8 ATTACKS ON FREEDOM TO SPEAK AND PRAY

Philip Booth

Introduction

Freedom of speech is generally regarded as a fundamental human right and is often protected in constitutions. Such protection is meaningless unless people are allowed to say things which others do not like or, indeed, say things which offend other people.

The restrictions on freedom of speech discussed in this chapter are linked to freedom to pray and to freedom of conscience. However, that link is not intrinsic to the argument. It just happens to be the case that the legal cases presented here involve Christians, but they relate to issues which divide society more generally. Many activists in the abortion debate, which I cover below, are non-believers who share the views of many Christians in relation to the protection of life in the womb. However, it is important to make the link between freedom of speech and religion because this touches upon questions of freedom of conscience, which is also generally regarded as a fundamental human right.

The Catholic Church outlined its teaching on the matter of religious freedom in *Dignitatis Humanae*, one of the

documents of the Second Vatican Council. The full English title of the document was 'Declaration on Religious Freedom, on the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious'. Paragraph 3 of that document is very clear:

> It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious … No merely human power can either command or prohibit acts of this kind … Injury therefore is done to the human person and to the very order established by God for human life, if the free exercise of religion is denied in society, provided just public order is observed.

Full ref for *Dignitatis Humanae*

All persons must be able to express verbally and in the written word their religious beliefs individually and in association with others: 'The demand is likewise made that constitutional limits should be set to the powers of government, in order that there may be no encroachment on the rightful freedom of the person and of associations' (*Dignitatis Humanae,* 1).

Of course, there are boundaries to such freedoms. The rights of others should not be infringed as 'society has the right to defend itself against possible abuses committed on the pretext of freedom of religion' (*Dignitatis Humanae,* 7).

This principle of freedom of speech and conscience, as well as its limits, has generally been widely accepted in secular societies. Deliberately encouraging the use of violence

or promoting racial hatred, for example, are categories of abuse that would be restrained by the law. However, saying things that might offend people has not normally been prohibited by the law.

So, for example, the UK Equality and Human Rights Commission states in relation to the Human Rights Act[1]:

- Article 9 protects your right to freedom of thought, belief and religion … You also have the right to put your thoughts and beliefs into action. This could include your right to wear religious clothing, the right to talk about your beliefs or take part in religious worship.

It continues: 'Public authorities cannot interfere with your right to hold or change your beliefs, but there are some situations in which public authorities can interfere with your right to manifest or show your thoughts, belief and religion.'

This chapter provides examples which show that freedom of speech and conscience in the UK have been restricted in ways that go far beyond what has generally been deemed acceptable in a free society. Much of the chapter uses the example of protests or vigils in relation to abortion. In doing so, it allows some consistency of argument in relation to the key points. Other issues are covered in the later parts of the chapter.

1 Article 9: Freedom of thought, belief and religion (https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion).

Restrictions on freedom of speech, conscience, prayer and thought

Public Space Protection Orders

The first case we will examine relates to a direct prohibition on freedom of speech and, indeed, freedom to pray. Given that atheists would define prayers as 'silent reflection', this prohibition, in effect, bans silent reflection in a public place.

Under the Anti-social Behaviour, Crime and Policing Act 2014, local authorities can prohibit activities within a specific space if the local authority believes that the activity is detrimental to the quality of life of the local community. The order can be renewed an indefinite number of times. The local authority only needs to have 'reasonable grounds' for its action.

A Public Space Protection order (PSPO) has been used by the London Boroughs of Ealing and Richmond to prohibit prayer and speech in a public space. Several others are under consideration. Specifically, after some years of peaceful prayer vigils outside an abortion centre in Ealing, a series of demonstrations was launched against those holding the prayer vigils by an organisation called 'Sister Supporter'. The group organising the counter demonstration then raised a petition to have the vigils banned. Following this, the council then issued a PSPO prohibiting 'protesting, namely engaging in any act of approval/disapproval or attempted act of approval/disapproval, with respect to issues related to abortion services, by any

means. This includes but is not limited to graphic, verbal or written means, prayer or counselling…'.

This order explicitly prevents individuals from praying, even silently, or speaking to individuals about alternatives to abortion or offering support as they approach the clinic. It also prohibits the expression of opinions. The High Court and Court of Appeal upheld the Ealing PSPO on the ground that those who wished to be outside the clinic undertaking the prohibited activities 'had a detrimental effect on the quality of life of those visiting the centre which was, or was likely to be, of a persistent or continuing nature' (*Dulgerhiu v. London Borough of Ealing*).

