



**CSC BRIEFING JULY 2017**

## **The Open University discriminates against Cuban students**

### **Summary**

One of Britain's biggest educational institutions, The Open University, has a policy that bans Cuban students from studying there. The OU is citing US blockade laws as its justification.

Dawn Turpin, OU Acting Assistant Director, confirmed in writing that this policy was to ensure that the OU took

**“necessary precautions to meet with regulation and protect both itself and its employees. Those steps include the OU not trading with those countries impacted by what is often called US ‘comprehensive’ sanctions and embargoes”.**

By barring a student's application based on their Cuban nationality, the OU is breaking anti-discrimination legislation laid down by the 2010 Equality Act. By complying with the extraterritorial aspects of the blockade, it is also in contravention of legislation which prevents British companies and organisations flouting UK laws in favour of US regulations.

CSC has written to the Open University asking them to overturn this policy. We have also written to the British government calling on them to intervene and, if necessary, to invoke the powers enshrined in antidote legislation, the 'Protection of Trading Interests Act' passed in 1996, to protect British interests against any such US bullying. If the Open University refuses to abide by UK law then necessary action should be taken against them.

### **Background**

In early 2017 a Cuban student began an application to study for a PhD in Teaching English as a Second Language at the OU. The student had successfully completed an MA at the University of Westminster which has had links with Havana medical schools and universities and has welcomed 30 Cuban students to study on MA scholarships since 2002.

While OU lecturers running the PhD were happy for the student to apply, they were unaware that this was against OU policy until the student and their lecturer from Westminster were informed that this was against the university's admissions policy.

Michelle Laufer, a lecturer who had taught the student at Westminster was shocked to be told that the OU ran a 'Restricted Countries' list which included Cuba. After contacting the Cuba Solidarity Campaign she asked the OU to provide further information about their policy.

In an email on 3 April, the Assistant Director of Academic Policy and Governance stated that list was due to “international economic sanctions and embargoes”, which meant that they would not register students from Cuba.

After being informed by CSC that there were no UK or European Union sanctions against Cuba, Michelle again contacted the OU to clarify exactly its position and which “sanctions and embargoes” it was referring to.

“I have worked with a number of students from Cuba who have studied successfully here in the UK at different universities and was keen to see if one of these students could continue their studies at the OU. I was therefore somewhat surprised at the OU policy particularly bearing in mind your stated aim of promoting educational opportunity and social justice,” she wrote.

On 24 April, Dawn Turpin, OU Acting Assistant Director, Academic Policy and Governance gave a damning explanation:

“The OU considers that it falls within the jurisdiction of US regulation with regard to economic embargoes. This is due to the fact that the OU has a number of employees who hold US citizenship (and are therefore subject to US regulation in this regard wherever they are in the world) and that the OU has other significant links with the US (notably using US financial systems).

“The OU is taking necessary precautions to meet with regulation and protect both itself and its employees. Those steps include the OU not trading with those countries impacted by what is often called US ‘comprehensive’ sanctions and embargoes (noting that the detailed applications of sanction regulation is different by country).

“These blocks in trading remain in place. The OU is seeking ‘Specific Licences’ from the US authorities (OFAC) and once received will consider further its policy and any changes. “

The ‘economic sanctions’ referred to by the OU, are those solely imposed by the United States against Cuba. Britain has no such sanctions. In fact it votes against the US blockade and its extraterritorial policies every year at the United Nations.

### **Extraterritorial nature of the US blockade and British government policy**

In 1992 and 1996, legislation was passed in US Congress to strengthen the extraterritorial parts of the blockade. The Torricelli Law (1992) made it illegal for US-owned subsidiaries in third countries to trade with Cuba and the Helms Burton Act (1996) made foreign investment in some Cuban companies liable to prosecution in the US.

Britain and in the EU opposed such legislation and in 1996 the European Council introduced regulation EC2271/96 (the ‘EU blocking Statue’) to offer protection to EU individuals and companies against certain specific extraterritorial legislation, including the Helms/Burton Act.

The British government also passed its own ‘antidote’ legislation, No. 3171, Protection of Trading Interests in 1996. [http://www.opsi.gov.uk/si/si1996/Uksi\\_19963171\\_en\\_1.htm](http://www.opsi.gov.uk/si/si1996/Uksi_19963171_en_1.htm)

This legislation makes it possible for the British government to penalise companies in the UK that comply with the extra-territorial aspects of US law, thus supposedly counteracting the effects of the US legislation. However, although this legislation remains on the statute books it has never been invoked.

