppressive qualities. Indeed, in 2013 Dawkins referred to Islam as "*the greatest force for evil in the world today*."[21] Dawkins was quick to point out his statements were directed at Islamism, and those who use religion for political objectives, and not mere adherents of the faith, but his statements may be understood by some to be captured by the second element.

9.26.8 Likewise, the Definition is likely to have a chilling effect on the right to freedom of expression of authors and artists, limiting their freedom to engage in creative activities that may be subjectively perceived by Muslims to be heretical or otherwise hostile. For example, Sir Salman Rushdie's fictional book, *The Satanic Verses,* contained dream sequences, named the protagonist Mahound (a medieval Christian slur for Muhammad), and portrayed the prophet's wives as promiscuous. Many Muslims found the book to be offensive and blasphemous. Indeed, a fatwa was placed on Rushdie by the late Supreme Leader of Iran — one that exists to this day, which has sadly been acted upon. While Dawkins and Rushdie are of course high-profile figures, their views and commentary on Islam have nonetheless been influential and are shared by a large proportion of the general population. It is highly likely, therefore, that these views would exist throughout the public, private and third sectors — the targets of the Definition and the Guidance.

9.26.9 To the extent that it can be alleged that forms of free expression and creativity may amount to public order offences, and to the extent that such expression is perceived as being targeted at Muslims, a chilling effect will materialise. This is especially the case where the Guidance directs not only public authorities, but also third sector organisations and society at large, to adopt and activate the Definition. As a contemporary example, the burning of a Qu'ran as an act of protest outside of the Turkish Consulate in London resulted in criminal charges, and notwithstanding Mr Coskun's subsequent acquittal from these charges — and a finding that such acts do not fall outside the scope of the free expression right — it is clear that the Definition and the Guidance would bolster exercise discretion to prosecute such activities, thereby smother lawful free expression and lawful protest.[22]

9.26.10 In a society which values religious freedom, persons are free to manifest their religious beliefs openly and in public. This includes the right of Christians to preach Christian scripture in public spaces or to share their faith in public or private, including where adherents of other faiths may find that practice offensive and even hostile (even if conducted respectfully). This right involves being able to direct their preaching or sharing at members of other faiths deliberately and directly. The point of such expression is to attempt to convince non-

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20 Hope not Hate: "State of Hate 2026: It Could Happen Here" https://hopenothate.org.uk/wp-content/uploads/2026/03/state-of-hate-2026-PDF.pdf (accessed 18 March 2026).

21 BBC News: "Richard Dawkins' Berkeley event cancelled for 'Islamophobia'" (24 July 2017) https://www.bbc.co.uk/news/world-us-canada-40710165 (accessed 18 March 2026).

22 *Director of Public Prosecutions v Coskun* [2026] EWHC (Admin) at [16].

> Christians of the truth claims of Christ. The first paragraph is engaged by such activities if there is a subjective perception that the offending preaching or sharing is in some way criminal (whether proven or merely alleged), and where it is directed at a person because they are Muslim or perceived to be Muslim. For example, there was the case of a Christian couple who ran a hotel in Liverpool who were prosecuted under section 5 Public Order Act 1986 (and later acquitted at trial) for sharing their faith with a Muslim who had been staying with them.[23]

9.27 Should proceedings be issued, the Claimant and any co-claimants will adduce evidence of individuals to further illustrate and underpin these and other interferences.

Ground 3: Abrogation of a constitutional right without clear statutory authority

9.28 The right to freedom of speech has been held by the Courts to be a constitutional right.[24] The executive has no power to abrogate, by way of interference with that constitutional right, without statutory authority granted by Parliament.[25] Here,

9.28.1 it is common ground that the Secretary of State is acting without Parliamentary authority;

9.28.2 the executive is acting to interfere with that constitutional right, including *inter alia* by creating a "*chilling effect*". As explained in *Miller*, the concept of "chilling effect" "*is an extremely important one".* An act that creates that effect is sufficient to amount to an unlawful interference and is an abrogation in this context unless justified in *Bank Mellat* terms.

9.28.3 the Courts, in accordance with their constitutional role to oversee and prevent excesses of power of the executive (see: *R (on the application of Miller) v The Prime Minister* [2020] AC 373), will act to prevent the abrogation of a fundamental right without Parliamentary authority. This Definition is such an abrogation, and it stands to be quashed.