Interestingly, Dulgerhiu herself took the case because she believed that she would have aborted her own baby had it not been for a vigil outside the clinic which she visited. An individual who was part of the vigil provided a leaflet offering practical assistance to Dulgerhiu when her baby was born – help which was subsequently necessary. The vigil therefore widened her options and addressed one of the concerns that often lead pregnant women to seek abortions.

Other attempts have been made outside the PSPO framework to prevent people praying or standing with placards outside abortion clinics. For example, Nottingham City Council took out an injunction against John Edwards, who was part of a small group praying outside a hospital in Nottingham. This was overturned by the judge, who stated that the council's action could 'simply not be justified'. The nature of the actions outside the clinic is perhaps indicated by the statement from one woman who said

that she heard: 'some chanting, possibly in Latin, which she found to be intimidating and sinister'. All published pictures of the vigils suggest small numbers of people (four or fewer), praying silently with small placards with slogans such as 'pray to end abortion'.[2]

When can freedom of speech be restricted? The buffer zone campaign

There have been threats to extend this prohibition on silent prayer and free speech around abortion clinics further. The Home Office launched an inquiry in November 2017 to review legislation surrounding protests and other activities close to abortion centres. Essentially, the proposal on the table was for buffer zones similar to the Ealing PSPO to be created around all clinics enforced by national legislation. The then Secretary of State for the Home Office, Sajid Javid, reported back to parliament in September 2018[3] rejecting that proposal. In his statement he noted that only around 10 per cent of abortion clinics experienced a protest of any kind and that few of these protests were in any sense aggressive. Most involved passive activities.

2 See, for example, Anti-abortion group 40 Days for Life targets Queen's Medical Centre. BBC News, 14 February 2018 (https://www.bbc.co.uk/news/uk-england-nottinghamshire-43006171). A counter-demonstration is also pictured with ten people taking part.

3 Outcome of the Abortion Clinic Protest Review, 13 September 2018 (https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-09-13/HCWS958).

The Secretary of State also noted that there was existing legislation available to deal with problems that any protests may cause:

> In making my decision, I am also aware that legislation already exists to restrict protest activities that cause harm to others. For example, under the Public Order Act 1986, it is an offence to display images or words that may cause harassment, alarm or distress. This Act also gives the police powers to impose conditions on a static demonstration if they believe it may result in serious public disorder, serious damage to property or serious disruption to the life of the community or if the purpose of the assembly is to intimidate others. There are also offences under the Protection from Harassment Act 1997 when someone pursues a course of conduct which they know will amount to the harassment of another person.

This takes us directly to the question of where the state should restrain freedom of speech.

One principle by which we might judge whether action to prevent freedom of speech is justified is J. S. Mill's 'harm principle'. According to this principle, government intervention is regarded as justified only if it harms others. This is a principle that is often used as a guide to policy by those who would describe themselves as social liberals. In framing his harm principle, however, Mill specifically included inciting violence as a reason for restricting freedom of speech, but he specifically excluded hurting the feelings of others as a reason for restriction (Mill 2006, chapters 3

Check this gloss - 'only if it harm others'

and 2 respectively). The activities that are prevented by the PSPO – prayer, handing out counselling leaflets or holding up posters – neither incite violence nor cause physical harm. As noted above, whether they hurt the feelings of others or help others psychologically is also debatable.

Prohibiting prayer and free speech on the grounds that it causes psychological harm, widely defined, is not a tenable argument for a stable legal framework in a free society. While it can be argued that an individual praying outside an abortion clinic causes psychological harm to those entering, it can also be argued that the act of entering the clinic and continuing with an abortion can cause psychological harm to those who oppose the procedure. Both are legal activities of which others disapprove. PSPOs are inhibiting freedom of speech in public places even where there is no question of incitement to violence.

In fact, the Acts of Parliament to which Sajid Javid referred and the relevant case law are already somewhat more restrictive than is implied as appropriate by Mill. One particular example is of interest in setting the parameters of that Act. In a case involving Andy Stephenson and Kathryn Sloane, who were arrested under the Act in Brighton in 2010 for holding images depicting abortion outside a clinic, the judge outlined the meaning of harassment, alarm and distress in law.

