

Consultation

**Office for
Students**



OfS

Consultation on the OfS's new free speech complaints scheme

This consultation runs from 14 December 2023
to 10 March 2024.

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Enquiries to regulation@officeforstudents.org.uk

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The Office for Students is the independent regulator for higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

Our four regulatory objectives

All students, from all backgrounds, and with the ability and desire to undertake higher education:

- are supported to access, succeed in, and progress from, higher education
- receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure
- are able to progress into employment or further study, and their qualifications hold their value over time
- receive value for money.

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About this consultation

The Office for Students (OfS) is implementing new freedom of speech functions. This will include a new free speech complaints scheme. This consultation sets out our proposals in this area. It also sets out the background to these proposals, why we are making them and what we expect their implementation to achieve.

Timing

Start: **14 December 2023**

End: **10 March 2024**

Who should respond?

We welcome responses from anyone with an interest in freedom of speech in English higher education.

We are particularly (but not only) interested in hearing from **students, staff, students' union representatives and leaders at providers** that will be engaging in the new arrangements. We welcome views from all types and size of provider and students' union.

We also welcome the views of **schools, employers, third sector organisations, policy bodies** and others with an interest in freedom of speech in English higher education.

How to respond

Please respond by **10 March 2024**.

Please use the online response form available at <https://survey.officeforstudents.org.uk/s/free-speech-complaints/>

How we will treat your response

We will summarise and/or publish the responses to this consultation on the OfS website (and in alternative formats on request). This may include a list of the providers and organisations that respond, but not personal data such as individuals' names, addresses or other contact details.

If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

The OfS will process any personal data received in accordance with all applicable data protection laws (see our privacy policy).¹

¹ Available at www.officeforstudents.org.uk/ofs-privacy/.

We may need to disclose or publish information that you provide in the performance of our functions, or disclose it to other organisations for the purposes of their functions. Information (including personal data) may also need to be disclosed in accordance with UK legislation (such as the Freedom of Information Act 2000, Data Protection Act 2018 and Environmental Information Regulations 2004).

Next steps

We will publish a summary of responses to this consultation in summer 2024. We will explain how and why we have arrived at our decisions, and how we have addressed any concerns raised by respondents. We will then set out next steps in the policy and implementation process.

Enquiries

Email regulation@officeforstudents.org.uk

Alternatively, call our public enquiry line on 0117 931 7317.

Consultation events are planned for early 2024. These events will provide an opportunity for you to discuss these proposals.

Details are available on our website at

www.officeforstudents.org.uk/news-blog-and-events/events/freedom-of-speech-consultation-webinars/

If you require this document in an **alternative format**, or you need assistance with the online form, contact regulation@officeforstudents.org.uk. (**Please note:** this email address should **not** be used for submitting your consultation response.)

For more information about our work to date on freedom of speech, please visit the OfS website: www.officeforstudents.org.uk/advice-and-guidance/quality-and-standards/freedom-of-speech/

Executive summary

Background

Freedom of speech and academic freedom are essential to higher education. The core mission of universities and colleges is the pursuit of knowledge, and the principles of free speech and academic freedom are fundamental to this purpose. They provide an environment to advance new ideas, encourage productive debate and challenge conventional wisdom. All staff and students are entitled to teach, learn and research in a culture that values vigorous debate, including in relation to difficult or contentious or uncomfortable topics. There is currently evidence to support concerns about freedom of speech in higher education: the 2023 National Student Survey (NSS) found that one in every seven students in England feels unable to express their own views.²

The OfS is an independent public body. We are not part of central government, but we report to Parliament through the Department for Education (DfE). We regulate higher education in England. Our primary aim is to ensure that English higher education is delivering positive outcomes for students – past, present, and future. We seek to ensure that students, from all backgrounds (particularly the most disadvantaged), can access, succeed in, and progress from, higher education. You can read more about how we currently regulate universities and colleges in England on our website.³

The Higher Education (Freedom of Speech) Act 2023 was passed earlier this year. When its provisions come into force, it will give the OfS more powers and duties to regulate universities and colleges, and their students' unions, on free speech issues. You can read more about this on our website.⁴

Proposals for a new complaint scheme

The new legislation imposes several new duties on registered universities and colleges, on their constituent institutions (such as colleges of universities) and on some students' unions. These include a duty to take steps to secure freedom of speech within the law.

The Act also requires the OfS to set up and operate a free speech complaints scheme. Under the scheme, past or present students, members, members of staff, applicants for academic posts and visiting speakers will be able to make complaints to the OfS about free speech issues. They will be able to complain about their university or college, constituent institution (such as colleges of universities) or students' union.

The free speech complaints scheme will be free to use. It is expected to operate from 1 August 2024. It will help us to achieve our strategic goal that 'providers secure free speech within the law for students, staff and visiting speakers.'

In this consultation, we have set out proposals for how we will operate the new free speech complaints scheme. The proposals cover:

² For more information about the NSS and the 2023 results, see www.officeforstudents.org.uk/advice-and-guidance/student-information-and-data/national-student-survey-nss/.

³ See www.officeforstudents.org.uk.

⁴ For more information, see www.officeforstudents.org.uk/advice-and-guidance/quality-and-standards/freedom-of-speech/.

- who can make a complaint
- what and whom they can complain about
- complaints that we can review, including time limits for bringing a complaint. The OfS is proposing that individuals should normally raise their concerns with the relevant university, college, or students' unions first, to give it an opportunity to put matters right. If the issues are not resolved after 30 days, then a complaint could be made to the OfS
- how we will deal with a complaint. This includes proposals on how we will review and make decisions on complaints and how we may deal with group complaints
- what action we may take if we decide to uphold some or all of a complaint
- our approach to publishing information about complaints that we receive. These proposals set out what material we would normally expect to publish, and what we would not normally expect to publish, in connection with the operation and findings of the free speech complaints scheme.

Who should provide feedback on our proposals

We are particularly (but not only) interested in hearing from students, staff, students' union representatives and leaders at providers that will be engaging in the new arrangements.⁵ We welcome views from all types and size of provider and students' union. We also welcome the views of schools, employers, third sector organisations, policy bodies and others with an interest in freedom of speech in English higher education.

Feedback on the proposals can be given via the online survey⁶ or you can find out more at one of the consultation events.⁷

You may be interested in reading and responding to our consultation on our new approach to regulating students' unions.⁸

Next steps

The consultation will close on 10 March 2024. We expect to consider the consultation responses and make decisions in respect of these proposals before 1 August 2024. We expect that the new complaints scheme will be in place by 1 August 2024 when the relevant provisions of the Act come into effect.

We expect to consult on further key elements of our implementation of the legislation. This will give providers, their staff and students and other interested parties an opportunity to inform our approach.

⁵ We use the terms 'providers' and 'registered providers' to refer to registered higher education providers as specified on the OfS Register (www.officeforstudents.org.uk/register).

⁶ See <https://survey.officeforstudents.org.uk/s/free-speech-complaints/>.

⁷ See www.officeforstudents.org.uk/news-blog-and-events/events/freedom-of-speech-consultation-webinars/.

⁸ See www.officeforstudents.org.uk/free-speech-students-unions-consultation/.

Introduction

1. Freedom of speech and academic freedom are fundamental to higher education. The core mission of universities and colleges is the pursuit of knowledge. The principles of free speech and academic freedom are fundamental to this purpose. They provide a necessary context for advancing new ideas, encouraging productive debate and challenging conventional wisdom.⁹
2. All staff and students are entitled to teach, learn and research in a culture that values vigorous debate. This is especially true in relation to difficult or contentious or discomforting topics.
3. As the statutory regulator for higher education in England, the OfS wants every student to have a fulfilling and enriching experience of higher education. In March 2022, we published our strategy for 2022 to 2025. There we described the two key areas of focus for this period that will inform our regulatory activity: quality and standards; and equality of opportunity.
4. Students will not have a high quality education if that education is not grounded in freedom of speech. That includes freedom of speech for themselves, for fellow students, for those who teach or supervise them and for visiting speakers.
5. As a priority for our activities focusing on quality and standards, we have set a goal that 'providers secure free speech within the law for students, staff and visiting speakers'.¹⁰

Existing requirements

6. Most of the universities and colleges that are registered with the OfS are 'public bodies' for the purposes of the Human Rights Act 1998. It is unlawful for them as public bodies to act incompatibly with the European Convention on Human Rights (the 'ECHR'). Article 10 of the ECHR relates to freedom of expression.¹¹
7. Section 43 of the Education (No 2) Act 1986 requires universities and colleges to 'take such steps as are reasonably practicable' to ensure that freedom of speech within the law is secured for their members, students, employees and visiting speakers.¹²
8. Currently, the OfS regulates providers on matters relating to free speech through relevant 'public interest governance principles'. These underpin the initial and ongoing conditions of registration relating to management and governance (the 'E conditions') that providers registered with the OfS must meet. You can read more about these requirements in our regulatory framework.¹³

⁹ In this consultation, we use the terms 'free speech' and 'freedom of speech' interchangeably.

¹⁰ See www.officeforstudents.org.uk/publications/office-for-students-strategy-2022-to-2025/.

¹¹ See <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/9>.

¹² See <https://www.legislation.gov.uk/ukpga/1986/61/section/43>.

¹³ Throughout this document, 'providers' and 'registered providers' refers to registered higher education providers as specified on the OfS's Register www.officeforstudents.org.uk/register/. To see the regulatory framework, visit www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/. A summary of the public interest governance principles is available at www.officeforstudents.org.uk/advice-and-guidance/regulation/registration-with-the-ofs-a-guide/public-interest-governance-principles/.

9. New legislation will replace section 43 of the Education (No 2) Act 1986 for providers and will strengthen the OfS's regulatory role on free speech matters. We explain this below.

New legislation

10. New legislation will strengthen the legal requirements on providers and introduce new requirements for their constituent institutions and for some students' unions, relating to freedom of speech. For providers and their constituent institutions, this will include requirements relating to academic freedom. A 'constituent institution' means any constituent college, school, hall or other institution of the provider. For example, the individual colleges of the University of Cambridge are constituent institutions of that university.¹⁴
11. The new legislation will also strengthen the OfS's regulatory role in relation to freedom of speech and academic freedom.
12. The new legislation is the Higher Education (Freedom of Speech) Act 2023 (the 'Act').¹⁵ The Act received Royal Assent on 11 May 2023. However, most of the provisions of the Act are not yet in force. They will come into force through secondary legislation. We expect this implementation to be phased over the next two years, although the precise dates are a matter for the Department of Education.
13. The Act amends the Higher Education and Research Act 2017 ('HERA') to incorporate new provisions relating to freedom of speech and academic freedom. In this document, we refer to the sections of the amended version of HERA rather than to the corresponding sections of the Act.

Freedom of speech within the law

14. The Act protects freedom of speech within the law. Unlawful speech is not protected. This means that speech that amounts to unlawful harassment, victimisation or discrimination is not protected. Similarly, unlawful incitement of religious or racial hatred, or speech that is otherwise unlawful, is not protected.

¹⁴ See section A4(4) in Part A1 of HERA.

¹⁵ The Higher Education (Freedom of Speech Act) 2023 is available at <https://www.legislation.gov.uk/ukpga/2023/16/enacted>.

Definitions of freedom of speech and academic freedom

15. 'Freedom of speech' is defined in the Act as:

Part A1 of HERA

Section A1 (13) In this Part —

references to freedom of speech are to the freedom to impart ideas, opinions or information (referred to in Article 10(1) of the [European Convention on Human Rights] as it has effect for the purposes of the Human Rights Act 1998) by means of speech, writing or images (including in electronic form)[.]

16. Academic freedom is defined in the Act as:

Part A1 of HERA

Section A1 (6) In this Part, 'academic freedom', in relation to academic staff at a registered higher education provider, means their freedom within the law—

(a) to question and test received wisdom, and

(b) to put forward new ideas and controversial or unpopular opinions,

without placing themselves at risk of being adversely affected in any of the ways described in subsection (7).

Section A1 (7) Those ways are—

(a) loss of their jobs or privileges at the provider;

(b) the likelihood of their securing promotion or different jobs at the provider being reduced.

Free speech duties of providers and constituent institutions

17. The Act will impose new duties on providers in relation to freedom of speech and academic freedom, and on their constituent institutions.

18. In brief, the new duties will require the governing body of each provider and constituent institution:

- a. To take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to secure freedom of speech within the law for its staff, members, students and visiting speakers; this includes, in relation to academic staff, securing their academic freedom (section A1 and section A4 of Part A1 of HERA).