9.29 The *dicta* on the principle of legality apply here, where there has been no Parliamentary oversight, *a fortiori.* As Lord Hoffmann explained in *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115:

> *Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by Parliament are ultimately political, not legal. But the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document.*

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23 BBC News, "*Christian hoteliers cleared in Muslim woman abuse row*," December 9, 2009, http://news.bbc.co.uk/1/hi/england/merseyside/8404212.stm (accessed 18 March 2026).

24 See *Broome v. Cassell; Reynolds v. Times Newspapers Ltd* [2001] 2 A.C. 127 (H.L.) at [207].

25 *Re Finucane* [2022] NIKB 37 at [121].

9.30 Fundamental rights, like those outlined above, cannot be overridden by general or ambiguous words.[26] But that is precisely what the Definition and the Guidance do, whether by intention or otherwise. While *Simms* was concerned with Parliament, whereas here we are concerned with the actions of a Minister, is *a fortiori* to the point — if something can only be done by Parliament with clear language and intent, it is certainly forbidden to a Minister, representing the executive, acting without statutory authority. And, as the Court held in *R(D) v Parole Board* [2018] EWHC 694 (Admin) at [190], [2019] QB 285, even if some degree of infringement is impliedly authorised:

> *it is incumbent on the executive to justify this by a pressing social need and as being the minimum necessary to achieve the objectives sought. These are matters for the court and not for the decision-maker.*

9.31 Here, not only is the curtailment of fundamental rights being effected through general and ambiguous words, there is no evidence to suggest the executive — that is, the Secretary of State — has ensured that the Definition and the Guidance is the minimum necessary to achieve the objectives sought.

Ground 4: Irrationality

9.32 Notwithstanding that the Secretary of State does not possess the power to impose the Definition, when read alongside the Guidance, the Definition is irrational in public law terms.

9.33 A heightened standard of review applies. As Chamberlain J explained in *KP v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 370 (Admin) at [76] ("***KP***"), the courts' approach to assessing the rationality of a decision "*varies depending on the importance of the interests affected by it, or to put the point another way, the gravity of its potential consequences.*" That the focus is on the consequences that flow from the challenged decision was confirmed by the Supreme Court in *R (Spitalfields Historic Building Trust) v London Borough of Tower Hamlets*.[27]

9.34 In terms of procedural review, when a heightened standard of scrutiny is engaged, the court will subject the decision to "*more rigorous examination, to ensure that it is in no way flawed*".[28] In *KP*, Chamberlain J explained what this means in practice. He explained that it requires the decision-maker "*to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account*." And in terms of outcome rationality, "*more will be required by way of justification …*"[29]

9.35 Here, there can be no doubt that the courts would impose a heightened standard of review given the significant importance of the interests engaged and the consequences that flow from the Secretary of State's decision to impose the Definition and the Guidance. Freedom of speech is the bedrock of democracy, and any state authorised interference with this protected right must be subject to the strictest scrutiny by the courts.

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26 See, for example, *R (Calver) v Adjudication Panel for Wales* [2012] EWHC 1172 (Admin) at [42] where the Court held, that "[o]ne of the consequences of giving this constitutional status to freedom of expression is that clear words are required to restrict it…"

27 *R (Spitalfields Historic Building Trust) v London Borough of Tower Hamlets* [2025] UKSC 11, [2025] 4 All ER 721 at [55], the Court accepted that the "*democratic principle that a councillor should be able to represent their constituents and the public in the local authority's area by voting on matters affecting them*" was capable of attracting heightened scrutiny, even where no specific individual 'right' was engaged.

28 *KP* at [77], citing *R v Secretary of State for the Home Department, ex parte Bugdaycay* at 531.

29 At [77], citing *R v Ministry of Defence ex p Smith* at 554 and *Pham v Secretary of State for the Home Department* [2015] UKSC 19, [2015] 1 WLR 1591 at [107].

Ground 4a: logical flaws and incoherence

9.36 As set out above, the FSU has significant concerns about not only the content of the Definition and the Guidance but also that it is internally incoherent or inconsistent such as to render the decision to publish it one no reasonable Minister, properly informed, could have made. These include:

9.36.1 First, it is illogical for the executive to specifically adopt the term "*hostility*" and then seek to define it in the Definition, in a way that is different to, and broader than, its meaning in statute in a related field. For example, the term "*hostility*" is used in the definition of a racially or religiously aggravated offence under s.28(1) (b) Crime and Disorder Act 1998: "*the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group*." But hostility in that context would not necessarily include conduct which fell within the second or third element of the Definition. Having two different meanings of "*hostility*" will inevitably result in confusion that no reasonable Minister could authorise.