Those holding the signs liken what they do to the actions of anti-slave-trade protesters in the nineteenth century and argue that, by holding images, they are simply presenting facts which they would like others to view so that they reconsider their views. The judge reasoned that

a complainant's feelings of 'distress' or 'alarm' under Section 5(b) of the Public Order Act are only actionable if they are caused by a sign which is objectively 'abusive' or 'insulting' and that this requires the signs to be demeaning or disparaging to foreseeable viewers. Because the pictures in this case were medically accurate, they can, it was argued, neither demean nor disparage: they do not involve the expression of an opinion but illustrate what happens in the abortion process.[4]

It is interesting that those who support buffer zones and further restrictions on free speech often begin by suggesting that they respect the right to free speech, but then argue that it is a qualified right and use as their cited qualification the language that appears in the Public Order Act. For example, the Mayor of London, Sadiq Khan, has said: 'The right to peaceful protest must be respected, but we must never tolerate behaviour that seeks to deliberately harass and intimidate women'; and Raj Chada, criminal defence lawyer and protest specialist at London law firm Hodge Jones & Allen, argues that the arguments against PSPO-enforced buffer zones are 'erroneous' because 'The right to free speech is a qualified right, but when your actions harass or intimidate others, then your right to free

4 A contrast could be made here with the holding of a placard reading 'Women who have abortions are murderers', which may be somebody's opinion that some may think appropriate to express in certain situations. However, to wave such a placard outside an abortion clinic, especially given the law and its definition of both abortion and murder, would be abusive and designed to cause distress.

speech can be curtailed'.[5] This is a particularly strange argument from a lawyer because the kind of actions cited by Khan and Chada are already illegal under the Public Order Act and the Protection from Harassment Act and case law has already established the meaning of these words: its meaning does not cover the kind of actions that Khan and Chada wish to prohibit using PSPOs.

It would seem that, under the interpretation of the legislation by the courts, the law as it stands both protects free speech and allows women to take all lawful actions to end their pregnancies without being impeded. On the other hand, PSPOs are being used to undermine the freedom to protest, speak, stand and hold placards, give out leaflets or even pray silently. As well as the risk of proliferation of PSPOs, there are other instruments that can be used against individuals that have a similar effect.

Community Protection Notices: the Waltham Forest case

Community Protection Notices (CPNs) apply to individuals rather than to a geographical area. They can be issued by an officer of a local authority to individuals in order to restrict their behaviour. They are very similar in legal standing to a PSPO.

5 Stalking, 'lies' and harassment: the fight to enforce buffer zones outside abortion clinics. *The Independent*, 7 November 2019 (https://www.independent.co.uk/life-style/women/abortion-clinic-buffer-zones-uk-home-office-review-bpas-marie-stopes-london-a9188041.html).

One local authority, the London Borough of Waltham Forest, has used a CPN to restrict freedom of speech in relation to a protest against abortion. In this case, the individual concerned was simply protesting about the law which he wanted to change: it was not a vigil outside an abortion clinic.

The case involved a member of the Centre for Bio-ethical Reform UK, Christian Hacking, who was protesting about abortion. He used large images of an aborted foetus to draw attention to the local Member of Parliament's view on decriminalisation of abortion including of viable babies. A CPN was issued and the person on whom it was served appealed that it was a contravention of his right to free speech. It was argued by a supporter of the appellant that this image was similar to displaying images of tissue or organs damaged by cancer. This might be done in public health campaigns to influence attitudes towards smoking, for example.

Clarify this sentence.

The CPN notice and the basis for turning down the appeal was that the image had a persistent negative effect on the quality of lives of the community.[6] In his evidence the appellant produced credible examples of where images had changed public opinion in the past, arguing that the images he was using were attempting to change public opinion in the same way. It was further argued that the

6 The full judgment can be found at https://christianconcern.com/wp-content/uploads/2018/10/CC-Resource-Judgment-Hacking-LBWF-200506.pdf?utm_source=Christian+Concern&utm_campaign=f2d4c74480-BN-202000506-Hacking-Walthamstow&utm_medium=email&utm_term=0_9e164371ca-f2d4c74480-127561849).

question of abortion involved two strongly opposed sides and that the CPN allowed one side to veto the message of the other side.

The judge found that the display of the images had a detrimental effect on some people in the locality. The judge also concluded that the effect was continuing in the case of two witnesses and that this affected their health. In addition, the judge found that there was, in the area of the display, behaviour which was 'feisty' as well as some disorder.