- b. To maintain a code of practice setting out matters relating to freedom of speech (section A2 and section A4 of Part A1 of HERA).
- c. To promote the importance of freedom of speech within the law and of academic freedom for academic staff, in the provision of higher education (section A3 and section A4 of Part A1 of HERA).

19. These duties are expected to come into force on 1 August 2024. They are set out in full in the Act.¹⁶

Free speech duties of relevant students' unions

20. The Act will also impose new duties on some students' unions. A 'students' union' is defined in the Act as:

Part A1 of HERA

Section A5(6) In this Part—

[...] 'students' union', in relation to any institution, has the same meaning as it has in Part 2 of the Education Act 1994 in relation to establishments to which that Part applies (see section 20 of that Act).

Section A5(7) In this Part, references to a students' union for students at a registered higher education provider that is eligible for financial support do not include a students' union for students at a constituent institution of such a provider.

21. The new duties will only apply to students' unions of providers that are registered in the 'Approved (fee cap) category' (see section 20(1)(b) of the Education Act 1994).¹⁷ Higher education providers registered with the Office for Students, are registered in one of two categories: Approved and Approved (fee cap). Providers registered in the Approved (fee cap) category are eligible for certain benefits. See our website for more detail.¹⁸ In this document, we refer to those students' unions as 'relevant students' unions'.

22. The new duties for relevant students' unions will require each relevant students' union:

- a. To take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to secure freedom of speech within the law for its members, students, staff, members and staff of the provider and of its constituent institutions and visiting speakers (section A5 of part A1 of HERA); and

¹⁶ See www.legislation.gov.uk/ukpga/2023/16/enacted.

¹⁷ This is because section A5(1) of Part A1 of HERA states that these duties apply to 'a students' union for students at a registered higher education provider that is eligible for financial support'. For more about the OfS's categories of registration, see www.officeforstudents.org.uk/advice-and-guidance/regulation/registration-with-the-ofs-a-guide/.

¹⁸ See www.officeforstudents.org.uk/advice-and-guidance/regulation/registration-with-the-ofs-a-guide/benefits-of-registration/.

- b. To maintain a code of practice setting out matters relating to freedom of speech (section A6 of part A1 of HERA).

23. These duties are expected to come into force on 1 August 2024. They are set out in full in the Act.

New duties and functions for the OfS

24. The Act will also strengthen the OfS's regulatory role in relation to freedom of speech and academic freedom. This will include:

- a. New general duties for the OfS, under section 2 of HERA, relating to freedom of speech and academic freedom.
- b. New general functions for the OfS relating to freedom of speech and academic freedom.
- c. A new complaints scheme, operated by the OfS, to consider free speech complaints about providers, constituent institutions or relevant students' unions, from present or former students, members, members of staff, applicants for academic posts or (actual or invited) visiting speakers.
- d. An extension of the OfS's regulation on free speech matters to apply directly to relevant students' unions.
- e. New conditions of registration for providers relating to free speech and academic freedom. These will include conditions requiring providers to comply with their new free speech duties referred to above. This will give the OfS a direct role in determining whether providers are meeting those statutory duties.
- f. Powers for the OfS to monitor overseas funding received by providers, constituent institutions and relevant students' unions, with a view to assessing the extent to which that funding may present a risk to free speech and academic freedom.

Timescales for implementation

25. The provisions relating to the OfS's new general duties and general functions (a. and b. in paragraph 24 above) are expected to come into force on 1 August 2024. We expect to consult on those matters in 2024.

26. The provisions relating to the new free speech complaints scheme and the extension of the OfS's regulation on free speech matters to relevant students' unions (c. and d. in paragraph 24 above) are expected to come into force on 1 August 2024.

27. The provisions relating to the new conditions of registration and the OfS's monitoring of overseas funding (e. and f. in paragraph 24 above) are expected to come into force on 1 September 2025.

28. In this consultation, we have set out our proposals relating to the new free speech complaints scheme. We are also now consulting on proposals relating to our regulation of relevant students' unions on free speech matters.¹⁹

Our proposals

29. Our proposals relating to a new free speech complaints scheme are described in detail in the 'proposals' section of this document. The new free speech complaints scheme will help us achieve our strategic goal that 'providers secure free speech within the law for students, staff and visiting speakers'.

30. In this consultation, we are seeking views on our proposed approach to designing and implementing the new complaints scheme. In setting out our proposed approach, we have also explained alternative options that we have considered and discounted.

31. We have not considered alternative proposals to the introduction of a free speech complaints scheme. We are not seeking views on whether we should introduce such a scheme. This is because the Act requires us to implement it.

32. In summary, our proposals relating to the new free speech complaints scheme are:

- a. Proposal A: What a free speech complaint is
- b. Proposal B: Who can complain?
- c. Proposal C: Complaints that we will not review
- d. Proposal D: Time limits
- e. Proposal E: Submitting a complaint
- f. Proposal F: Reviewing a complaint
- g. Proposal G: Our decision and Notice of Complaint Outcome
- h. Proposal H: Recommendations and suggestions
- i. Proposal I: Suspension and withdrawal of a complaint
- j. Proposal J: Group complaints
- k. Proposal K: Representations
- l. Proposal L: Information requirements
- m. Proposal M: A respondent's duty to comply
- n. Proposal N: Advertising the complaints scheme

¹⁹ Our consultation on proposals relating to the OfS regulation of relevant students' unions on free speech matters is available at: www.officeforstudents.org.uk/free-speech-students-unions-consultation/.

- o. Proposal O: Charges, costs and fees
- p. Proposal P: Publication of information relating to the free speech complaints scheme

Matters to which we have had regard in developing our proposals

33. When developing our proposals, we have carefully considered the matters to which we must have regard, including: our general duties in section 2 of HERA, the Regulators' Code, the Public Sector Equality Duty and statutory guidance issued by the Secretary of State. Our assessment of these matters is set out in [Annex C](#).

Feedback and consultation questions

34. We welcome responses from anyone with an interest in freedom of speech in English higher education. We are particularly (but not only) interested in hearing from students, staff, students' union representatives and leaders at providers that will be engaging in the new arrangements. We welcome views from all types and size of provider and students' union. We also welcome the views of schools, employers, third sector organisations, policy bodies and others with an interest in freedom of speech in English higher education.

35. The consultation questions are listed in full in [Annex A](#).

Documents and legislation referred to in this consultation

In this consultation we refer to the following documents and legislation:

Education Act 1994

<https://www.legislation.gov.uk/ukpga/1994/30/contents>

Education (No.2) Act 1986

<https://www.legislation.gov.uk/ukpga/1986/61/contents>

Higher Education Act 2004

<https://www.legislation.gov.uk/ukpga/2004/8/contents>

Higher Education and Research Act 2017

<https://www.legislation.gov.uk/ukpga/2017/29/contents/enacted>

Higher Education (Freedom of Speech) Act 2023

<https://www.legislation.gov.uk/ukpga/2023/16/enacted>

OfS strategy 2022 to 2025

www.officeforstudents.org.uk/publications/office-for-students-strategy-2022-to-2025/

Regulatory advice 21: Publication of information

www.officeforstudents.org.uk/publications/regulatory-advice-21-publication-of-information/

Securing student success: Regulatory framework for higher education in England

www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/

Proposals

36. Under new legislation, the OfS will operate a new free speech complaints scheme. Under the scheme, the OfS will consider free speech complaints about providers, constituent institutions or relevant students' unions. It will consider complaints from current or former students, members, members of staff, applicants for academic posts or (actual or invited) visiting speakers. We expect the scheme to operate from 1 August 2024.
37. In these proposals, and in the proposed scheme rules, we refer to the organisation being complained about as the 'respondent'. We refer to the person making the complaint as the 'complainant'.
38. Our proposed rules for the scheme are at Annex B. The rules are divided into sections. Proposals A-O describe proposed sections. Proposal P sets out proposals relating to the publication of information about the scheme. Section T of the proposed rules includes definitions of various terms that appear in the rules and in this consultation.

Proposal A: What a free speech complaint is (section A of the rules)

What are we proposing?

39. The Act will require the OfS to operate a free speech complaints scheme. The Act also states that the scheme must review free speech complaints.²⁰ In our proposed scheme, we have defined 'free speech complaint' in rule 2 and this reflects the requirements of the Act. Free speech complaints must relate to the free speech duties that we have set out at rules 3 and 4.²¹ In this document we refer to those duties as 'relevant free speech duties'.
40. Under the Act, an eligible person can bring a free speech complaint.²² (Proposal B discusses who is 'eligible'.) The complaint must be about the governing body of a provider or constituent institution, or about a relevant students' union (the 'respondent').²³ We are proposing that a complaint may be about more than one such body.
41. The Act states that the complaint must make what we are calling 'free speech claims'. They must claim that the person making the complaint has suffered adverse consequences (which need not be financial) because of something that the respondent has done or not done. For example, a student may have been removed from their course or a member of staff may have been disciplined. They must also claim, or give rise to a question as to whether, the respondent's action or inaction was a breach of its duty to take reasonably practicable steps to secure free speech within the law.²⁴ This is reflected in proposed rule 2.
42. Under the Act, a free speech complaint may also make other claims, in addition to the 'free speech claims' referred to above. This is reflected in proposed rule 7.

²⁰ HERA Sch. 6A 1(1).

²¹ HERA Sch. 6A 2(1) and Sch. 6A 3(1).

²² HERA Sch. 6A 2(1) and Sch. 6A 3(1).

²³ HERA Sch. 6A 2(1) and Sch. 6A 3(1).

²⁴ That is, HERA Part A1 section A1 or Part A1 section A5. See HERA Sch. 6A 2(1) and Sch. 6A 3(1).

Why are we proposing this?

43. The Act sets out which organisations can be complained about under the scheme and what claims (the 'free speech claims' referred to above) a complaint must include. Our proposed scheme rules reflect those requirements.
44. The Act states that a free speech complaint may contain claims that are not free speech claims.²⁵ In Proposal C, we propose that we will only review those other claims if they include information that is relevant to the free speech claims in that complaint.
45. We are proposing that a free speech complaint may be about more than one organisation. We are proposing this because the adverse consequences that a complainant is claiming may relate to the actions or inactions of more than one organisation: for example, a university and a constituent institution of that university. We consider that requiring a complainant to submit separate complaints in those circumstances could create unnecessary burden for them. It could also create delay and inefficiency in our review process.

Question A: Do you have any comments on Proposal A regarding what a free speech complaint is?

²⁵ HERA Sch. 6A 2(3) and Sch. 6A 3(3).

Proposal B: Who can complain? (section B of the rules)

What are we proposing?

46. The Act sets out who can make a free speech complaint about a provider, a constituent institution or a relevant students' union.²⁶ These requirements are reflected in section B of our proposed scheme rules.
47. The eligibility requirements are slightly different depending on which category of organisation (a provider, constituent institution, or relevant students' union) the complainant is complaining about. Broadly, anyone who is or was a member, member of staff, student or visiting speaker (actual or invited) at the organisation they are complaining about can make a free speech complaint. Anyone who has applied to become a member of academic staff at a provider or constituent institution can also make a free speech complaint.
48. Under our proposals, a legal person (such as a corporation) may be eligible if they fall into one of those categories.
49. Section T of the proposed scheme rules explains each of the terms: constituent institution, member, member of academic staff, member of staff, registered higher education provider, relevant students' union, student, visiting speaker.
50. We are also proposing that we will not review a free speech complaint made by personal representatives of the estate of a person who has died, unless the free speech complaint was submitted to us before they died.

Why are we proposing this?

51. The categories of 'eligible person', set out in section B of the proposed scheme rules, reflect the requirements set out in the Act. Where terms are defined in the Act, the proposed scheme rules incorporate those definitions in section T.
52. The Act does not preclude a legal person (such as a corporation) from being eligible and so our proposed rules do not do so either. For example, a legal person could be a 'visiting speaker' and as such could suffer adverse consequences as a result of a breach of the relevant free speech duty by a provider.
53. We have proposed definitions of 'member', 'member of academic staff' and 'member of staff'. Those terms are not defined in the Act. The Act does not suggest any limitation and our proposed definitions are broad. In our view, any person in these categories could suffer adverse consequences because an organisation has breached its duty to secure free speech within the law. Therefore, we consider that any such person should be able to make a free speech complaint.
54. Our proposed definition of 'student' is not limited to higher education students. This is because the Act does not include any such limitation. Some providers may have students aged 11 to 16 (Key stage 3 and 4), or 16 to 18 years (Key stage 5), or adults enrolled on further education or community learning programmes.

²⁶ HERA Sch. 6A 2(2) and Sch. 6A 3(2).