9.36.2 Second, the Guidance states that the purpose of the concept of AMH and "*hostility*" in particular is so that the Definition focuses on "*actions and conduct rather than simply holding beliefs*" (section 5, 2nd paragraph). But the second element and "*prejudicial stereotyping*" is not necessarily an action or aspect of conduct — it could logically be a wholly mental process, including the "*intention*" to "*encourage hatred*". And if the second element is only intended to capture an "*action*" or "*conduct*", that is not an obvious or a natural reading of the language and sentence structure used. An ordinary reader would naturally understand that a wholly mental process was captured by the second element. Indeed, that conclusion would be supported by the Guidance which states AMH includes "*subtle forms of prejudice*" (section 8, 6th paragraph). This incoherence is irrational.

9.36.3 Third, it is illogical to have a "*Definition*" of what amounts to AMH and then within the Guidance include express statements that extend the Definition: ie. "*Importantly, this definition makes clear that prejudicial stereotyping or racialisation constitute anti-Muslim hostility when combined with an intention to encourage hatred against Muslims*" (section 5, final paragraph). Plainly, the Definition does not "*make clear*" that "*racialisation*" (whatever that means) constitutes AMH. If it was the Government's intention that it should, it should have said so. It is illogical and incoherent to include this statement in the Guidance.

9.36.4 Fourth, it is illogical in the third element to include the subclause after the term "*relevant conduct*" and before the limitation "*is intended to disadvantage Muslims*". The inclusion of the subclause has the implication that "*relevant conduct*" meets the definition of AMH regardless of whether it is "*unlawful discrimination*" or not, where it is "*the creation or use of practices and biases within institutions*", whatever that means, and where there is an "*intention to*" "*disadvantage*" Muslims (again, whatever that means). If it was the intention of the drafter that "*practices and biases*" would be included in the meaning of AMH, even where it is not "*unlawful discrimination*", that decision is illogical as there is no reason why conduct which was not unlawful discrimination should fall within the third element. If it was not, then the Definition contains a logical flaw in that the natural reading of the third element of AMH includes a matter not intended to fall within the Definition.

9.36.5 Fifth, it is further illogical for the Definition to only apply to England. If the executive has identified a problem that requires the Definition to address it, then it is, absent explanation, illogical that that conclusion only applies to England and not to Scotland, Wales or Northern Ireland.

9.36.6 Sixth, the meaning of "unlawful discrimination" in the Definition and the Guidance is unclear and appears to be inconsistent or incompatible with the meaning of unlawful discrimination under the EA 2010. On the one hand, the Definition is said to be engaged by conduct that amounts to "unlawful discrimination", which would therefore encompass conduct that amounts to both direct and indirect discrimination (both being unlawful under the EA 2010). However, the second and third paragraphs of the Definition then import a requirement for specific intent, implying that only intentional or direct discrimination engages the Definition, and conversely that indirect discrimination does not. This is plainly illogical and irrational but also amounts to a clear misunderstanding of the correct legal standards.

9.36.7 Seventh, the Definition states that "*Anti-Muslim hostility is intentionally … assisting or encouraging criminal acts… that are directed at Muslims because of their religion".* However, this does not state whether only the act of encouragement/assistance needs to be intentional, or whether the abettor also must intend the eventual criminal act to be directed at Muslims because they are Muslims. The problem is the use of the word 'are' in the present tense indicative. From the perspective of the person doing the encouraging, the criminal acts *will* or *may* be done. But as a result of this imprecise drafting, there are four possible interpretations:

(i) Person A, motivated by AMH, intentionally encourages person B do a criminal act against Muslims (and person A intends that B be motivated by AMH);

(ii) Person A, motivated by AMH, intentionally encourages person B do a criminal act against Muslims (and is indifferent to the motivation of person B);

(iii) Person A encourages person B to do a criminal act against Muslims with the intention that B be motivated by AMH (whether or not that transpires); and

(iv) Person A with no particular motivation, intentionally encourages person B do a criminal act against someone who happens to be a Muslim (and if B is motivated by AMH then A's act is also an act of AMH).

9.36.8 The Definition's failure to resolve these distinct interpretations means that a person of ordinary understanding cannot know whether their conduct falls within the Definition. That uncertainty is itself a further source of chilling effect.