The British government through the Trade & Investment Department (UKTI) issues clear advice to businesses wishing to develop trade with Cuba on its ‘Overseas Business Risk – Cuba’. Its own website states:

*“US extra-territorial sanctions are applied by the US Government against companies in third countries that do business in the US if they breach the US economic embargo against Cuba. The Cuba sanctions programme is contained in the Cuba Assets Control regulations (CACR),*

issued in by the US Office of Foreign Asset Control (OFAC), which also includes the 1992 Cuba Democracy Act and 1996 Cuban Liberty and Democracy (Libertad) Act (popularly known as 'Helms Burton' after its sponsors).

#### *UK Government Guidance*

*The UK Protection of Trading Interests Act makes it illegal for UK-based companies to comply with extraterritorial legislation (like Helms-Burton) and there is provision for fines to be levied against offending companies and individuals. In parallel an EU Blocking Statute also makes it illegal to comply. The risk of US sanctions can create uncertainty and businesses, especially banks, sometimes find themselves caught between conflicting legal requirements"*

Full information from UKTI web site:

<https://www.gov.uk/government/publications/overseas-business-risk-cuba/overseas-business-risk-cuba>

#### **Precedents for foreign governments penalising companies for complying with extraterritorial legislation**

The governments of both Austria and Mexico have previously taken action against companies for complying with US extraterritorial laws. In 2007 Austria's fifth largest bank, BAWAG, reversed a decision to close the bank accounts of 100 Cuban customers after the Austrian government threatened to charge the bank for violating EU laws.

In a statement to the Austrian parliament the then Foreign Minister, Ursula Plassnik said: *"US law is not applicable in Austria. We are not the 51st of the United States."*

In 2008 the Mexican government fined the Sheraton Maria Isabel hotel £60,000 for barring 16 Cuban guests. The Mexican Foreign Ministry said the fine was for violating the national act to Protect Trade and Investment from Foreign Norms that Contravene International Law passed October 1996, in order to oppose the Helms-Burton extra-territorial law.

#### **UK parliamentary and government statements on extraterritorial actions**

In May 2007 160 British MPs signed 'Early Day Motion 1408, US Extraterritorial Legislation' in response to Hilton Hotels and Barclays bank complying with US sanctions. The EDM called upon the British government to "make urgent representations to the relevant US authorities to cease the prosecution of such illegal trade measures."

<http://www.parliament.uk/edm/2006-07/1408>

In 2007 Barclays Bank closed the bank accounts of some Cuban companies operating in the UK. Following a lobbying campaign by CSC and MPs against the decision officials from the Department for Business, Enterprise and Regulatory Reform (BERR) met with MPs and CSC. Laura Hanoman from (BERR), wrote a letter stating:

*"Officials from the BERR and the Foreign and Commonwealth office have met with representatives of Barclays bank to discuss this issue. The situation is complex and I do have some sympathy with Barclays bank and other businesses that find themselves caught between conflicting legal requirements particularly when businesses find that by complying with US law they will break UK/EU law and vice versa"*

#### **Conclusion**

The Cuba Solidarity Campaign believes that the OU is breaking British anti-discrimination legislation laid down by the 2010 Equality Act. They are also in contravention of trade laws which are in place to

penalise British companies and organisations which comply with US blockade legislation above UK sovereign laws.

The Open University (OU) was set up in 1969 by Harold Wilson's Labour government to increase access to further education. It has grown to become the biggest academic institution in Britain with more than 170,000 students this year – 7,000 of whom are from overseas.

The organisation's decision to reject applications from Cuban students singles it out ignominiously from any other British educational establishment: none of whom refuse applications from Cuban students, as far as CSC is aware. It also flies in the face of their own mission statement: 'to be open to people, places, methods and ideas.'

In the light of the recent rapprochement between the US and Cuba, it is ludicrous that the US government is still attempting to prevent foreign companies and organisations from having normal business and banking relations with Cuba. The policy is also against the spirit of a recent Memorandum of Understanding signed between the UK and Cuba to 'boost bilateral cooperation in higher education, research and teaching of English.'