55. In our view, any student engaged in study or research could suffer adverse consequences because their institution has breached its duty to secure free speech within the law. Therefore, we consider that any such person should be able to make a free speech complaint.
56. We have also defined 'student' to include a student who is studying or undertaking research at a provider or is studying or undertaking research elsewhere for an award of that provider. Students studying at one provider for an award of another provider could suffer adverse consequences should that awarding provider breach its duty to secure free speech within the law.
57. We have proposed a broad definition of 'visiting speaker'. We consider that a narrower definition would risk excluding those who should legitimately be considered visiting speakers. We considered a definition that would restrict 'visiting speakers' to those who had been approved under the organisation's approvals process. However, a refusal to approve an invitation may itself give rise to questions about whether there has been a breach of a duty to secure free speech within the law. We therefore discounted this option.
58. However, our proposed definition of 'visiting speaker' does not include those who would like to speak at an organisation, but who have not been invited.
59. We propose that we will not consider complaints from someone who has died unless we received their complaint before they died. We consider that it is important for a complaint to be 'owned' by a complainant and to set out the complainant's own views. We recognise that families and personal representatives of a person who has died may wish to raise concerns, including about the circumstances surrounding that person's death. We consider that the free speech complaints scheme is not the appropriate mechanism through which to raise those concerns. Where the person was a student, the OfS may have a broader regulatory interest in the circumstances of the case. Concerns could then be more appropriately raised through our notifications process.²⁷

Question B: Do you have any comments on Proposal B regarding who can complain?

²⁷ See www.officeforstudents.org.uk/for-students/ofs-and-students/notifications/.

Proposal C: Complaints that we will not review (section C of the rules)

What are we proposing?

60. The Act states that a free speech complaint may contain claims that are not free speech claims.²⁸ We are proposing only to review those other claims if they include information that is relevant to the free speech claims.
61. We also propose that:
- a. We will only consider free speech complaints that we receive on or after 1 August 2024, when the free speech complaints scheme comes into effect.
 - b. We will not review a free speech complaint in relation to matters or events before 1 August 2024 (when the free speech complaints scheme comes into effect). Where those matters or events were ongoing as of 1 August 2024, we propose to review them in relation to the period from 1 August 2024.
 - c. We will not review a free speech complaint about a respondent if it was not a provider, a constituent institution or a relevant students' union when the action or inaction being complained about took place.
62. We propose that we will not review a free speech complaint if it appears to us that proceedings relating to its free speech claims, to which the complainant is or was a party, are being, or have been, dealt with by a court or tribunal. The Act provides for the inclusion of such a provision in the scheme rules.²⁹ We have explained the details of our proposals, and our reasons for making them, in more detail in the 'Why are we proposing this?' section below.
63. Similarly, we propose that we will not review a free speech complaint if it appears to us that a complaint brought by the complainant, and relating to the same subject matter as the free speech claims in the free speech complaint, is being, or has been, dealt with under the student complaints scheme.³⁰ The Act permits the inclusion of such a provision in the scheme rules.³¹
64. Some respondents will have an internal process, such as a complaints or appeals process, under which the free speech claims in a complaint could be considered. If they do, we propose that we will normally only review a free speech complaint if the complainant has completed that process or, if earlier, once 30 days have elapsed since that process began.
65. The Act permits the OfS to dismiss free speech complaints, without considering their merits, where they are frivolous or vexatious.³² We have proposed a rule in the scheme rules that will allow us to do this. That rule also sets out a non-exhaustive list of examples of where we may determine that a complaint is frivolous or vexatious.

²⁸ HERA Sch. 6A 2(3) and Sch. 6A 3(3).

²⁹ HERA Sch. 6A 5(2)(c).

³⁰ The student complaints scheme is currently operated by the Office of the Independent Adjudicator. See <https://www.oiahe.org.uk/>.

³¹ HERA Sch. 6A 5(2)(d).

³² HERA Sch. 6A 6(2).

Why are we proposing this?

66. The Act states that the proposed scheme is for the review of free speech complaints. We discuss that issue in [Proposal A](#) above.
67. The Act also states that a free speech complaint may contain claims that are not free speech claims.³³ We are proposing only to review those other claims if they include information that is relevant to the free speech claims. For example, claims that contain contextual information that helps us to understand the free speech claims. We are proposing this because we will not be able to make recommendations arising from claims that are not free speech claims.³⁴ Therefore, we think we should focus our review on free speech claims. We consider that reviewing aspects of a complaint that are related to the free speech claims is appropriate and will target our activity at cases where we may be able to recommend a resolution.
68. Similarly, the Act sets out the categories of organisation about which free speech complaints may be made. We discuss that issue in [Proposal A](#) above. We consider it to be in keeping with those provisions for us to limit our review to complaints about organisations that were providers or constituent institutions or relevant students' unions at the time that the action or inaction being complained about took place.
69. The Act is not expressed to have retrospective effect. The provisions to enact the new scheme, and relevant free speech duties to which the free speech scheme relates, are expected to take effect on 1 August 2024. In our view, it is appropriate for us to limit our review to complaints about matters that occurred on or after that date. To do otherwise would introduce an element of retrospectivity into the new relevant free speech duties, and result in us considering the activities of respondents against relevant free speech duties that were not in force at the time those activities took place.
70. Under our proposals, where a free speech complaint relates to events or matters that were ongoing as of 1 August 2024, we would be able to review them in relation to the period from 1 August 2024. We consider this to be appropriate so as not to introduce retrospectivity.
71. We propose that we will not review free speech complaints if it appears to us that the complainant has already raised the matter under the student complaints scheme or they have already been involved in court or tribunal proceedings over the matter. The Act also permits the inclusion of such provisions in the scheme.³⁵ We consider that this approach will target our regulatory activity where action is most likely to be needed.
72. In deciding whether a free speech complaint is about a subject-matter that is being or has been considered by one of those other bodies, we propose to focus on the free speech claims in the complaint. We have proposed this because our review of a free speech complaint, including any recommendations that we may make (see [Proposal H](#)), would focus on those claims. We consider that it would not be appropriate for us to exclude a complaint because extraneous elements of that complaint, that would not be the focus of our review, had been considered by another body.

³³ HERA Sch. 6A 2(3) and Sch. 6A 3(3).

³⁴ HERA Sch. 6A 7(4).

³⁵ HERA Sch. 6A 5(2)(c).

73. Our proposed understanding of ‘court or tribunal’ does not include an internal panel constituted by a respondent under its internal processes, such as a panel convened to hear disciplinary proceedings. Those internal processes are the subject of a separate rule, considered below. Nor does it include a panel established by a Professional, Statutory and Regulatory Body (PSRB), where this is not at the complainant’s request. Where such panels are requested by the respondent or others, this should not preclude the complainant from bringing a complaint to the OfS.
74. We propose to consider court or tribunal proceedings to have begun when the claim or application is submitted, including where that claim or application seeks permission to bring proceedings. However, we propose to retain discretion to consider complaints where permission to bring proceedings has been refused or where proceedings have been formally paused. We have proposed this because, for example, a complainant may be refused permission to take a claim to court for reasons which are unrelated to the merits of their claim. Similarly, we consider that a complainant who has started a court process should have an option to pause that process and pursue their matter through our scheme instead.
75. Under the Act, our scheme may include a provision which requires a complainant to have first ‘exhausted any internal procedure for the review of complaints’ which is provided by the respondent.³⁶ We are proposing to include a provision on this matter in the scheme. This is because we consider that the respondent should have an opportunity to put matters right before the complainant complains to the OfS. A respondent should then make every effort to resolve matters quickly, not least because a free speech complaint concerns a statutory free speech duty of the respondent. Therefore, we propose that we will normally only review a free speech complaint if the complainant has completed any internal process of the respondent under which their free speech claims could have been considered or, if earlier, once 30 days have elapsed since those proceedings began.
76. We have proposed the 30-day rule because we wish to create incentives for a respondent to deal with a matter quickly. We considered the alternative of requiring a complainant to have completed any internal process. However, we consider that would not create sufficient incentives for a respondent to deal with a free speech matter quickly. We are also proposing to retain discretion to allow us to review a complaint before the 30-day period has elapsed (the proposed rule is framed as ‘We will normally...’). We may consider doing this where, for example, the matters being complained about are time-sensitive and any recommendation that we make (see [Proposal H](#) below) would be unlikely to be effective should there be further delay.
77. Our proposed rule refers to ‘a disciplinary, complaints, appeals, grievance or similar internal review process’. We have proposed this broad definition because the issues that are being complained about could take many forms and may, for example, form the basis of an academic appeal or staff grievance. A complainant may be the subject of a disciplinary process that relates to issues around free speech. In that case, we consider that the respondent should be given an opportunity to conduct its internal process, but not to delay that process unnecessarily. The 30-day rule that we propose, and have discussed above, would help to mitigate that risk of delay. Delay may constitute punishment in itself.

³⁶ HERA Sch. 6A 5(2)(b).

78. The Act allows us to dismiss a free speech complaint, without considering its merits, if the OfS considers it to be frivolous or vexatious.³⁷ We have included a rule to this effect, because we consider that it will help us to make effective use of our resources to focus on more significant complaints (see section C). Our proposed rule does not set out an exhaustive definition of what is frivolous or vexatious. This is because we consider that an exhaustive definition may result in unintended consequences, such as inadvertently excluding complaints that should reasonably be considered under the scheme. What is frivolous or vexatious may depend on the individual circumstances of the case. We have included a non-exhaustive list of examples to illustrate how we may apply the rule. We consider that our proposal will allow us to take a broad and flexible approach.

Question C: Do you have any comments on Proposal C regarding complaints that we will not review?

³⁷ HERA Sch. 6A 6(2).

Proposal D: Time limits (section D of the scheme rules)

What are we proposing?

79. We propose that a free speech complaint must be submitted to the OfS by 12 months after the date on which it appears to the OfS that the adverse consequences, that are alleged in the free speech claims in the complaint, last occurred.

Why are we proposing this?

80. The Act states that the OfS may impose time limits for making complaints under the scheme.³⁸ We considered whether to propose a longer time limit, such as eighteen months or twenty-four months, or no time limit at all. We decided not to do so. Reviewing a sequence of events that took place long ago may present practical difficulties, since evidence may have been destroyed and memories may have faded. We consider that the time limit we propose creates an incentive for complaints to be brought swiftly.

81. We also considered whether to propose a shorter time limit, such as three months or six months. We decided not to do so. We recognise that some complainants may seek to resolve a matter informally with the respondent, and we should allow them time within which to do so. Some complainants may also need more time to compile the evidence and submit a complaint to the OfS.

Question D: Do you have any comments on Proposal D regarding time limits?

³⁸ HERA Sch. 6A 5(2)(a).

Proposal E: Submitting a complaint (section E of the scheme rules)

What are we proposing?

82. We are proposing that a free speech complaint must be made in writing by submitting a complaint form to us. We propose to make the complaint form available on our website and that complainants will be able to submit the form, together with any supporting evidence, to us online or through the post. We will be able to make adjustments to this process for complainants who have a disability, to enable them to access the scheme.
83. We propose to ask for personal information in the complaint form, including date of birth if the complainant is under 18 years old. In the latter case, a parent or guardian will be required to sign the complaint form as well. The subject-matter of a complaint may include sensitive personal data. We will process personal data, including sensitive personal data, in accordance with relevant data protection legislation. We also propose to ask for information that will help us to determine whether we can review the complaint under the scheme and make a decision on it.
84. We propose that we will not review anonymous complaints. We will make reasonable attempts to protect the complainant's identity if they ask us to do so, unless we are legally required to reveal their identity. However, we cannot guarantee that we will be able to maintain a complainant's anonymity. We do not have formal powers to protect whistleblowers.
85. We also propose that a complainant may appoint a representative to conduct their free speech complaint for them. We propose that we will normally then correspond with the representative in relation to the free speech complaint, rather than with the complainant. Under our proposals, a complainant does not need to appoint a representative.

Why are we proposing this?

86. We consider that requiring a complainant to complete and submit a complaint form, rather than simply sending an email or telephoning us, will help us to ensure that the complainant provides us with all the relevant information about their complaint. This will include information to help us to determine whether the complaint is one that we can review. This is likely to make the process more efficient for the complainant, since it will help the complainant to focus on the key issues that we will need to know to be able to consider their complaint. In turn, that is likely to make our review process more effective and efficient.
87. We recognise that some complainants may prefer to provide information to us in hard copy, rather than in an online format. Therefore, we propose to permit complaints to be submitted though the post as well as online.
88. Some complainants may wish to appoint a representative to conduct their complaint for them and our proposals permit this. The scheme is intended to be simple to use and there is no requirement for a complainant to appoint a representative. Where a complainant does so, we propose that we will then correspond with the representative. We have proposed this to make our review process more efficient; if we corresponded with both the complainant and their representative, we may receive different or conflicting information from them. It follows that we would expect the representative to seek and comply with the complainant's instructions and to ensure that they keep the complainant informed of the progress of their complaint.