9.36.9 Equally, these different interpretations show that the Definition and the Guidance fails the most basic of tests "to be prescribed by law" as set out in *Re Gallagher,* in that they are: "*obscure and open to different interpretations*" (§21); and they potentially "*confer a discretion so broad that its scope is in practice dependent on the will of those who apply it, rather than on the law itself*" and they are "*couched in terms so vague or so general as to produce substantially the same effect in practice*"(§17).

9.36.10 Finally, it is illogical to publish the Definition and the Guidance where it is so open to different and inconsistent interpretation. In particular, it was irrational to include terms which are open to different interpretation without proper definition: those terms include "*hatred*", "*prejudice*", "*hostility*", "*racialisation*" and "*disadvantage*". If the Government is to publish this Definition and Guidance, and given its likely chilling effect on freedom of speech and the intent that it be relied upon and "adopted" by multifarious organisations, it is incumbent on the executive to properly explain and define what is meant by the Definition and the Guidance. That it has failed to do so is irrational in that it is a decision no reasonable decision maker could have made.

Ground 4b: Failure to take into account relevant considerations

9.37 Rationality review involves the courts assessing both the process of reasoning by which a decision is reached and the outcome.[30]

9.38 In terms of process, there is no evidence (at least on the face of the publicly available documents) that the Secretary of State took all relevant material considerations into account when making the decision to impose the Definition and the Guidance and in the terms published. To the contrary, had the Secretary of State been properly informed of the risks to freedom of speech in particular, and impact on the groups of individuals as set out above, he would not have adopted the Definition and the Guidance. The Decision is *prima facie* irrational on this basis.

Ground 4c: Definition serves no reasonable purpose

9.39 The Decision was further or alternatively irrational in that it serves no reasonable or rational purpose. Here it is relevant that there is a significant body of legislation already passed by Parliament, and Guidance issued by statutory bodies. If it is only the purpose of the Secretary of State to encourage compliance with that legislation, then the second element would not have been included, and the third element would not have been stated in the terms it is. If the purpose is to go beyond that legislation, then the Decision is one no reasonable decision maker could have made. The executive cannot extend the rights and obligations of individuals and organisations, nor infringe the rights of others by diktat without Parliamentary scrutiny, and any decision to do so is unreasonable.

9.40 Existing legislation already clearly prohibits many of the activities the Definition appears to intend to regulate, including the EA 2010; The Public Order Act 1986 (as amended by the Racial and Religious Hatred Act 2006) (the **"Public Order Act**"), and The Crime and Disorder Act 1998 (as amended) (**the "Crime and Disorder Act**"). Specifically:

9.40.1 The Public Order Act creates specific offences for intentionally stirring up religious hatred (see sections 29B-29G). This includes using threatening words or behaviour, displaying threatening written material, or publishing or distributing material with the intent to incite hatred against a group defined by their religious beliefs or lack of belief;

9.40.2 Under the Crime and Disorder Act, existing criminal offences (such as assault, criminal damage, and harassment) become 'racially or religiously aggravated' offences if the perpetrator demonstrates or is motivated by hostility towards a victim's actual or perceived religious group (see sections 28-32). Therefore, the Definition and the Guidance adds little to the existing legal architecture designed to protect Muslims from hatred and discrimination.

9.40.3 The EA 2010 prohibits discrimination (direct or indirect), harassment or victimisation of a person with a protected characteristic (such as religion or belief). Therefore, in this respect the Definition and the Guidance is also redundant given existing legislation already addresses intentional discrimination, as well as discriminatory conduct that has the effect of disadvantaging a protected group, regardless of intent.

9.41 Although public government messaging has sought to justify the Definition and the Guidance with reference to the growing "hostility", "discrimination" and "hate" towards Muslim communities, the FSU is concerned that the true driver behind the Definition was, and always has been, politically motivated.

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30 See *Braganza v BP Shipping Limited* [2015] UKSC 17, [2015] 1 WLR 1661 at [24]); *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin), [2019] 1 WLR 1649 at [98].

9.42 While the FSU of course accepts that the Government is entitled to develop and implement policy, and that this will invariably be influenced by political considerations, there is a limit to this. It is well established that a political purpose can taint a decision with impropriety, and decisions based on wholly political policy considerations are open to challenge.[31]

9.43 Indeed, just recently when discussing the wider context to the introduction of the Definition and the Guidance, the Chair of the Working Group, the Right Honourable Dominic Grieve KC, confirmed that:[32]

> *I think it's also worth bearing in mind that a lot of it, I'm afraid, and I've said this in the past, has to do with politics. If you are, or you see yourself dependent on a particular community vote — we've after all seen it in the recent Gorton by-election then, I'm afraid, my impression having taken an interest in this subject for some time, is that there is a tendency to gloss over issues.*

Ground 4d: Introduction of blasphemy law

9.44 The Decision is also irrational in that, in substance, the Definition and the Guidance introduce a blasphemy law. This is not only problematic on its own terms but, more crucially, it cuts across and undermines clear Parliamentary intent to abolish blasphemy laws.