CSC believes that the British government should uphold its own sovereign laws above those of the US and defend British interests; it should make representations to the Open University to accept Cuba students, and if they refuse, the government invoke existing UK legislation to penalise them for complying with US extraterritorial legislation over and above British equalities laws

**The Cuba Solidarity Campaign is calling for:**

1. The Open University to end this discriminatory policy immediately
2. The British government to make robust representations to the Open University urging it to abide by UK laws against discrimination as set out in the Equality Act 2010 and explain that its admissions policy runs counter to the 1996 UK Protection of Trading Interests law.
3. If the Open University does not reverse its policy towards Cuban students, the British government should invoke existing antidote legislation (as statuted in the 1996 UK Protection of Trading Interests Act) to ensure the OU complies with UK equalities law.

**For more information and campaign actions visit  
[www.cuba-solidarity.org.uk/OU](http://www.cuba-solidarity.org.uk/OU)**

**Attachments**

**Appendix 1:** Chronology of Open University actions and correspondence

**Appendix 2:** Full correspondence between Michelle Laufer and the Open University

**Appendix 3:** Copy of letters sent to The Rt Hon Alan Duncan MP, Minister of State at the Foreign & Commonwealth Office and Keith Zimmerman, Open University Secretary

## **Appendix 1:**

### **Chronology of Open University actions and correspondence**

#### **3 April 2017**

Michelle Laufer, lecturer at the University of Westminster, wrote to the OU to find out why the student's application was rejected and was surprised to be informed by the OU's Assistant Director, Academic Policy and Governance, that the OU runs a 'Restricted Countries' list which included Cuba. They stated that this list was in response to 'international economic sanctions and embargoes'. Accordingly they made clear that the OU would not register students from Cuba.

#### **13 April 2017**

On 13 April 2017, Michelle Laufer again contacted the OU to clarify exactly which international sanctions and embargoes the OU was referring to. There are no British or EU sanctions against Cuba currently in place.

#### **24 April 2017**

On 24 April Michelle received further correspondence this time from Dawn Turpin the OU Acting Assistant Director, Academic Policy and Governance.

"The OU considers that it falls within the jurisdiction of US regulation with regard to economic embargoes. This is due to the fact that the OU has a number of employees who hold US citizenship (and are therefore subject to US regulation in this regard wherever they are in the world) and that the OU has other significant links with the US (notably using US financial systems).

The OU is taking necessary precautions to meet with regulation and protect both itself and its employees. Those steps include the OU not trading with those countries impacted by what is often called US 'comprehensive' sanctions and embargoes (noting that the detailed applications of sanction regulation is different by country).

These blocks in trading remain in place. The OU is seeking 'Specific Licences' from the US authorities (OFAC) and once received will consider further its policy and any changes. "

#### **26 June**

On 26 June CSC gave a briefing on the case to parliamentarians at an All Party Parliamentary Group on Cuba meeting in Westminster. Those present were shocked to discover the OU action and agreed to raise questions both in the Commons and the Lords.

#### **10 July**

The Cuba Solidarity Campaign wrote to the Open University asking them to reverse their policy, and to the British government asking for them to intervene in the matter.

#### **13 July**

On 13 July, in reply to a written question in the House of Commons on how many Cuban students were studying at UK universities, Catherine West MP received a written reply from Jo Johnson, Minister of State for Universities and Science in the Department of Education that in 2015/16 there were five undergraduate and 25 postgraduate Cuban students enrolled in the UK.

#### **14 July**

In a written question on 14 July, Catherine West MP asked the Secretary of State for Education whether she had "had any discussions with the Open University on its use of a restricted countries list in its application process." Answer pending.

**Appendix 2:**  
**Full correspondence between Michelle Laufer and the Open University**

Following the Cuban Student's initial approach to the Open University, Michelle Laufer the student's MA lecturer telephoned the Open University to find out why they would not accept the application. After a series of telephone conversations Michelle asked for clarification in writing which are set out below:

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From: Michelle Laufer  
**Sent: 28 March 2017 10:47**  
To: CREET-Student-Enquiries <creet-student-enquiries@open.ac.uk>  
Subject: RE: Please ring me  
Importance: High

Dear Amanda

I wonder if you have been able to get something in writing yet about the policy re Cuban applicants.  
All the best

Michelle

Michelle Laufer  
Principal Lecturer  
Department of English, Linguistics and Cultural Studies  
Network for Languages London  
Co-Director Westminster Professional Language Centre  
University of Westminster  
309 Regent Street (Room 307)  
London W1B 2UW

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From: CREET-Student-Enquiries  
**Sent: 28 March 2017 10:55**  
To: Michelle Laufer  
Subject: RE: Please ring me

Dear Michelle

I have been asked to refer your enquiry to the Head of Governance here at the OU.