Question E: Do you have any comments on Proposal E regarding submitting a complaint?

Proposal F: Reviewing a complaint (section F of the scheme rules)

What are we proposing?

89. We propose that when we first receive a complaint, we will consider whether it is one that is eligible for review under the scheme. This means that we would consider whether:
- a. The complaint is a free speech complaint (section A of the rules and [Proposal A](#)).
 - b. The complainant is an eligible person (section B of the rules and [Proposal B](#)).
 - c. The free speech complaint is about an organisation that can be complained about under the scheme (section A of the rules and [Proposal A](#)).
 - d. We cannot review some or all of the free speech complaint under section C of the scheme rules (see [Proposal C](#) – Complaints we will not review) or section D of those rules (see [Proposal D](#) – Time limits).
90. We propose that we may share information with the respondent or with others to help us to determine matters of eligibility. We will tell the complainant, and the respondent if relevant, whether and to what extent we are able to review their free speech complaint.
91. Our proposals give us discretion to determine what activities to undertake to conduct a review. We propose to consider the complaint form and any supporting information that the complainant submits with that form. We may ask the complainant and/or the respondent specific questions or request additional information from them. We may share some or all of the information that the complainant sends to us with the respondent and may seek their representations on that information.
92. Where we consider it appropriate, we may decide to have one or more face-to-face meetings with the complainant and/or the respondent and/or other persons that we consider may have information or expertise that is relevant to the free speech complaint. We may ask the complainant, the respondent, or those other persons, questions at such a meeting. We may allow the complainant, the respondent and/or those other persons to ask each other questions at such a meeting.
93. We propose that, where we consider that a free speech complaint concerns academic judgement, we may seek expert academic judgement to inform our review. We propose that we will do this only if we consider it appropriate. We also propose that we may seek expert advice from persons with other forms of expertise, where we consider it appropriate.
94. We are also proposing that we may seek a settlement of the free speech complaint without conducting a full review. This would require the agreement of the complainant and the respondent and would result in the withdrawal of the complaint by the complainant.
95. We propose that we may decide to dismiss a complaint, during our review, if we decide that the complaint is not one that we can consider after all (that is, that the eligibility requirements referred to in paragraph 89 above are not in fact met). We may do this where, for example, new information comes to light during our review.

Why are we proposing this?

96. Our proposals are designed to ensure that we appropriately identify complaints that are eligible for review under the scheme. We have explained in Proposals A to D why we have proposed the eligibility requirements as they are. When we receive a free speech complaint, we propose to make an initial decision about the extent to which we can review it. However, we have also proposed flexibility to enable us to dismiss some or all of a complaint during the review process, where, for example, information comes to light that leads us to conclude that the complaint is not one that we can review under the rules after all.
97. Our proposals are also designed to ensure that our review process is flexible, and that we can undertake activities that will best enable us to reach a decision about a free speech complaint. Our proposals are designed to ensure that we can drive the review process, obtaining the information that we think will help us to determine the extent to which the free speech complaint is justified (see [Proposal G](#) below).
98. We propose that our starting point would usually be to conduct a paper-based review. However, we have proposed a flexible process under which we are able to hold face-to-face meetings and permit the parties to a complaint to ask each other questions. The aim of those activities is to help us to gather information that will inform our decision about a complaint. We recognise that meetings may be stressful for the participants and may cause delay to our review process. We will only hold them where we consider it to be appropriate. We expect that in most cases, such meetings will not be required.
99. We considered whether we should restrict our review to a consideration of the information that the complainant submits in, and with, their complaint form. That approach would put the onus on the complainant to provide all relevant information at the outset and may support a timely review of free speech complaints.
100. However, we have decided not to propose that approach. We recognise that a free speech complaint may concern complex issues. It is likely that we would need to ask questions or seek further information to enable us to understand and reach a decision about the complaint. Our review will include consideration of whether the respondent has breached its free speech duty to take reasonably practicable steps to secure free speech within the law.³⁹ This may include breaches that the complainant has not explicitly raised. A free speech claim, as defined in the Act, may 'raise the question' whether there has been a breach of the relevant duty, and this may include breaches that the complainant does not explicitly allege. It is important that we have all the relevant information to enable us to conclude these lines of enquiry. We consider that to be in the interests of the complainant, the respondent and wider stakeholders.
101. We considered whether we should exclude complaints to the extent that they concern academic judgement. However, the Act will require us to consider every complaint that is capable of being referred under the scheme. It does not preclude us from considering matters of academic judgement.⁴⁰ Under our proposals, we will seek expert academic judgment to inform our review where we consider that appropriate. We have not proposed

³⁹ As stated in HERA Part A1 section A1 or Part A1 section A5.

⁴⁰ HERA Sch. 6A 5(1).

that we would seek expert academic advice in every case. This is because we consider that such expert advice may not be required in every case.

102. Our proposals include an option for us to seek settlement of a complaint. We have proposed this because we consider that a settlement may be an effective and timely way in which to resolve free speech complaints in some cases. In seeking to achieve a settlement, we may want to discuss the complaint with the parties or suggest that they discuss the complaint. Any settlement would require the agreement of both parties. We propose to document a settlement in a Notice of Complaint Outcome (see [Proposal G](#) below).

Question F: Do you have any comments on Proposal F regarding reviewing a complaint?

Proposal G: Our decision and Notice of Complaint Outcome (section G of the scheme rules)

What are we proposing?

103. The Act includes a requirement for us to decide on the extent to which a free speech complaint is justified.⁴¹ The Act will also require us to notify the parties of our decision and of our reasons for making it.⁴²
104. We propose that we will make a decision about a complaint as soon as reasonably practicable. This reflects a requirement in the Act.⁴³ We will decide whether the complaint is justified, partly justified or not justified.
105. The decision that we reach will depend on our assessment of whether:
- a. The respondent has breached or is breaching the relevant free speech duty; and
 - b. The complainant has suffered adverse consequences that are more than minor or trivial as a result of the breach.
106. We propose that if it appears to us that each of 105a and 105b above is more likely than not, then we may decide that the complaint is justified. If it appears to us that 105a is more likely than not, but 105b is not, then we may decide that the complaint is partly justified. Otherwise, we may decide that the free speech complaint is not justified.
107. We are also proposing that when we have made a decision, we will notify the complainant and the respondent in writing of our decision and of our reasons for reaching it. We propose to do so in a Notice of Complaint Outcome.
108. We propose that we will not make a decision about the extent to which a free speech complaint is justified where we have agreed a settlement (see Proposal F above). An agreed settlement would result in the withdrawal of a complaint by the complainant. However, we propose that we would issue a Notice of Complaint Outcome to confirm the terms of the settlement of the free speech complaint.
109. We also propose that if a complaint is against more than one respondent then we will determine the complaint separately against each respondent.

Why are we proposing this?

110. We are proposing to make decisions on the basis of whether it appears to us that the relevant claims are more likely than not. The relevant claims are the matters referred to in paragraph 105 above. A free speech complaint must include claims about those matters (see Proposal A above).
111. We considered two alternatives to this proposal.

⁴¹ HERA Sch. 6A 6(1)(a).

⁴² HERA Sch. 6A 8(a).

⁴³ HERA Sch. 6A 6(1)(b).

112. First, we considered whether to require a higher standard of proof than ‘it appears to us to be more likely than not’, to find the complaint justified or partly justified. For example, we might have required that we be satisfied ‘beyond reasonable doubt’ that the complainant had suffered adverse consequences, and that that was as a result of a relevant breach, before determining that the complaint was justified.
113. Second, we considered whether to require a lower standard of proof than ‘it appears to us to be more likely than not’. For example, we might have required there simply to be a case that on its face indicated that the complainant had suffered adverse consequences because of a relevant breach, to decide that the complaint is justified.
114. We discounted these alternatives. Our findings should justify substantial recommendations. We consider that a lower standard of proof would undermine this aim. Conversely, ‘beyond reasonable doubt’ is the test used in criminal law cases. We are proposing the test that it ‘appears to us’ that the civil standard (‘more likely than not’) is met. The civil standard is the test that courts such as the county court uses when considering civil claims, including the one that will be provided for in section A7 of Part A1 of HERA, as inserted by the Act. The inclusion of the words ‘it appears to us’ reflects the tests that the OfS applies when making other regulatory decisions under HERA. For example, when we are deciding whether to impose a monetary penalty on a relevant students’ union in relation to a breach of a free speech duty under our broader regulatory role. Or when we are deciding whether to impose a sanction on a provider in relation to a breach of a condition of registration.⁴⁴
115. The Act states that we may find a complaint partly justified if, for example, we consider that there has been a breach of its duty to secure free speech within the law that has not resulted in adverse consequences for the complainant.⁴⁵ The Act also provides that, if we find a complaint partly justified, we can make recommendations.⁴⁶ We have proposed provisions to this effect in the scheme rules. We consider that it may be important to identify a breach of the relevant free speech duty, even if it has not caused the complainant to suffer adverse consequences. We also think that it may be important to make recommendations in such a case. Therefore, we are proposing that we may find a complaint partly justified in those circumstances.
116. Under our proposals, we could only find a free speech complaint to be justified if it appears to us more likely than not that the adverse consequences suffered by the complainant are more than minor or trivial. Our current view is that a ‘justified’ decision should be reserved for the more serious cases. This is because we consider it important to be able to distinguish breaches of the relevant free speech duty that have resulted in adverse consequences that are more than minor or trivial. Where we decide that the respondent has breached its duty to secure free speech within the law but the complainant has suffered only minor or trivial

⁴⁴ Under HERA 69B(2) (as amended) the OfS may impose a monetary penalty on a relevant students’ union if it appears to the OfS that is failing or has failed to comply with any of its free speech duties. We are consulting separately on our proposed regulation of relevant students’ unions www.officeforstudents.org.uk/free-speech-students-unions-consultation/. The OfS may impose a monetary penalty on a provider, or suspend the provider’s registration with the OfS, if it appears to the OfS that there is or has been a breach of one of its ongoing conditions of registration (sections 15 and 16 of HERA respectively).

⁴⁵ HERA Sch. 6A 7(2).

⁴⁶ HERA Sch. 6A 7(1).

adverse consequences, we may find the complaint to be 'partly justified'. We would still be able to make recommendations in relation to such a complaint.

117. Under our proposals we may find a complaint to be not justified where it appears to us more likely than not that the respondent is not breaching, and has not breached, its duty to secure free speech within the law. This means that we would not go on to make findings about other parts of the complaint. Under Proposal C, we have proposed that we will only consider claims in a complaint that are not 'free speech claims' where they are relevant to those free speech claims. The focus of our review is the free speech elements of a complaint. It follows that, should it appear to us that it is more likely than not that the respondent has not breached or is not breaching its duty to secure free speech within the law, we would find the complaint not justified and conclude our review.

Question G: Do you have any comments on Proposal G regarding our decision and Notice of Complaint Outcome?

Proposal H: Recommendations and suggestions (section H of the scheme rules)

What are we proposing?

118. The Act will require the scheme to provide that the OfS may make a recommendation when it considers a free speech complaint to be justified or partly justified.⁴⁷ The Act defines what a recommendation is.⁴⁸ Broadly, this is a recommendation that the respondent does something or refrains from doing something. This may include the payment of sums to the complainant. The Act also states that we may only make recommendations that arise from the free speech claims in the complaint.⁴⁹ Our proposed scheme rules reflect these requirements.
119. Our proposals expect the respondent to comply with any recommendation that we make in full, within the time limits that we set and to report to us when it has done so. Any recommendations would be set out in the Notice of Complaint Outcome.
120. We also propose that we may make suggestions in any Notice of Complaint Outcome, whether or not we decide that the complaint is justified or partly justified. We may suggest that the respondent considers doing something or not doing something.

Why are we proposing this?

121. Our proposed rules are designed to be flexible and do not limit the form that recommendations may take, other than that they may only arise from the free speech claims in a complaint (and that latter point will be required by the Act⁵⁰). The form of recommendation will depend on the individual circumstances of the case. Recommendations may be designed to put the complainant in the position they would have been in before the circumstances of their complaint occurred, where that is appropriate or possible. Our recommendations may also relate to broader issues such as a change in the respondent's processes or practices. For example, we might recommend that the respondent should review its regulations or provide staff training on free speech or related matters.
122. We are proposing that we may make suggestions even where we find a complaint to be not justified. This is because, in such circumstances, there may still be things that the respondent can do to mitigate the risk of future breaches of their duty to secure free speech within the law. For example, it may be helpful for the respondent to improve its processes or review its regulations. However, we are not proposing to publish information about a respondent's compliance with suggestions. (Whereas we are proposing to publish information about a respondent's compliance with recommendations: see [Proposal P.](#))

Question H: Do you have any comments on Proposal H regarding recommendations and suggestions?