9.45 The common law offences of blasphemy and blasphemous libel ("**the Offences**") were repealed in 2008 through section 79(1) of the Criminal Justice and Immigration Act 2008. This followed close to thirty years of attempts to repeal these offences — the last public prosecution for which was in 1922, and the last private prosecution was in 1977.[33]

9.46 At the Report stage of the Criminal Justice and Immigration Bill 2007-08, Dr Evan Harris tabled an amendment to abolish the Offences. After outlining the cross-party support for the amendment — including from the Hon. Member for Beaconsfield (Mr. Grieve), who "*has an excellent reputation in standing up for freedom of expression*" — Dr Harris stated:[34]

> *Those laws are also unnecessary in two significant ways. First, enough laws dealing with outraging public decency and public order offences are already on the statute book to ensure that the removal of these two offences will not lead to widespread outrageous behaviour in public….*
>
> *The offence of blasphemy is illiberal because its scope is uncertain. Its terms do not define—because the offence is not statutory, for one thing—what someone must do or say to be arrested, prosecuted and convicted. It is also an offence of strict liability, so not having intended to blaspheme is no defence to prosecution. One therefore cannot know when one is committing the offence, which was the main reason given by the Law Commission for seeking its abolition as long ago as 1985. Although people do not know whether they have committed the offence, it also commands an unlimited penalty, because no penalty is laid down in statute. The offence is discriminatory, in that it*

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31 See, for example, *R v Secretary of State for Foreign and Commonwealth Affairs, ex p World Development Movement Ltd* [1995] 1 WLR 386, 398C-D; *R v SSHD ex p Launder* [1997] 1 WLR 839, 868B-D.

32 The Telegraph: "Blasphemy law by the back door: the problem with anti-Muslim hate guidance" https://www.youtube.com/watch?v=hK5nnmPLQng (accessed 14 March 2026).

33 *Whitehouse v Gay News Ltd, R v Lemon* [1979] 1 All ER 898, HL. See also the The Law Commission: "Offences against religion and public worship" (18 June 1985), HC 442 1984-85.

34 UK Parliament: "Criminal Justice and Immigration Bill" (Hansard, vol 470, 9 January 2008) https://hansard.parliament.uk/commons/2008-01-09/debates/08010972000001/CriminalJusticeAndImmigrationBill (accessed 18 March 2026).

> *applies only to the Christian religion—and within that, only to the tenets of the Church of England.*
>
> *For both the reasons that I have given—the lack of clarity and its discriminatory nature—the offence does not comply with the European convention on human rights, or, indeed, with our own law now that it incorporates the convention.*

9.47 On 21 January 2008, the Joint Committee on Human Rights released its report on the Criminal Justice and Immigration Bill.[35] In summary, it was in favour of abolishing the Offences. It stated that:

9.47.1 the continued existence of the offences of blasphemy and blasphemous libel gives rise to "an ongoing risk" of violations of Articles 9, 10 and 14;

9.47.2 the offences also discriminate on grounds of religion because they only protect the Christian religion, and even within that religion they only protect the tenets of the Church of England. Unlike the narrowly drawn offence of incitement to religious hatred, which protects people of all religions and none against intentionally threatening words and behaviour, the offences of blasphemy and blasphemous libel provide no protection to people of other religions; and

9.47.3 the continued existence of the offences can no longer be justified, and it was confident that this would also, in today's conditions, be the view of the English courts under the Human Rights Act and the Strasbourg Court under the ECHR.