I have chased her for a reply.

Apologies for the delay.

Kind Regards  
Amanda

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From: CREET-Student-Enquiries [mailto:creet-student-enquiries@open.ac.uk]  
**Sent: 03 April 2017 10:32**  
To: Michelle Laufer  
Subject: FW: Please ring me

Dear Michelle  
The Assistant Director, Academic Policy and Governance asked me to send you the following statement.

Kind Regards

Amanda

Restricted countries

In response to international economic sanctions and embargoes, The Open University does not currently register students who are ordinarily resident in any of the following countries:

- (1) Cuba
- (2) Iran
- (3) North Korea
- (4) North Sudan
- (5) Syria

The University continues to review its position on a regular basis.

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From: Michelle Laufer

**Sent: 13 April 2017 09:40**

To: CREET-Student-Enquiries <creet-student-enquiries@open.ac.uk>

Subject: Cuban Student

Dear Amanda,

Thank you for the confirmation from the Open University (OU) Assistant Director, Academic Policy and Governance, that the OU has an existing policy of not allowing students who are ordinarily resident in Cuba to study at the OU.

You stated that the OU policy was in response to “international economic sanctions and embargoes”. I wanted to ask exactly which international sanctions and embargoes the OU is referring to.

I am certainly not aware of any British sanctions against Cuba. I also remember that Phillip Hammond, the then Foreign Secretary, visited Cuba in April 2016 and signed a number of cooperation agreements between our two countries.

I have worked with a number of students from Cuba who have studied successfully here in the UK at different universities and was keen to see if one of these students could continue their studies at the OU. I was therefore somewhat surprised at the OU policy particularly bearing in mind your stated aim of promoting educational opportunity and social justice.

You also mention that the OU is continually reviewing its policies. I now wonder if there is any way in which the OU would be able to review this particular policy regarding Cuban students.

Please let me know if I can assist, or further such a review in any way.

I look forward to hearing back from you particularly regarding my question about the ‘international economic sanctions and embargoes’.

I look forward to your response on this,  
All the best

Michelle

Michelle Laufer

Principal Lecturer  
Department of English, Linguistics and Cultural Studies  
Network for Languages London Co-Director  
Westminster  
Professional Language Centre  
University of Westminster  
309 Regent Street (Room 307)  
London W1B 2UW

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From: Dawn.Turpin  
**Sent: 24 April 2017 12:55**  
To: Michelle Laufer  
Cc: CREET-Student-Enquiries  
<creet-student-enquiries@open.ac.uk>

Subject: FW: Cuban Student

Dear Michelle

Your email has been forwarded to me to respond, please accept my apologies for the delay in coming back to you.

The OU considers that it falls within the jurisdiction of US regulation with regard to economic embargoes. This is due to the fact that the OU has a number of employees who hold US citizenship (and are therefore subject to US regulation in this regard wherever they are in the world) and that the OU has other significant links with the US (notably using US financial systems).

The OU is taking necessary precautions to meet with regulation and protect both itself and its employees. Those steps include the OU not trading with those countries impacted by what is often called US 'comprehensive' sanctions and embargoes (noting that the detailed applications of sanction regulation is different by country).

These blocks in trading remain in place. The OU is seeking 'Specific Licences' from the US authorities (OFAC) and once received will consider further its policy and any changes.

Kind Regards

Dawn Turpin  
Acting Assistant Director, Academic  
Policy and Governance, The Open University  
+44 (0) 1908 332963  
www.open.ac.uk  
Academic Policy & Governance Providing expert, professional services



### **Appendix 3:**

#### **Copy of letters sent to The Rt Hon Alan Duncan MP, Minister of State at the Foreign & Commonwealth Office and Keith Zimmerman, Open University Secretary**

**1.**

The Rt. Hon. Sir Alan Duncan MP  
Minister of State for Europe and the Americas at the Foreign & Commonwealth Office  
King Charles Street  
London SW1A 2AH  
[alan.duncan.mp@parliament.uk](mailto:alan.duncan.mp@parliament.uk)

cc. Jo Johnson MP  
Minister of State for Universities, Science, Research and Innovation  
Department for Business, Energy & Industrial Strategy  
1 Victoria Street  
London SW1H 0ET  
[jo.johnson.mp@parliament.uk](mailto:jo.johnson.mp@parliament.uk)

10<sup>th</sup> July 2017

Dear Sir Alan Duncan MP,

#### **The Open University (OU) policy to ban applications by Cuban students**

I am writing to ask you to urgently intervene in this important matter.