In the judgment, Article 10 of the Convention on Human Rights was quoted:

> The exercise of these freedoms [political speech], since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The judge found that the appellant was served with the CPN in the pursuit of the legitimate aims of maintaining order and protecting health.

This reasoning and judgement is problematic. It effectively means that those who oppose a particular political viewpoint can have the expression of that viewpoint

prohibited by a council officer who uses a civil device. This can happen if opponents create the circumstances in which there will be a breach of the peace or if a tiny number of people are distressed by the image. This is not only a restriction on freedom of speech, it is achieved by a device wielded by a council officer which can be activated according to entirely arbitrary criteria.

It might be argued that councils should be able to determine what type of protests take place on or near their own property or on public highways. Organisations cannot have carte blanche to undertake any activities they like on any piece of public land. But such restrictions should be general and not arbitrary. For example, it could be argued that large stationary gatherings or large placards that cause an obstruction should be prohibited by council by-laws. However, these should be general prohibitions passed by the council. The problem with CPNs is the same as the problem with PSPOs. Both allow council officers who might be motivated by personal preference or their own political views or the political views of a small interest group to prohibit free speech, or even to prohibit praying, using a much lower bar than is intended by the law that parliament has passed in relation to free speech.

We know where you live: free speech and police visits

There has also been concern about restrictions on freedom of speech arising from the hate crime provisions built into the Equality Act 2010. In general, the problems seem to

come, not from prosecution under the Act, but from police investigations which can easily be triggered. Two cases illustrate the problem.

In the first, a Baptist Church in Norfolk displayed a poster suggesting that, if you did not believe in God, you would go to hell. The bottom of the poster depicted flames.[7] This is standard Christian teaching for some (though not for all) Christian denominations. Nevertheless, a 20-year-old complained to the police stating that he believed that Christianity is inclusive and loving in nature. The police registered the poster as a 'hate incident'. The police stated: 'National guidance required us to investigate the circumstances and the matter has been recorded as a hate incident. Having spoken to the pastor of the church, it has been agreed the poster will be taken down'.[8] There seems to be no doubt that the police believed that they were required to register the poster as a hate incident, that they visited the pastor and that the visit caused the poster to be removed.

In the second case, Oluwole Ilesanmi was arrested and questioned by the Metropolitan Police for alleged hate speech crimes. He was then released and awarded £2,500 compensation for wrongful arrest and humiliating and distressing treatment.

7 Amusingly, the poster was next to another poster promising visitors to the church a very warm welcome.

8 Police investigate Attleborough church 'hate incident' after sign suggests non-Christians will 'burn in hell' – but what do you think? *Eastern Daily Press*, 22 May 2014 (https://www.edp24.co.uk/news/police-investigate-attleborough-church-hate-incident-after-sign-suggests-non-christians-will-burn-in-hell-but-what-do-you-think-1-3612263).

In addition to the direct impact of police involvement on free speech in both cases, there will be an indirect effect. Few people wish to go through a police investigation and may be put off from speaking freely because they are worried about the consequences.

According to the principles outlined by Mill and also those enshrined in UK law, it should be unacceptable for the law to prevent any individual or religious group talking publicly about 'eternal damnation' except in very limited circumstances such as when the term is used as a deliberate part of a process of mental intimidation of an individual. There will always be cases, of course, where the police interview or even arrest people in circumstances that turn out to be inappropriate. However, in this case, arguably, the law encourages such action.

A hate crime is defined by the Crown Prosecution Service (CPS) in the following way:

> The term 'hate crime' can be used to describe a range of criminal behaviour where the perpetrator is motivated by hostility or demonstrates hostility towards the victim's disability, race, religion, sexual orientation or transgender identity … A hate crime can include verbal abuse, intimidation, threats, harassment, assault and bullying, as well as damage to property.[9]

The CPS advice also sets a high hurdle for a successful prosecution. The problem is that incidents are recorded as

9 https://www.cps.gov.uk/hate-crime

hate incidents by the police, and have to be investigated as such, if, in the opinion of the alleged victim or any other person, an incident was motivated by hatred or prejudice based on one of the stated characteristics in the Equality Act. This can lead to controversial but reasonable opinions being the basis of a visit from the police or even arrest. It is easy to see how the threat of the reporting of a hate incident may stifle free speech and debate. Indeed, in both cases above, such action led to the cessation of the activity. Many people will simply not wish to encounter the police in the course of their daily lives and they should not feel inhibited from speaking freely for fear that they might do so.