9.48 Subsequently, the Government introduced an amendment to abolish the Offences during the Committee stage in the House of Lords on 5 March 2008. The Government's amendment passed by 148 to 87. During the House of Commons' consideration of the Lords' amendments, Maria Eagle, the Parliamentary Under-Secretary of State for Justice, stated:[36]

> *As I said on Report, it is high time that Parliament reached a settled conclusion on the matter. Today gives us an opportunity to do so. The last prosecution under these laws was in 1977, in the case of Whitehouse v. Gay News Ltd, and there has been no public prosecution under them since the 1920s. There have therefore been no cases since the introduction of the Human Rights Act in 1998. Given that these laws protect only the tenets of the Christian Churches, they would appear to be plainly discriminatory.*
>
> *…*
>
> *The House will be aware that in 2001 the Government introduced legislation that specifically affords protection, in the form of religiously aggravated offences, to religious as well as racial groups. We have also brought in legislation to protect people from discrimination on the grounds of religion or belief. Perhaps most importantly, we introduced a new offence of incitement to religious hatred in the Racial and Religious Hatred Act 2006. I know that there was controversy about some if not all of those provisions, but they show*

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35 Joint Committee on Human Rights: "Legislative Scrutiny: Criminal Justice and Immigration Bill" (21 January 2008) https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/37/37.pdf (accessed 18 March 2026).

36 UK Parliament: "Criminal Justice and Immigration Bill" (Hansard, vol 475, 6 May 2008) https://hansard.parliament.uk/commons/2008-05-06/debates/08050680000001/CriminalJusticeAndImmigrationBill (accessed 18 March 2026).

that we have introduced protection for people expressing their religious views that we believe is fair.

9.49 The House of Commons considered the Lords' amendment on 6 May 2008 and agreed to it by a division of 378 votes to 57. The Bill received Royal Assent on 8 May 2008.

9.50 The arguments raised throughout the course of the repeal of the Offences apply just as much to Definition and Guidance, particularly the risk they pose to Articles 9, 10 and 14 of ECHR. Parliament recognised this in 2008 and acted. It recognised that protections remain for discrimination on the grounds of religion or belief, including the incitement of religious hatred.

9.51 However, by repealing the Offences, Parliament drew a clear distinction between legitimate speech that is targeted at or concerns religion (and which is protected under the ECHR) and where that crosses the line into criminal or discriminatory acts. That distinction has been well understood and indeed applied since 2008. However, the Definition and the Guidance undermines this distinction by creating a grey area — an area that was clearly not intended by Parliament and is therefore irrational.

Ground 5: Guidance or policy is unlawful in *R(A)* terms

9.52 The Guidance read as a whole authorises and approves of unlawful conduct and provides an inaccurate statement of the law applying *R (on the application of A) v Secretary of State for the Home Department)* [2021] UKSC 37, [2021] 1 WLR 3931 ("***R(A)***") and *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 [38] [46]:

9.52.1 The Guidance includes an inaccurate statement of law in that it inaccurately describes the nature of speech that is protected, and it follows that it authorises or approves unlawful conduct including the interference with a protected right. As set out above at 8.1.12-8.1.14, the Guidance purports to explain "*freedom of speech*", and in doing so it contains a statement of law that must be accurate. Yet the statement in the Guidance is inaccurate, in that it inaccurately states or implies the limit on that right in a way that is not consistent with the case law, in particular, as explained in *Miller* and *Forstater*. In this context, and given the importance of the concept of freedom of speech, it was incumbent on the executive to accurately describe it. This included not stating or implying that:

(a) the right to freedom of speech is generally limited to speech which is "*in the public interest*" or academic debate (see in particular: section 3, 2nd paragraph, section 5, 2nd paragraph, section 6, final paragraph). But, as set out above there is no such limitation: in *Miller* the tweets were protected not withstanding that they were "*opaque, profane or unsophisticated*".

(b) that "*prejudice*" is not protected; but, of course, thoughts or speech which one person may describe as "*prejudice*", properly understood can be a protected belief under Article 9, and where it is manifested, protected speech under Article 10 (see in particular: section 3, 2nd paragraph).

(c) while speech which causes "*offence*" may be protected, that protection is limited to that which others find "*uncomfortable*" or "*disagreeable*" and not beyond (section 8, 6th paragraph). The implication that the right to "*offend*" only includes being "*disagreeable*" or making a person "*uncomfortable*" misstates the law: see *Forstater* as above.

(d) that there is a right to be protected from "offence", i.e. use of the term "*always*" (section 8, 6th paragraph). But there is no such right, speech will not be protected (subject to justification) *only* where it falls within Article 17, which as above sets a very high threshold.

9.52.2 The Guidance also misstates the law in that it states expressly that conduct which falls within the second element would not be protected speech: "*the second paragraph is intended to encompass behaviour that is not necessarily unlawful, but which is reprehensible in this context, because it extends beyond the bounds of protected free speech*." (with emphasis) (section 8, 4th paragraph).