⁴⁷ HERA Sch. 6A 7(1).

⁴⁸ HERA Sch. 6A 7(3).

⁴⁹ HERA Sch. 6A 7(4).

⁵⁰ HERA Sch. 6A 7(4).

Proposal I: Suspension and withdrawal of a complaint (section I: Suspension and withdrawal)

What are we proposing?

123. We propose that we may suspend our initial consideration or review of a free speech complaint if the complainant either:
- a. Does not provide us with information as required (see Proposal L below), or
 - b. Cannot be contacted using the contact details that they have given to us.
124. We may also decide to suspend our initial consideration or review of some of the complaints in a group complaint while we focus on one of the complaints in the group, under Proposal J below.
125. We propose that the complainant may withdraw their complaint at any stage before we issue a Notice of Complaint Outcome or dismiss the complaint.

Why are we proposing this?

126. The Act will require us to make a decision on a free speech complaint as soon as reasonably practicable.⁵¹ We propose that we may decide to suspend our review where the complainant does not provide us with information that would help us to make a decision. We consider that this may act as an incentive for the complainant to comply with our requests and so support timely review of their complaint. That is in their interests, and the interests of the respondent.
127. The Act will only require us to make a decision on a complaint that is not withdrawn.⁵² We considered the alternative of not permitting the complainant to withdraw a complaint. We discounted that alternative. We do not consider it to be in the interests of the complainant or the respondent to review a complaint that the complainant no longer wishes to pursue.

Question I: Do you have any comments on Proposal I regarding suspension and withdrawal?

⁵¹ HERA Schedule 6A 6(1)(b).

⁵² HERA Sch. 6A 6(1)(a).

Proposal J: Group complaints (section J of the scheme rules)

What are we proposing?

128. We propose that we may consider two or more complaints together, if they are about the same respondent and the same subject matter. This could be the case whether those complaints were submitted individually or as a group. We also propose that we may decide to review a representative one among such complaints (a lead complaint) while suspending our review of the others, pending the outcome of the lead complaint.

Why are we proposing this?

129. The Act will require us to make decisions on complaints as soon as is reasonably practicable.⁵³ We consider that dealing with complaints about the same subject and respondent together may save time and expense for complainants and respondents.

130. Similarly, it may be effective to consider a lead complaint, and suspend our review of the other complaints in the group. In the event that we decided that the lead complaint was justified, the respondent may then seek to resolve the other complaints in the group without us having to reach a decision on those complaints. This may support timely resolution of those complaints which would be in the interests of the complainants and the respondent.

Question J: Do you have any comments on Proposal J regarding group complaints?

⁵³ HERA Sch. 6A 6(1)(b).

Proposal K: Representations (section K)

What are we proposing?

131. We propose that we may seek representations from the complainant and/or the respondent as appropriate, before reaching any final decision about:
- a. Whether we can review a complaint under the rules.
 - b. The extent to which a free speech complaint is justified.
 - c. Whether to make, and the form and content of, any recommendation or suggestion.

Why are we proposing this?

132. We considered whether to propose that we would always seek representations from one or both parties to a complaint before making final decisions. Or conversely, whether to propose that we would never seek representations. The Act will require us to reach decisions as soon as reasonably practicable.⁵⁴ Representations may introduce delay into the process. However, we consider that in some cases, though not necessarily all, it may be appropriate for us to seek representations from one or both parties, before making a final decision. We have therefore proposed flexibility to allow us to do so. We propose to determine whether to do so on a case-by-case basis.

Question K: Do you have any comments on Proposal K regarding representations?

⁵⁴ HERA Sch. 6A 6(1)(b).

Proposal L: Information requirements (section L of the scheme rules)

What are we proposing?

133. We propose that we may require the complainant and/or the respondent to provide us with information about a free speech complaint. For example, we may require this to help us to determine whether we can review the complaint under the scheme rules, or the extent to which a free speech complaint is justified. We propose to set out each such requirement in writing in a notice. We also propose that the complainant and the respondent must provide us with the information that we specify in the notice and at the time and in the manner and form we specify.

Why are we proposing this?

134. Under Proposal F (Reviewing a complaint) we have explained our proposals for how we may review a free speech complaint. Those proposals include us requesting information from the complainant and/or the respondent. The Act requires respondents to comply with the requirements of the scheme.⁵⁵

135. We have proposed the information requirement referred to above to enable us to obtain information from the complainant and/or the respondent in a timely manner. The information that we need to enable us to make a decision about a free speech complaint may vary depending on the circumstances of the case. Therefore, we have not proposed in the scheme rules, an exhaustive list of the information that we may require or set timescales within which this information must be provided. Rather, we have proposed a flexible approach that will allow us to set out in writing the information that we require, together with the form that information should take and the timescales within which it should be submitted to us.

Question L: Do you have any comments on Proposal L regarding information requirements?

⁵⁵ HERA Sch. 6A 11(1).

Proposal M: A respondent's duty to comply (section M of the scheme rules)

What are we proposing?

136. Under the Act, a respondent to a free speech complaint must comply with any requirements that the scheme imposes on it. The Act also states that, if a respondent fails to comply with a requirement imposed by the scheme and does not satisfy us that it is unable to comply, we may enforce the requirement in civil proceedings for an injunction.⁵⁶ We propose to include rules in the scheme that reflect those provisions.
137. Under the proposed scheme rules, a respondent must comply with any requirements that are imposed on it by, or under, the rules. This would include any requirement to provide information set out in a notice that we send to the respondent under the proposed information requirements in the scheme (see Proposal L above).

Why are we proposing this?

138. We consider that this provision may act as an incentive for respondents to comply with the requirements of the scheme rules, in a timely manner. We also consider that the provision will enable us to enforce requirements that may be necessary for us to determine a complaint.

Question M: Do you have any comments on Proposal M regarding a respondent's duty to comply?

⁵⁶ HERA Sch. 6A 11.

Proposal N: Advertising the scheme (section N of the scheme rules)

What are we proposing?

139. We are proposing that from 1 August 2024, providers, constituent institutions and relevant students' unions should advertise this scheme in relevant materials. Those materials are listed in section N of the proposed scheme rules. Broadly, they include:
- a. Staff and student induction materials.
 - b. Free speech code of practice and any processes for managing speaking events.
 - c. Internal complaints and appeals processes.
 - d. For providers and constituent institutions, application materials for applicants for academic posts.
140. We have proposed a short paragraph, describing the scheme, that should be included in those materials. This is set out in section N in the scheme rules.
141. We are also proposing that providers, constituent institutions and relevant students' unions should bring the scheme to the attention of members, staff and students at least once a year.

Why are we proposing this?

142. In our view, the scheme can only be effective if those who might want to use it are aware of it. In our proposals we have listed the key materials that we consider should signpost to the scheme. Those are the materials that we consider potential complainants may engage with in relation to matters that could later form the subject of a free speech complaint. We have proposed some simple wording for inclusion in those materials. This will ensure that organisations are consistent in the way they advertise the scheme. It will also support organisations to ensure that they refer to the scheme appropriately.
143. We considered whether to propose a longer deadline (after 1 August 2024) by which date organisations should include the signposting text in relevant materials. However, we expect that the scheme will come into effect on 1 August 2024 and we consider it to be important that the scheme is appropriately signposted to potential users from that date.
144. We have proposed that the wording should be included in a 'prominent place' in the relevant materials. For example, it may be appropriate for the scheme to be advertised at the beginning of a complaints process as well as at the end. This is because under our proposals, a complainant may be able to complain to the OfS before they have completed that process.
145. We have also proposed that organisations should bring the scheme to the attention of members, staff and students at least once a year. We consider that this is also an important mechanism through which persons who may wish to use the scheme are informed about it. We also note that the Act will separately impose a requirement on organisations to bring their free speech code of practice to the attention of students at least once a year.⁵⁷

⁵⁷ HERA Part A1 section A2(5)(b) and Part A1 section A6(5)(b).

Question N: Do you have any comments on Proposal N regarding advertising the scheme?

Proposal O: Charges, costs and fees (section O of the scheme rules)

What are we proposing?

146. Under our proposed rules, we will not charge any fee to the complainant for reviewing their free speech complaint. This reflects provisions in the Act.
147. Under the Act, we may recover costs from respondents in relation to our review of a complaint where we find that complaint justified or partly justified. We expect to set out proposals in relation to that matter, in a future consultation.

Why are we proposing this?

148. The Act states that the scheme must be free to complainants.⁵⁸

Question O: Do you have any comments on Proposal O regarding charges, costs and fees?

⁵⁸ HERA Sch. 6A 9.

Proposal P: Publication of information relating to the free speech complaints scheme

What are we proposing?

Relevant legislation

149. Under section 67A of HERA, we have a statutory power to publish notices, decisions and reports in the performance of our functions; this includes publishing decisions to conduct or terminate an investigation.
150. The Act will amend section 67B (Publication of decision to conduct or terminate investigation) of HERA to include a new subsection 3A:

Section 67B of HERA

(3A) In the application of this section to publication of a decision under the scheme provided by virtue of Schedule 6A (free speech complaints scheme)—

(a) references to an investigation (however expressed) are to a review of a free speech complaint under the scheme;

(b) for the purposes of subsection (2)(a), the OfS terminates an investigation without making a finding if it—

(i) does not make a decision as to whether a free speech complaint is justified because the complaint is withdrawn, or

(ii) dismisses a free speech complaint without considering its merits;

(c) for the purposes of subsection (2)(b), the findings of an investigation do not result in the OfS taking any further action only where—

(i) the OfS decide that a complaint is wholly not justified, or

(ii) the OfS decide that a complaint is justified (wholly or partly) but do not make any recommendations about the person about which the complaint is made.

151. The effect of new sub-section 67B(3A) is to extend section 67B (publication of decision to conduct or terminate investigations), to apply to a review of a free speech complaint under the new OfS free speech complaints scheme.

152. Schedule 6A of HERA, which is inserted by the Act, will also state, at paragraph 13:

Defamation

13 For the purposes of the law of defamation, absolute privilege attaches to the publication under section 67A of—

(a) any decision or recommendation made by the OfS under the [OfS free speech complaints] scheme, and

(b) any report under paragraph 12(1)(b)

153. References in paragraph 13 of Schedule 6A to the ‘scheme’ are to the new OfS free speech complaints scheme. References to ‘any report under paragraph 12(1)(b)’ are to any results of a review of the OfS free speech complaints scheme or its operation (or any aspect of either of those matters), reported to the Secretary of State under paragraph 12 of Schedule 6A to HERA.

154. We expect these provisions to come into force on 1 August 2024.

Our proposals

155. We have previously published guidance for providers on the approach we will take to the publication of information about providers and connected individuals. This guidance is set out in ‘Regulatory advice 21: Publication of information’.⁵⁹ This guidance was published following consultations on our proposed approach.

156. The guidance sets out how we normally use our powers in sections 67A to 67C of HERA and contains our general policy for the publication of information about providers and individuals connected with them. It sets out the information we would normally expect to publish and the information that we would not normally expect to publish. It also sets out the factors to which we will have regard in making a publication decision.

157. We are now proposing to amend Regulatory advice 21 to set out the information that we would normally expect to publish, and the information that we would not normally expect to publish, in relation to the OfS free speech complaints scheme.⁶⁰

Information we would normally expect to publish

158. We propose that items 15 and 16 in the table below are added to ‘Table 1: Information the OfS would normally expect to publish’, in Regulatory advice 21. We also propose to amend existing items 4 and 8 in Table 1. Our proposed amendments are set out in red font in the table below.

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
4	Information about an investigation into any type of potential non-compliance with a condition of	The identity of a provider subject to investigation, a summary of the matters	The OfS’s detailed assessment of the relevant issues, including the underlying evidence

⁵⁹ ‘Regulatory advice 21: Publication of information’ is available at www.officeforstudents.org.uk/publications/regulatory-advice-21-publication-of-information/.

⁶⁰ We are consulting separately on proposals relating to our regulation of students’ unions on free speech matters. That consultation includes proposals on the publication of information on relevant students’ unions. See www.officeforstudents.org.uk/free-speech-students-unions-consultation/.