A close-run thing: *Lee v. McArthur and Ashers*

A further case of a rather different type relates to a cake shop in Northern Ireland managed by a Christian couple. The couple was asked to bake a cake for a gay person. The couple did not actually know the prospective purchaser was gay and this has not been disputed. The bakers were asked to put the slogan 'Support Gay Marriage' on the cake. After discussion within the family firm, the customer was told that the order could not be fulfilled because the bakery was a Christian business and they did not wish to promote gay marriage. This case is especially interesting because it provides one of the few modern examples in a free country of persons being required to say something they did not believe rather than being prevented from saying something they did believe, which is the topic of the earlier discussion.

In the judgements in the lower courts, it was held that the action of the bakers was direct discrimination because it was the insertion of the word 'gay' before 'marriage' into the slogan that led to the order not being accepted. The judge therefore determined that this was discrimination even though the suppliers did not know the purchaser was gay and even though they would have supplied a cake for a gay wedding but without that slogan (or, for that matter, would not have supplied a cake for a heterosexual wedding with a slogan on it which supported gay marriage: a scenario that is not entirely implausible).

This interpretation is especially interesting because, if the judgement of the lower courts had been upheld, it would then be the case that anti-discrimination law was not only requiring a business to provide a service to somebody living in a way that the business owners regarded as sinful, but would have required them to write a slogan promoting a particular way of life and promoting a political position of which they did not approve. Also interesting in this case is the fact that the perceived problem in this case is not discrimination against a person as such.

The decision was overturned on appeal to the Supreme Court, which made the distinction between refusing to serve a gay person and refusing to make a statement that went against the business owners' beliefs. It was stated in the judgement that 'nobody should be forced to have or express a political opinion in which he does not believe'; that 'the bakery would have refused to supply this particular cake to anyone … there was no discrimination on grounds

of sexual orientation'; and that 'no justification has been shown for the compelled speech which would be entailed.'[10]

This case is worth noting because of how far it could have limited freedom of conscience. If the original judgements had stood, people could have been required to express support for a political idea that they oppose.

Free speech and institutional culture

There are many other examples of actions which lead to suggestions that free speech is under threat in society. In particular, free speech on campuses is regularly in news headlines and is a subject taken seriously by the government. Universities UK (2014) provides a detailed discussion of the legal and other considerations for universities in relation to promoting free speech. Universities do have a legal obligation to protect free speech and academic freedom under the Education Act 1986 and related legislation. However, this is subject to a range of other obligations.

Nevertheless, there has been considerable concern about a large number of specific events or decisions that are regarded by many as undermining free speech or, at least, creating a climate of intolerance. One such example is the cancelling of a Visiting Fellowship in the Faculty of Divinity at the University of Cambridge for the academic Jordan Peterson after protests from students and staff. Commenting on the decision, a staff spokesperson said:

10 *Lee* (Respondent) *v Ashers Baking Company Ltd and others* (Appellants) (Northern Ireland). The judgement can be found at https://www.supremecourt.uk/cases/docs/uksc-2017-0020-judgment.pdf.

'[Cambridge] is an inclusive environment and we expect all our staff and visitors to uphold our principles. There is no place here for anyone who cannot [do so]'. The Student Union commented: 'His work and views are not representative of the student body and as such we do not see his visit as a valuable contribution to the University, but one that works in opposition to the principles of the University'.[11]

This last comment is especially interesting as it suggests quite directly that Cambridge University Student Union believes that people whose views are not representative of those of the student body cannot make a valuable contribution to the university. This seems to undermine the whole essence not just of freedom of expression but also academic freedom and academic inquiry. The university's behaviour, prima facie, does not seem to be consistent with the Vice Chancellor's expressed aspiration that: 'Cambridge is the natural home for all those who want to challenge ideas, and are prepared to have their ideas challenged'.[12]

There are many other examples of guest speakers being 'no platformed' in universities even if they are part of the political mainstream or because they hold feminist views questioning certain theories on transsexuality.

In a different context, a Christian doctor was dismissed by the Department for Work and Pensions (DWP) after

11 The quotations from the student union and from Cambridge University are to be found in Cambridge University rescinds Jordan Peterson invitation. *The Guardian*, 20 May 2019 (https://www.theguardian.com/education/2019/mar/20/cambridge-university-rescinds-jordan-peterson-invitation).