The Open University has confirmed in writing that they operate a policy of a ban on Cuban students from studying at the university (correspondence below). They have cited US blockade legislation as a justification for running this discriminatory admissions policy. It seems clear that such a policy is illegal under UK anti discrimination laws as set out in the 2010 Equality Act as it is being indiscriminately applied to all students of a particular race or nationality.

The OU correspondence also states that the policy is in place to avoid repercussions from the United States. In their letter dated 24 April 2017, they claim to be “taking necessary precautions to meet with regulation and protect both itself and its employees. Those steps include the OU not trading with those countries impacted by what is often called US ‘comprehensive’ sanctions and embargoes.”

In its actions and its written justifications the OU is seemingly placing US anti Cuban blockade legislation over and above existing UK equality laws.

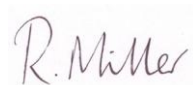
I am sure that you are aware that the British Government has powers enshrined in its own ‘antidote’ law, the Protection of Trading Interests Order passed in 1996, to protect British companies from the effects of the extra-territorial application of the US blockade. I would urge you to invoke this legislation against the Open University if they do not overturn their policy on Cuban students.

I am aware that you recently met with Cuba’s Vice Minister of Higher Education, Dr Aurora Fernández, following the 2016 Memorandum of Understanding signed by our two countries to ‘boost bilateral cooperation in higher education, research and teaching of English.’ I am sure that you will agree that the Open University policy needs to be challenged if we wish to build on this relationship.

I hope that you will be prepared to intervene urgently in this matter and take robust action against this discriminatory policy and ensure that the Open University change its policy and publicly declare that they will accept Cuban students.

I look forward to your response,

Best wishes,



Rob Miller  
Director

**2.**

Baroness Lane-Fox of Soho  
Chancellor  
The Open University  
Walton Hall  
Milton Keynes, MK7 6AA

cc. Keith Zimmerman  
University Secretary  
The Open University  
Walton Hall  
Milton Keynes MK7 6AA  
[university-secretary@open.ac.uk](mailto:university-secretary@open.ac.uk)

10<sup>th</sup> July 2017

Dear Baroness Lane-Fox of Soho,

**The Open University (OU) discriminatory admissions policy against Cuban students**

I am writing to raise this important matter and to ask the Open University to change its stated policy which we believe to be illegal under UK anti discrimination laws as set out in the 2010 Equality Act.

In your correspondence copied below, the Open University has confirmed that you operate a ban on Cuban students from studying at the OU. You have cited US anti Cuban blockade legislation as a justification for running this discriminatory admissions policy. It would seem clear that such a policy is illegal as it is being indiscriminately applied to all students of a particular race or nationality. I would also point out that many Cuban students already study at UK schools, colleges and universities.

Your written justification seemingly places US legislation over and above UK law.

For information we have written to the British Government on this matter. Our Government has signed a 2016 Memorandum of Understanding between the UK and Cuba which aims to 'boost bilateral cooperation in higher education, research and teaching of English. The Rt. Hon. Sir Alan Duncan MP recently met with Cuba's Vice Minister of Higher Education, Dr Aurora Fernández, in London to further develop that cooperation.

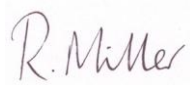
I hope that you will be prepared to change your policy and make it publicly clear that you will now accept applications from Cuban students.

Your correspondence makes it clear that you have some concerns about repercussions from the United States. If this is the case then I hope that you will seek any necessary reassurances from the UK Government to protect the OU and its staff.

The British Government already has existing 'antidote' legislation, on the 'Protection of Trading Interests' which was passed in 1996. This protects British companies from the effects of the US extra-territorial application of its anti Cuba policies. This law also enables the British government to penalise companies in the UK that comply with the extra-territorial aspects of US legislation.

I look forward to your early response,

Best wishes,

A handwritten signature in cursive script that reads "R. Miller". The signature is written in a dark ink on a light-colored background.

Rob Miller  
Director