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
	<p>registration or into other potential regulatory harm:</p> <p>A decision to open an investigation, or information about a live investigation at any time after it has been opened</p> <p>The progress of an investigation at key milestones where that investigation has previously been announced</p> <p>Any provisional decisions taken as a result of an investigation that has previously been announced</p> <p>Where information has been published about a decision to conduct an investigation, any decision to close that investigation without making any finding, or if the findings of that investigation do not result in any further action</p> <p>This does not include matters relating to the review of complaints under the OfS free speech complaints scheme</p>	<p>being investigated, and the progress of an investigation</p> <p>A provisional decision and the reasons for that decision</p> <p>A decision to close an investigation and the reasons for that decision</p>	<p>considered in that assessment</p>
8	<p>Information that relates to individuals connected with a provider, or where specified below, a constituent institution or a relevant students' union:</p> <p>A finding that an individual is not suitable to be approved as a provider's accountable officer</p>	<p>The decision about an individual and the reasons for that decision</p>	<p>The OfS's detailed assessment of the relevant issues, including the underlying evidence considered in that assessment</p> <p>The Notice of Complaint Outcome issued under the OfS free speech complaints scheme</p>

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
	<p>A finding that an individual is not a fit and proper person</p> <p>The conduct of an individual where this is relevant to the reasons for a regulatory finding about a provider including a breach of a condition</p> <p>In connection with a provider, a constituent institution or a relevant students' union: the conduct of an individual where this is relevant to the reasons for finding a free speech complaint to be partly justified or justified</p>		
15	Information about the outcome of free speech complaints made to the Office for Students' free speech complaints scheme (the 'free speech complaints scheme')	<p>Information about the complaint, including the identity of the provider, constituent institution or students' union that is the subject of the free speech complaint (the 'respondent')</p> <p>A decision on a free speech complaint that it is justified, partly justified or not justified</p> <p>The settlement of a free speech complaint</p> <p>Any recommendations or suggestions that the OfS makes in relation to a free speech complaint</p> <p>The respondent's compliance with the OfS's recommendation on a free speech complaint</p>	The Notice of Complaint Outcome including where that Notice is issued in relation to the settlement of a free speech complaint
16	Statistical information about free speech complaints	Information about the number and type of free speech complaints received	

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
		<p>by the OfS and the outcome of those complaints, including where we have determined that a complaint is not one that we can consider under the free speech complaints scheme</p> <p>The identity of the providers, constituent institutions and students' unions about which free speech complaints have been made</p>	

159. We propose that we would make decisions about the publication of information relating to a decision to conduct a review of a free speech complaint, on a case-by-case basis.

Information we would not normally expect to publish

160. We propose that we would not normally expect to publish the name of a complainant under the OfS free speech complaints scheme, unless we make an exception based on our consideration of relevant factors. We propose to amend Regulatory advice 21 to reflect this.

Factors to which we will have regard in making publication decisions

161. In making publication decisions about the matters related to the free speech complaints scheme, we propose to consider the 'Factors to which we will have regard in making publication decisions' in Regulatory advice 21. In doing so, and where the context of the publication decision so requires, we propose to interpret the factors in Regulatory advice 21, as follows:

- a. To refer to constituent institutions or relevant students' unions.
- b. References to 'regulate', 'regulation' and 'monitoring and investigatory activity' include the OfS's functions under the OfS complaints free speech complaints scheme.
- c. References to persons coming forward to provide information, includes the submission of complaints to the OfS free speech complaints scheme.

Engagement with providers, constituent institutions, relevant students' unions and connected individuals

162. We propose that the nature of our engagement with a provider, constituent institution or relevant students' union in relation to a publication decision on the matters referred to in this [Proposal P](#), will depend on the particular circumstances of the case. We propose that we will seek representations from a provider, constituent institution or relevant students' union

before making a final decision to publish information where we consider it is appropriate to do so and in the manner we consider appropriate. This reflects the existing approach set out in paragraph 15 of Regulatory advice 21.

Other consequential amendments

163. We propose to make further minor, consequential amendments to Regulatory advice 21, to reflect the fact that publication decisions may relate to information about the OfS free speech complaints scheme.

Why are we proposing this?

164. The law gives the OfS powers to publish notices, decisions and reports given or made in the performance of our functions.⁶¹

165. Regulatory advice 21 sets out the framework within which we currently make decisions about publication matters. Our policy states that, when making a publication decision, we will have regard to the factors set out in that policy and will consider them in the manner we consider to be appropriate for an individual case. The factors directly incorporate the language used in section 67A of HERA. They also include a final factor, which reflects the other legal requirements placed on us by HERA and other legislation. This includes the requirement for us to have regard to our general duties under section 2 of HERA. Our policy also makes clear that we may have regard to other relevant factors in making publication decisions, and those will depend on the particular circumstances of a case.

166. We explained our reasons for adopting the policy set out in Regulatory advice 21, in our analysis of responses to our public consultation on the policy.⁶² Those reasons also underpin our proposal to extend the general policy to matters referred to in this proposal. The inclusion of decision-making factors, and the illustrative considerations for and against publication that sit underneath them, give us a level of flexibility that we consider appropriate. We consider that it would be inappropriate to introduce a rigid approach to publication since each case should be determined on its own particular circumstances. We recognise that this may make our decision-making process more complex and reduce the certainty that providers, constituent institutions and relevant students' unions have about whether information relevant to them will be published. However, we consider that a more rigid or rules-based system would fetter our discretion and be inconsistent with our public law obligations.

167. We considered whether it is necessary to make changes to our published policy on publication of information and whether we should instead make publication decisions on the matters referred to in this proposal, on an individual basis without reference to a policy. While we consider that that would be reasonable, we also consider that there are benefits to increased transparency about the types of information that we are likely to publish or not to publish, and the factors that we will take into account in reaching individual decisions. Our proposals set out how we propose to interpret those factors, to refer to constituent institutions, relevant students' unions and the free speech complaints scheme where the context of the publication decision so requires.

⁶¹ HERA 67A.

⁶² See www.officeforstudents.org.uk/publications/consultation-on-publication-of-information-about-higher-education-providers-analysis-of-responses-and-decision/.

168. In our proposals, we have set out matters that we propose ‘we will normally publish’. We considered whether our starting point should be that ‘we would not normally’ publish those matters. However, we consider that it is in the public interest for the OfS to be transparent about its regulatory and other decisions and its reasons for making them. This includes decisions made under the proposed free speech complaints scheme. In our view, visibility creates confidence in the regulatory system. We consider this to be in the interests of the public, of current and potential students, and of other providers, constituent institutions and relevant students’ unions that have complied with the duty to take reasonably practicable steps to secure free speech within the law. Identifying areas where bodies have not complied with this duty, may also support compliance with those duties by others.
169. We considered whether to propose that we ‘would normally’ publish the name of a complainant. However, our current view is that the public interest in publishing a complainant’s name is likely to be outweighed by other factors. We recognise that the nature of the information that we propose to publish about a complaint may reveal the identity of a complainant, even if they are not explicitly named. In making decisions about publication in individual cases, we propose to take into account the factors set out in our published policy. We propose to interpret those factors to refer to the proposed complaints scheme where the context so requires.
170. Under our proposals, we propose that we will not include ‘information relating to a decision to conduct a review of a free speech complaint’ in the list of information that we would normally expect to publish or in the list of information that we would not normally expect to publish. We have proposed this because we consider that the factors in favour of, or against, publication may be particularly finely balanced. This means that we would have regard to the factors in the general policy, in determining whether to publish this information on a case-by-case basis. We propose to interpret those factors to refer to the proposed complaints scheme where the context so requires.

Question P: Do you have any comments on Proposal P regarding the publication of information relating to the free speech complaints scheme?

What would be the effect of these proposals?

171. The effect of these proposals would be to provide a scheme that implements the requirements of Schedule 6A to HERA (inserted by the Act) in an effective way. Our proposals are designed to provide a scheme that supports the timely and effective review of eligible free speech complaints.
172. Our proposals set out a flexible framework under which we would review complaints. The review process can be adapted to suit the individual context of the case. The scheme is designed to be straightforward for complainants to use, so that they do not need professional representation to enable them to obtain where their lawful free speech has been curtailed.
173. The timely review of free speech complaints will highlight areas where providers, their constituent institutions and students' unions need to do more to comply with their relevant free speech duties. That is in the interests of the higher education sector as a whole. The scheme will be an important tool through which the OfS will seek to ensure that free speech within the law is secured for staff, students and visiting speakers.
174. The proposal relating to the publication of information would provide transparency and clarity about the type of information that the OfS would normally expect to publish, or not publish, in relation to the proposed free speech complaints scheme. It would provide transparency and clarity about the factors that the OfS would have regard to when making publication decisions about those matters. More generally, the proposal is likely to result in increased transparency about the OfS's activities and decisions, for students and other stakeholders.

Annex A: List of consultation questions

Question A: Do you have any comments on Proposal A regarding free speech complaints?

Question B: Do you have any comments on Proposal B regarding who can complain?

Question C: Do you have any comments on Proposal C regarding complaints that we will not review?

Question D: Do you have any comments on Proposal D regarding time limits?

Question E: Do you have any comments on Proposal E regarding submitting a complaint?

Question F: Do you have any comments on Proposal F regarding reviewing a free speech complaint?

Question G: Do you have any comments on Proposal G regarding our decision and Notice of Complaint Outcome?

Question H: Do you have any comments on Proposal H regarding recommendations and suggestions?

Question I: Do you have any comments on Proposal I regarding suspension and withdrawal?

Question J: Do you have any comments on Proposal J regarding group complaints?

Question K: Do you have any comments on Proposal K regarding representations?

Question L: Do you have any comments on Proposal L regarding information requirements?

Question M: Do you have any comments on Proposal M regarding a respondent's duty to comply?

Question N: Do you have any comments on Proposal N regarding advertising the scheme?

Question O: Do you have any comments on Proposal O regarding charges, costs and fees?

Question P: Do you have any comments on Proposal P regarding the publication of information relating to the free speech complaints scheme?

Question Q: Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

Question R: In your view, are there ways in which the objectives of this consultation that could be delivered more efficiently or effectively than proposed here?

Question S: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Question T: Do you have any comments about any unintended consequences of these proposals, for example, for particular types of provider, constituent institution or students' union or for any particular types of student?

Annex B: Proposed rules of the free speech complaint scheme

The Office for Students free speech complaints scheme⁶³

Effective from 1 August 2024

The Office for Students (OfS) operates a free speech complaints scheme. We review complaints about free speech from students, staff, applicants for academic posts and (actual or invited) visiting speakers.

In these rules, references to 'we', 'us' and 'our' are to the Office for Students.

References to 'you' are to the person making the free speech complaint (the complainant) or to their appointed representative where the context requires.

'Registered higher education providers' are the universities and colleges that are registered with the OfS.⁶⁴

Terms in bold are explained in the Glossary at the end of these rules.

Section A: What is a free speech complaint?

1. The OfS reviews **free speech complaints** about the **governing bodies** of **registered higher education providers** or of **constituent institutions** of those providers, and about **relevant students' unions**. In these rules, we refer to the body that is being complained about as a **respondent**.
2. A **free speech complaint** is a complaint made by an **eligible person** that:
 - a. Claims that the person making the complaint has suffered adverse consequences (which need not be financial) as a result of action or inaction of a **respondent**; and
 - b. Claims that, or gives rise to a question as to whether, the action or inaction was a breach of the **respondent's free speech duty**.
3. The **free speech duty** for governing bodies of **registered higher education providers** and their **constituent institutions** is set out in section A1 (Duty to take steps to secure freedom of speech) of Part A1 of **HERA**.
4. The **free speech duty** for **relevant students' unions** is set out in section A5 (Duty to take steps to secure freedom of speech) of Part A1 of **HERA**.
5. In these rules, we refer to the claims described in rule 2 as **free speech claims**.
6. A **free speech complaint** may be about more than one **respondent**. References in these rules to a '**respondent**' are to each **respondent** unless the context requires otherwise.

⁶³ These rules implement the requirements of Schedule 6A to the Higher Education and Research Act 2017 (HERA). They are effective from 1 August 2024.

⁶⁴ See the OfS Register at www.officeforstudents.org.uk/register/.

7. A **free speech complaint** may include claims other than **free speech claims**.

Section B: Who can complain?

8. You can make a **free speech complaint** about a governing body of a **registered higher education provider**, or of a **constituent institution**, if you are an **eligible person** as follows:

- a. A person who is or was a **student, member or member of staff** of the **registered higher education provider or constituent institution** (as the case may be);
- b. A person who has applied to become a **member of academic staff** of the **registered higher education provider or constituent institution** (as the case may be); or
- c. A person who was, or was at any time invited to be, a **visiting speaker** at the **registered higher education provider or constituent institution**.