12 Vice Chancellor's address to the university, October 2019.

using sex-at-birth rather than preferred gender pronouns when undertaking health assessments for people claiming benefits. The judgement in relation to the case determined that, while the doctor had a right to hold those beliefs under the Equality Act 2010, the right to manifest them was subject to the right of the client to be called by their preferred pronoun under the provisions of the same act. Not to use the preferred pronoun of the client would be discrimination and harassment under the Act.[13]

A Christian doctor, Dr Richard Scott, was also investigated by the General Medical Council (GMC) in 2012 for talking about his faith to a patient. Unusually, the GMC allowed the complainant to give evidence by telephone without any cross-examination. The complaint was upheld and the doctor given a warning. The GMC has undertaken a further 'fitness to practice' investigation into the same individual after receiving complaints not from any patients but from the National Secular Society about the individual talking to patients about his faith. However, that was not taken further.

Interestingly, Dr Scott's practice clearly states on the opening page of its information booklet that the majority of its partners are Christians and that their faith guides how they view their responsibilities towards their patients. They state that they will offer to talk to patients about spiritual matters but that patients are free to reject this

13 *Mackereth v The Department for Work and Pensions and others*. The judgement seems to reflect a priority ranking of protected rights.

offer or to make clear that they would not like the offer to be made.[14]

These examples all have different implications for freedom of speech and the approach we might wish to take in a free society would be different in each case. In the case of universities, they are free and independent institutions. In a free society, however reprehensible we might regard the behaviour of a particular institution, universities should surely be free to decide their own policies with regard to freedom of speech, as long as they fulfil their charitable objectives. If central government were to impose a blueprint in relation to how free speech should be ensured within universities, it would risk undermining the plurality of the sector.[15]

As far as the provision of medical services is concerned, in principle, in a free society, we should surely welcome a plurality of institutions based on different values and approaches to providing medical care. Such freedom exists in many other countries where medical service providers often have religious foundations. It also exists in the hospice and social care sectors in the UK. The problem appears to be that the GMC has a statutory role in licensing doctors. And, as a state licensing body, it is restricting how doctors can deliver medicine alongside other forms of patient support even if the practice is made clear to patients. Newman's 'Idea of a University' discussed the importance

14 https://www.practicebooklet.co.uk/bethesda/online/

15 For example, the London School of Economics was founded to promote the objectives of the socialist Fabian society and there are many universities with a Christian foundation in a pluralist higher education sector.

of not detaching medicine from philosophy and religion (Newman 1852). People are free to disagree with this perspective, but surely it should be possible to tie one's faith overtly to the practice of medicine.

These cases raise a further set of issues, discussed by Oderberg (2018), related to whether individuals should have freedom of speech and conscience protected in sectors where there are monopoly or monopsony characteristics. But, in general, in a free society we should not need to legislate to protect freedom of speech and conscience. We should simply avoid legislation that restricts such freedoms.

Conclusion

The use of Public Space Protection Orders and Community Protection Notices lead to clear and significant restrictions on freedom of speech, conscience and prayer which are not compatible with a free society. Such instruments can be employed using administrative discretion without recourse to the courts. On the other hand, the Public Order Act and Protection from Harassment Act, which have been properly tested in the courts, only restrict speech if it is abusive or insulting, demeaning or disparaging. A relatively high bar has been set by the courts for limiting free speech on these grounds. Though some might believe these acts to be insufficiently liberal, as compared with J. S. Mill's perspective on free speech, the limits these laws put on free speech are not onerous.

There are other areas of concern when it comes to freedom of speech and conscience. For example, police will investigate hate incidents if, in the opinion of the alleged victim or any other person, an incident was motivated by hatred or prejudice based on one of the stated characteristics which include religion. As we have seen, police intervention has stopped people speaking freely and fear of a police visit is likely to lead people to self-censor.

The author would not regard J. S. Mill as his philosophical guide. However, the 'harm principle' is often cited by social liberals to justify non-intervention by the state in moral matters. Mill supported freedom of speech and believed that we do not have the right to be protected from speech that offends us unless there is incitement to violence. Our parliamentary legislation broadly respects that principle. However, a range of other legislative devices have given power to government officials or the police to undermine freedom of speech and conscience in a decisive way. These powers are being used and they have no place in a free society.