9.52.3 In short, whether speech is that which was protected under the ECHR could fall within the second element would turn on the meaning of the word "*hatred*" and whether hatred in this context meant conduct which fell within Article 17 of the Convention (as explained in *Forstater* above). But as the Definition and the Guidance does not define "hatred", contrary to the Guidance, speech which was protected speech could fall within the Second element.

9.52.4 The cumulative effect of these misstatements of the nature and scope of protected speech, together with the exhortations to adopt and apply the Definition and the Guidance, means that public and private bodies will be led to treating lawful expression as AMH and to take action against it. This would be directly contrary to the safeguards in both the EA 2010 (as read down) and the Human Rights Act 1998 and therefore meets the test in *R(A)* of sanctioning or approving unlawful conduct.

Ground 6: Public Sector Equality Duty

9.53 In deciding to publish the Definition, if he had that power, the Secretary of State was exercising a function, and was required to comply with section 149 of the Equality Act 2010 — the public sector equality duty ("**PSED**"). He was required to have due regard to the need to achieve the objectives set out in section 149(1). The principles governing compliance with the PSED have been set out in cases including *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, and reaffirmed by the Court of Appeal in *R (Bridges) v Chief Constable of South Wales Police* [2020] EWCA Civ 1058 at [174]–[175]. These include that:

9.53.1 The PSED must be considered at the formative stage of the decision;

9.53.2 It must be exercised with substance, rigour, and an open mind;

9.53.3 It is non-delegable and must be considered by the decision-maker personally;

9.53.4 It is a continuing duty; and

9.53.5 It may require the decision-maker to take steps to gather relevant information, including through consultation.

9.54 Subject to the disclosure requested in this letter being provided in accordance with the duty of candour, the FSU is concerned that the Secretary of State may have breached the PSED, particularly given:

9.54.1 The Working Group did not reflect a plurality of religious, ideological, or philosophical viewpoints. All members appear to be aligned with a broadly similar policy or institutional outlook in relation to defining Anti-Muslim hatred, and there did not appear to be any visible representation from academic experts with differing perspectives, advocates of freedom expression, secular voices from within Muslim communities, or even minority Islamic sects likely to be affected by the definition. Subject to these matters being allayed in response to this letter through disclosure of evidence clearly demonstrating compliance with the PSED, the composition of the Working Group raises legitimate concerns about institutional bias and undermines confidence in the fairness of its process and outcomes.

9.54.2 No equality impact assessment or equivalent analysis has been published, and there is no indication that the potential impact of the proposed definition on different protected groups (including religious minorities, free speech advocates, or those with philosophical beliefs protected under the EA 2010) was considered.

9.54.3 The irrationality inherent in the Decision strongly implies the PSED has not been discharged.

10 Request and Case Management Proposals

10.1 The Decision has immediate effect and therefore causes immediate prejudice to a wide variety of people, including for the reasons identified in this letter. Within days of the Decision being published, accusations of 'anti-Muslim hostility' were levelled at individuals for exercising their right to lawful freedom of speech.[37]

10.2 Accordingly, the FSU requests that the Definition and the Guidance be immediately withdrawn, accompanied by a statement that suspends their operation.

10.3 Failing this, the FSU considers it is important and in the public interest for this case to be determined swiftly. Our client therefore intends to apply for the proceedings to be dealt with by way of a 'rolled up' hearing. As such, we propose the following case management directions:

10.3.1 The Defendant to file and serve his Detailed Grounds of Defence and any witness evidence within 35 days of the Statement of Facts and Grounds being served;

10.3.2 The Claimant(s) to file and serve any evidence in reply to the Defendant's witness evidence within two weeks of the Defendant's Detailed Grounds of Defence and witness evidence being filed and served;

10.3.3 A two-day judicial review hearing to be listed at the soonest available opportunity, allowing time for standard pre-hearing directions to be accommodated.

10.4 Alternatively, should the Decision be withdrawn subject to review pending determination of these proceedings, standard judicial review procedure would be appropriate.

10.5 We invite your client's views on these case management proposals.

11 Alternative dispute resolution

11.1 The FSU is open to resolving this matter without recourse to litigation and is prepared to engage with the Secretary of State and/or the Ministry in good faith if your client makes sensible proposals that address our client's concerns.

11.2 The FSU would be grateful for an opportunity to meet with Ministry officials in good faith regarding the matters addressed in this correspondence, particularly given the Guidance notes that the Definition is a "*working definition*" and that adjustments may be made "*as the context of the issue evolves, in response to feedback and emerging evidence to ensure clarity, effectiveness, and useful application of the definition*."