9. You can make a **free speech complaint** about a **relevant students' union** if you are an **eligible person** as follows:

- a. A person who is or was:
 - i. A **member or member of staff** of the **relevant students' union**;
 - ii. A **student** of a **registered higher education provider** to which the **relevant students' union** relates; or
 - iii. A **member or member of staff** of a **registered higher education provider** to which the **relevant students' union** relates or of any of its **constituent institutions**; or
- b. A person who was, or was at any time invited to be, a **visiting speaker** at the **relevant students' union**.

10. We will not review a **free speech complaint** made by personal representatives of the estate of a person who has died, unless the **free speech complaint** was submitted to us before that person died.

Section C: Complaints that we will not review

11. We will not review a complaint unless it is a **free speech complaint**.

12. A **free speech complaint** may include claims other than **free speech claims**. However, we will only review those other claims if they include information that is relevant to the **free speech claims**.

13. This scheme is not retrospective. This means that we will not review a **free speech complaint** to the extent that it concerns matters or events before 1 August 2024. Where those matters or events were ongoing as of 1 August 2024, we will review them in relation to the period from 1 August 2024.

14. We will not review a **free speech complaint** about a **respondent** if it was not a **registered higher education provider**, a **constituent institution** or a **relevant students' union** when the action or inaction being complained about took place.
15. We will not review a **free speech complaint** if it appears to the OfS that proceedings relating to the same subject-matter as the **free speech claims** in that complaint, to which you are or were party, are being, or have been, dealt with by a court or tribunal. 'Court or tribunal' does not include a panel established by the **respondent**, in connection with its own internal disciplinary, complaints or appeals processes. Nor does it include a panel established by a **Professional, Statutory and Regulatory Body** where this was not at your request. We will consider that proceedings have begun once the application or claim has been submitted, including where that application or claim is seeking permission to bring proceedings. We may decide to review a **free speech complaint** where permission to bring any such proceedings was refused or where any such proceedings have been formally stayed or adjourned.
16. We will not review a **free speech complaint** if it appears to the OfS that a complaint brought by you and relating to the same subject-matter as the **free speech claims** in that complaint, is being, or has been, dealt with under the **student complaints scheme**.
17. This rule applies where the **respondent** has a disciplinary, complaints, appeals, grievance or similar internal review process under which the **free speech claims** in your **free speech complaint** could be or are being considered. In those circumstances, we will normally only accept a **free speech complaint** once you have completed that process or, if earlier, once 30 days have elapsed since that process began.
18. We will dismiss a **free speech complaint** at any time if, in our judgement, it is frivolous or vexatious. The following non-exhaustive list illustrates when we may determine that a **free speech complaint** is frivolous or vexatious:
 - a. The **free speech complaint** provides no new information to that set out in a **free speech complaint** previously submitted by you and considered under this scheme.
 - b. You continually change the substance of a **free speech complaint**.
 - c. You have acted aggressively, or offensively, or abusively, or have made unreasonable demands on us.
 - d. Your **free speech complaint** does not clearly identify issues or matters that are the subject of the complaint.
 - e. You have not complied with our information requirements (section L) on several occasions.
 - f. Your **free speech complaint** concerns matters which in the OfS's judgment are trivial.

Section D: Time limits

19. A **free speech complaint** must be submitted to the OfS by 12 months after the date on which it appears to the OfS that the adverse consequences that are alleged in the **free speech claims** in the complaint, last occurred.

Section E: Submitting a free speech complaint to us

20. A **free speech complaint** must be made in writing, by submitting a complaint form to us. You will also be able to submit any documents that are relevant to your complaint. The complaint form is available on our website. The complaint form and any supporting documents may be submitted online or by post. Instructions on how to do this are on our website. If you have a disability, we can adjust this process to enable you to access this scheme. Guidance on how to request adjustments is set out on our website.
21. When you submit a **free speech complaint to us**, we will ask you for personal information including your name and contact details.
22. We cannot review anonymous complaints. If you ask us to protect your identity from the **respondent** or other persons, we will make reasonable attempts to do so, unless we are legally required to reveal your identity. However, we cannot guarantee that we will be able to maintain your anonymity. The OfS does not have formal powers to protect whistleblowers.
23. You may appoint a representative to correspond with us about your **free speech complaint** on your behalf. We will then normally correspond with your representative, rather than directly with you. This means that you should make sure that your representative understands your **free speech complaint**, will act in your best interests and can keep you informed throughout our review process. Where you have appointed a representative, 'you' will refer to your representative where the context requires. If you tell us that you no longer wish your representative to act for you, we will tell your representative and will then correspond directly with you. You are not required to appoint a representative.

Section F: Reviewing a free speech complaint

24. When we receive a complaint, we will decide whether we can review it in whole or in part. This means that we will consider whether:
 - a. It is a **free speech complaint** under section A;
 - b. You are an **eligible person**;
 - c. It is about a **registered higher education provider**, a **constituent institution** or a **relevant students' union** and
 - d. We cannot review some or all of the complaint under section C (Complaints that we will not review) or section D (Time limits) above.
25. We may share information with the **respondent** and/or with other parties, to help us decide whether we can review some or all of the **free speech complaint**.
26. We will tell you in writing whether, and to what extent, we can review your **free speech complaint**. We will also say why we have reached this decision. Where we consider it appropriate, we will also tell the **respondent**.
27. Where we decide that we can review a **free speech complaint**, we will decide what activities to undertake to conduct that review.

28. We will look at the information that you send us. We may ask you specific questions about a **free speech complaint** or require additional information from you. We will do this where we consider it to be appropriate.
29. We may share some or all of the information that you send us with the **respondent**. We may seek the **respondent's** representations on that information. We may ask the **respondent** specific questions about a **free speech complaint** or require additional information from the **respondent**. For example, we may ask questions or require information about the **respondent's** policies or procedures, or its decision-making processes where these are relevant to the **free speech complaint**. We may do one or more of these things where we consider it to be appropriate.
30. Our starting point will usually be to conduct a paper-based review of a **free speech complaint**. However, where we consider it to be appropriate, we may have one or more face-to-face meetings with you and/or the **respondent** and/or other persons that we consider may have information or expertise that is relevant to your **free speech complaint**. We may ask you, the **respondent**, or those other persons, questions at such a meeting. We may allow you, the **respondent** and/or those other persons to ask each other questions at such a meeting.
31. Where we consider that a **free speech complaint** concerns academic judgement, we may seek expert academic judgement to inform our review. We will do this only if we consider it appropriate. We may seek expert advice from persons with other forms of expertise, where we consider it appropriate.
32. We may seek to resolve the **free speech complaint** without conducting a full review or deciding the extent to which your complaint is justified. This is called settlement. Any proposed settlement will be subject to your agreement and the agreement of the **respondent**. An agreed settlement would result in the withdrawal of your **free speech complaint**.
33. We may decide to dismiss your **free speech complaint**, in whole or in part, at any point during our review and without making a decision about the extent to which it is justified. We may do this if we decide, during that review process, that your complaint is not a **free speech complaint**, you are not an **eligible person** or we cannot review some or all of your complaint under section C or section D above. For example, we may do this on the basis of information that comes to our attention during our review.

Section G: Our Decision and Notice of Complaint Outcome

34. When we have reviewed a **free speech complaint** and consider that we have all the information and evidence that we need to make a decision about the extent to which it is justified, we will make a decision. We will do this as soon as reasonably practicable after we have received a **free speech complaint**.
35. We will issue a **Notice of Complaint Outcome** in writing to you and to the **respondent** setting out our decision. Where you have appointed a representative, we will issue the **Notice of Complaint Outcome** to both of you.
36. The **Notice of Complaint Outcome** will state whether the **free speech complaint** is justified, partly justified or not justified, and the reasons for this. See rule 41 below in relation to the issue of a **Notice of Complaint Outcome** following settlement.

37. If it appears to the OfS that:

- a. It is more likely than not that the **respondent** has breached, or is breaching, its **free speech duty**; and
- b. It is more likely than not that you have suffered adverse consequences, that are more than minor or trivial, as a result of the breach referred to in 37a,

then we may determine that your **free speech complaint** is justified.

38. If it appears to the OfS that:

- a. It is more likely than not that the **respondent** has breached, or is breaching, its **free speech duty**; and
- b. It is more likely than not that:
 - i. you have not suffered adverse consequences or
 - ii. you have suffered only minor or trivial adverse consequences as a result of the breach referred to in 38a,

then we may determine that your **free speech complaint** is partly justified.

39. If it appears to the OfS that it is more likely than not that the **respondent** is not breaching and has not breached its **free speech duty**, we may conclude that your complaint is not justified.

40. We will not make a decision about the extent to which a **free speech complaint** is justified, where we have agreed a settlement with you and the **respondent** in respect of that complaint. However, we will still issue a **Notice of Complaint Outcome** in those circumstances, to confirm that the **free speech complaint** has been resolved through a settlement and the terms of that settlement.

41. We will not make a decision about the extent to which a **free speech complaint** is justified, where that complaint has already been withdrawn or dismissed, under these rules.

42. If a **free speech complaint** is against more than one **respondent**, then we will determine the complaint separately against each **respondent**.

Section H: Recommendations and suggestions

43. If we decide that your **free speech complaint** is justified or partly justified, we may make a recommendation to the **respondent**. The recommendation will be set out in the **Notice of Complaint Outcome**.

44. A recommendation may be a recommendation that the **respondent**:

- a. Does anything that is specified in the recommendation, which may include the payment of sums specified in the recommendation; or
- b. Refrains from doing anything specified in the recommendation.

45. We will not make a recommendation arising from claims included in your **free speech complaint** that are not **free speech claims**.
46. We expect the **respondent** to comply with any recommendation we make in full and within the time limits we set, and to report to us when it has done so.
47. We may also make suggestions in any **Notice of Complaint Outcome**. Those suggestions may suggest that the **respondent** considers doing or not doing something.
48. The operation of this scheme does not in any way affect the ability of the OfS to investigate and/or take any form of regulatory or enforcement action in respect of any non-compliance with any of the OfS's conditions of registration or other regulatory requirements.

Section I: Suspension and withdrawal

49. We may suspend our initial consideration or review of a **free speech complaint** if:
 - a. You do not comply with an information requirement under section L; or
 - b. You can no longer be contacted through the contact details that you have provided to us.
50. We may also decide to suspend our initial consideration or review of a **free speech complaint** where it is part of a group complaint, in the circumstances set out in rule 52 below.
51. You may withdraw your **free speech complaint** at any stage before we issue a **Notice of Complaint Outcome** or dismiss the complaint.

Section J: Group complaints

52. Where we receive a series of **free speech complaints** from more than one person about the same **respondent** and the same subject matter, we may decide to treat these complaints as a group complaint. The complaints may have been submitted individually, including where a **complainant** has no knowledge of the other complaint(s) in the group, or together in a group.
53. We may decide to consider the **free speech complaints** within a group complaint together. Alternatively, we may decide to review one of the **free speech complaints** in a group complaint, the lead complaint, in the first instance, and to suspend our review of the **other free speech complaints** within the group complaint, pending the outcome of our review of the lead complaint.

Section K: Representations

54. When we are deciding:
 - a. Whether a complaint is one that we can review under these rules;
 - b. The extent to which a **free speech complaint** is justified; or
 - c. Whether to make, and the form and content of any, recommendations or suggestions about a **free speech complaint**,

we will seek representations from you and/or from the **respondent** before making a final decision, if we consider it is appropriate to do so, and in the manner we consider appropriate.

Section L: Information requirement

55. We may require you and/or the **respondent** to provide us with information about a **free speech complaint**. For example, we may require this to help us to determine the extent to which we can review the complaint, or the extent to which it is justified. A requirement to provide information will be set out in writing in a notice.
56. You and the **respondent** must provide us with such information as we specify in the notice referred to in rule 55 at the time and in the manner and form specified in that notice.

Section M: Respondent's duty to comply

57. The **respondent** to a **free speech complaint** must comply with any requirements that are imposed on it by, or under, these rules.
58. If a **respondent** fails to comply with a requirement imposed by or under these rules and does not satisfy us that it is unable to comply, we may enforce the requirement in civil proceedings for an injunction. This is in accordance with paragraph 11 of Schedule 6A to **HERA**.