11.3 Withdrawal of the Decision pending review is, however, a pre-condition to any such meeting. Such withdrawal pending review could be communicated by way of an appropriately worded public statement making clear that the Definition and the Guidance are not currently in force and are subject to review.

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[37] See, for example, The Guardian, "*Starmer claims Tory party has 'problem with Muslims' after Nick Timothy tweet*," 18 March 2026: https://www.theguardian.com/politics/2026/mar/18/starmer-conservatives-muslim-prayer-london-politics (accessed 19 March 2026).

12 Disclosure and information requests

12.1 Your client will no doubt be aware of the obligations imposed upon him pursuant to the duty of candour in public law litigation. The duty of candour applies at the pre-action stage as well as during judicial review proceedings.[38] The duty of candour requires disclosure of information that could be averse to the Secretary of State's case or, in the words of the High Court, disclosure of "the good, the bad and the ugly".[39] In essence, the duty requires that judicial review be "conducted with all the cards face upwards on the table" and acknowledges that "the vast majority of the cards will start in the authority's hands".[40]

12.2 Without prejudice to the generality of the duty of candour, our client requests urgent disclosure of the following documents and information;

12.2.1 The initial list of the consultees who were engaged directly by the Working Group;

12.2.2 The Working Group's final advice to the Secretary of State;

12.2.3 Whether a PSED impact assessment was conducted, and if not, why not;

12.2.4 If a PSED impact assessment or equivalent analysis was undertaken, this PSED or similar assessment/analysis;

12.2.5 What is meant by the statement the "government encourages the adoption of the definition across the public, private and third sectors" (emphasis added), specifically what steps the government encourages the public, private and third sectors to take;

12.2.6 Ministerial submissions and readouts underlying the Decision to implement the Definition and the Guidance.

12.3 The FSU will maintain confidentiality over any information and/or documents disclosed. We (Sharpe Pritchard and our client, the FSU), undertake that we will receive any documents disclosed by the proposed Defendant in response to this letter for the purpose of advising our client on matters associated with the issues addressed in this letter, and not for any collateral purpose, nor will the information be published, unless or until the protections envisaged under CPR 31.22 cease to apply. We note that our client has previously given such undertakings in the context of other judicial review proceedings and has a history of full compliance.

12.4 We emphasise that early disclosure of these limited documents during the pre-action stage is appropriate and proportionate in this case because there is a serious lack of transparency as to essential aspects of decision making, as identified in this letter. Candour is necessary so that our client can properly consider which of the grounds summarised in this letter to plead in a claim. Should such disclosure not be forthcoming, and should our client be required to plead grounds which might otherwise be strengthened or weakened by more timely candour, then our client will seek to recover its costs occasioned by such delinquency: *M v Croydon London Borough Council* [2012] EWCA Civ 595.

13 Date for Reply

13.1 Your response to this letter is requested by 16:00 on 2 April 2026, which provides your client with the standard 14-day response period.

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38 *R (Police Superintendents' Association) v Police Remuneration Review Body & Anor* [2024] 1 WLR 166 at [15](9); *National Bank of Anguilla (Private Banking and Trust) Ltd (in Administration) v Chief Minister of Anguilla* [2025] UKPC 14 at [91].

39 *R. (on the application of Hoareau) v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 1508 (Admin) at [20].

40 *R. v Lancashire CC Ex p. Huddleston* [1986] 2 All E.R. 941 at 945.

13.2 We reiterate that the matters being challenged cause immediate and ongoing prejudice, and therefore an expedited and compliant response is required. We note your client has briefed the press that the Decision has been underpinned by advice from counsel, and your client is confident of his legal position, and we therefore anticipate your client is already prepared to address the matters raised in this letter fully and candidly.

13.3 We note that our client has taken less than two weeks to compile this letter. We remind you that a failure to engage constructively and within the Pre-Action Protocol timetable may be a relevant consideration for assessing costs under ***Croydon***, in which the Court of Appeal emphasised the importance of timely and reasoned engagement during the pre-action stage. Should your client consider he needs further time to articulate his position, we require a clear and candid explanation of why that is so, and we reserve the right to decline to delay issuing proceedings.

13.4 If no pre-action response is received within this period, the FSU reserves the right to issue proceedings without further notice.

Yours faithfully,

Sharpe Pritchard LLP