Section N: Advertising the scheme

59. A **registered higher education provider, constituent institution and relevant students' union** should:
- a. From 1 August 2024, include the text in rule 60 in a prominent place in the following documents or information sources:
 - i. Staff and **student** induction materials.
 - ii. Free speech code of practice and any process or procedure for managing speaking events, for internal or external speakers.
 - iii. Any disciplinary, complaints, appeals, grievance or similar internal review process.
 - iv. In the case of a **registered higher education provider** or **constituent institution**, application materials for applicants to become a **member of academic staff** of that **registered higher education provider** or **constituent institution**.
 - b. At least once a year, bring this scheme to the attention of the following persons:
 - i. In the case of a **registered higher education provider** or **constituent institution**: **students, members or members of staff** of that **registered higher education provider** or **constituent institution** (as the case may be).
 - ii. In the case of a **relevant students' union**:
 1. **Members or members of staff** of the **relevant students' union**;

2. **Students** of a **registered higher education provider** to which the **relevant students' union** relates; or
3. **Members** or **members of staff** of a **registered higher education provider** to which the **relevant students' union** relates or of any of its **constituent institutions**.

60. The text that a **registered higher education provider, constituent institution** and **relevant students' union** should include in the documents or information sources referred to in rule 59a above is:

'The Office for Students (OfS) operates a free speech complaints scheme. Under that scheme, the OfS can review complaints about free speech from members, students, staff, applicants for academic posts and (actual or invited) visiting speakers. Information about the complaints that the OfS can review is available on its website. [LINK – to be supplied]'

Section O: Charges, costs and fees

61. We will not charge any fee to you for reviewing your **free speech complaint**.
62. Where we have made a decision that a **free speech complaint** is justified or partly justified, we may, by notice, require the **respondent** to pay our costs in relation to making the decision up to the date of notification.

Section P: Collecting and sharing data

63. Through the operation of this scheme, we will collect and process personal data. This may include sensitive personal data. The privacy notice published on our website⁶⁵ sets out why and how we will do this.
64. We may share information that we receive under this scheme with other parties. We will do so in accordance with the requirements set out in **HERA**.

Section Q: Publication of information

65. We would normally expect to publish information about the **free speech complaints** that we receive, in accordance with our published guidance on publication matters ('Regulatory advice 21: Publication of information').⁶⁶
66. The information that we would normally expect to publish in relation to this scheme is set out in Table 1 in 'Regulatory advice 21: Publication of information'.
67. In publishing information about a **free speech complaint**, we would not normally expect to publish the name of the **complainant**. However, it may be possible to infer your identity from the information that we publish.

⁶⁵ See www.officeforstudents.org.uk/ofs-privacy/other-privacy-notice/.

⁶⁶ See www.officeforstudents.org.uk/publications/regulatory-advice-21-publication-of-information/.

68. In making publication decisions we will consider the factors set out in 'Regulatory advice 21: Publication of information'.

Section R: Amendments to the rules

69. These rules may be amended from time to time.

Section S: Law

70. These rules shall be governed by and interpreted according to the law of England and Wales.

Section T: Glossary

Complainant: an **eligible person** who has made a complaint under these rules

Constituent institution: any constituent college, school, hall or other institution of a **registered higher education provider**

Eligible person:

- a. In relation to a complaint about a **governing body** of a **registered higher education provider**, or of a **constituent institution**, a person referred to in rule 8.
- b. In relation to a complaint about a **relevant students' union**, a person referred to in rule 9.

Free speech claims: the claims described in rule 2.

Free speech complaint: a complaint made by an **eligible person** that:

- a. Claims that the person making the complaint has suffered adverse consequences (which need not be financial) as a result of action or inaction of a **respondent**; and
- b. Claims that, or gives rise to a question as to whether, the action or inaction was a breach of the **respondent's free speech duty**.

A **free speech complaint** may include claims other than **free speech claims** (see above).

The **free speech duty** for governing bodies of **registered higher education providers** and **constituent institutions** of such providers is set out in section A1 of Part A1 of **HERA** (Duty to take steps to secure freedom of speech).

The **free speech duty** for **relevant students' unions** is set out in section A5 of Part A1 of **HERA** (Duty to take steps to secure freedom of speech).

Governing body of a registered higher education provider: see **registered higher education provider**.

HERA: the Higher Education and Research Act 2017.

Member:

'Member', in relation to a **registered higher education provider**, may include board members, faculty, staff, **students** and administrators. A **member** does not include a person who is a **member** of the provider solely because of having been a **student** of the provider.

'Member', in relation to a **constituent institution** of a **registered higher education provider**, may include board members, faculty, staff, **students** and administrators. A **member** does not include a person who is a **member** of the institution solely because of having been a **student** of the institution.

'Member', in relation to a **students' union** which is a representative body and not an association (see section 20(1)(b) of the Education Act 1994), means those whom it is the purpose of the union to represent, excluding any **student** who has signified that they do not wish to be represented by it.

Member of academic staff: a **member of staff** who is employed, or otherwise engaged, for the purpose of teaching or conducting research.

Member of staff (of an organisation): an employee of that organisation or other person working for that organisation under a contract of employment, including, without limitation, a fixed-term contract, a zero-hours contract, an hourly-paid contract or other type of casual or atypical contract of employment.

Notice of Complaint Outcome: a written document setting out the outcome of our review of a **free speech complaint**.

Professional, Statutory and Regulatory Bodies form a group of professional bodies, bodies with statutory authority over a profession and professional regulators.

Registered higher education provider and **governing body** in relation to such a provider: have the same meanings as in Part 1 of **HERA** (see section 85 of that Act). The OfS publishes a Register of **registered higher education providers** on its website.⁶⁷

Registered higher education provider that is eligible for financial support: a **registered higher education provider** that is an eligible higher education provider for the purposes of section 39 of **HERA**. These providers are registered in the OfS's 'Approved (fee cap)' registration category.

Relevant students' union: a **students' union** at a **registered higher education provider that is eligible for financial support**. This does not include a **students' union** for **students** at a **constituent institution** of such a provider.

Respondent: a **registered higher education provider, constituent institution** or **relevant students' union** which is the subject of a **free speech complaint**.

Student: a person undertaking a course of study or a programme of research (i) at the institution in question or (ii) that leads to an award granted by the institution in question, and in either case this may include a trainee or apprentice.

⁶⁷ See www.officeforstudents.org.uk/register.

Student complaints scheme: the scheme for the review of qualifying complaints (within the meaning of section 12 of the Higher Education Act 2004) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act).

Students' union: has the same meaning as it has in Part 2 of the Education Act 1994 in relation to establishments to which that Part applies (see section 20 of that Act).

Visiting speaker: a person who was invited to speak at a **registered higher education provider, constituent institution or relevant students' union**. It does not include a person who wanted or requested an invitation to speak but was not invited.

Annex C: Matters to which we have had regard in developing our proposals

1. In formulating these proposals, we have had regard to the matters set out below.

The OfS's general duties

2. The OfS's general duties are set out in section 2 of the Higher Education and Research Act 2017 (HERA). In performing our functions, we are required to have regard to:

- a. The need to protect the institutional autonomy of English higher education providers;
- b. The need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers;
- c. The need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers;
- d. The need to promote value for money in the provision of higher education by English higher education providers;
- e. The need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers;
- f. The need to use the OfS's resources in an efficient, effective and economic way, and
- g. So far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be—
 - i. Transparent, accountable, proportionate and consistent, and
 - ii. Targeted only at cases in which action is needed.

3. We have carefully considered each of our general duties. We consider that the proposals set out in this consultation are particularly relevant to general duties (a), (b), (e), (f) and (g): institutional autonomy; quality, choice and opportunity for students; equality of opportunity; efficient, effective and economic use of the OfS's resources; and best regulatory practice.

4. In formulating our proposals, we have placed significant weight on our general duty relating to institutional autonomy. HERA currently defines 'institutional autonomy' to include 'the freedom within the law of academic staff at English higher education providers—

- i. To question and test received wisdom, and
- ii. To put forward new ideas and controversial or unpopular opinions,

without placing themselves in jeopardy of losing their jobs or privileges they may have at the providers.⁶⁸

In formulating our proposals for a freedom of speech complaints scheme, we have placed significant weight on the need to protect this aspect of institutional autonomy. We consider that our proposals relating to the free speech complaints scheme will create an incentive for providers and constituent institutions to protect the academic freedom of their academic staff. We therefore consider that our proposals will enhance this aspect of institutional autonomy.

5. HERA also defines ‘institutional autonomy’ to include the freedom of English higher education providers to conduct their own management and to determine their own approach to teaching and their own criteria for admissions and appointments.
6. In developing our proposals, we gave weight to this aspect of institutional autonomy. For instance, we have considered where there should be room for a provider, constituent institution or relevant students’ union to address a free speech matter itself. An example of this is the proposed requirement that a complainant should normally have initiated any available and relevant internal review process before raising the matter with us. However, we have balanced the need to protect this aspect of institutional autonomy against the need to protect academic freedom. Therefore, we have proposed that a complainant could bring a complaint to the free speech complaints scheme if 30 days have elapsed since the start of an internal review process. We consider that it is in the interests of academic freedom for academic staff that institutions have an incentive to resolve issues quickly.
7. The OfS must also have regard to the general duty (b): the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers. We consider that students will not have a high quality education if that education is not grounded in freedom of speech. That includes freedom of speech for themselves, for fellow students, for those who teach or supervise them and for visiting speakers. In formulating our proposals, we have taken the view that freedom of speech and academic freedom provide a necessary context for advancing new ideas, encouraging productive debate and challenging conventional wisdom, and that these are essential characteristics of quality higher education provision. We consider that our proposals advance the aim that all providers and relevant students’ unions secure freedom of speech within the law for students, staff and visiting speakers. We therefore consider that they would promote quality in the provision of higher education.
8. We propose that we would normally expect to publish information about the outcome of free speech complaints that we have considered under the scheme. This may provide students with information that may help to inform their choices about where to study.
9. The OfS must also have regard to the general duty (e): the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers. Without free speech within the law being secured for all

⁶⁸ HERA 2017 2(8)(c). The Act will amend HERA to omit 2(8)(c): see Schedule para 2(4)(c) of the Higher Education (Freedom of Speech) Act 2023. However, the Act will also add two additional general duties to section 2 of HERA, of which one will be ‘(ab) the need to protect the academic freedom of academic staff at English higher education providers’. See section 5(1) of the Act. The Act will also introduce a definition of academic freedom into HERA.

students, they will not have equal opportunity to participate fully in higher education or research. This may be especially important for those who could otherwise suffer harassment, discrimination and victimisation on account of their protected characteristics, including their religious or philosophical beliefs.

10. Our proposals for the free speech complaints scheme may support the lawful expression of views that others may find offensive. Some groups who share protected characteristics may consider that they will be negatively affected by the lawful expression of views that they find offensive. However, our proposed approach to operating the free speech complaints scheme may support those groups to put forward their counter views (within the law), and that may be a positive effect. Moreover, we consider that open, tolerant discussion of controversial matters may be more likely to promote good relations between such groups than censorship or silencing. Censorship or silencing risks concealing tensions without going any way to resolving them.
11. We consider that our proposals for the free speech complaints scheme will help create an environment in which students from all backgrounds can succeed in higher education. We have aimed to minimise barriers to the submission of a free speech complaint. Our intention is to create an impartial and accessible process for considering free speech concerns.
12. The OfS must have regard to the need to use its resources in an efficient, effective and economic way (general duty (f)). In formulating our proposals, we have considered how we will have regard to these factors in running the free speech complaints scheme. For example, we have proposed that we may dismiss ineligible, vexatious, or frivolous complaints. We have also proposed to support settlements on complaints, when doing so is acceptable to both the complainant and the respondent.
13. The OfS is required to have regard so far as relevant, to the principles of best regulatory practice (general duty (g)). These include the principles that regulatory activities should be transparent, accountable, proportionate and consistent, and targeted only at cases in which action is needed.
14. The legislation will require that every eligible free speech complaint is capable of being referred under the scheme. Within this constraint, we are proposing to target our activity by focusing our review on the elements of a complaint that are relevant to its free speech claims. We have also proposed that we may dismiss ineligible, vexatious, or frivolous complaints. We also propose to support settlements on complaints, when doing so is acceptable to both the complainant and the respondent.
15. We are proposing to make the complaints process transparent, accountable and consistent through publication of the scheme rules and by communicating in writing, to complainants and respondents, any decisions made in the review of a free speech complaint and our reasons for those decisions.
16. We propose to publish information relating to outcomes and recommendations of free speech complaints. We consider that doing so is in the interests of transparency and accountability. Published examples of outcomes will support knowledge and understanding associated with the application of the new relevant free speech duties and will provide assurances that the OfS is regulating effectively around freedom of speech.

17. We consider duties (c) and (d), which relate to competition where this is in the interests of students and value for money, to be important. However, in formulating these proposals we have given more weight to our other general duties.
18. The OfS is required to have regard to the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers.
19. Competition could be encouraged by allowing providers to determine their own stance on the extent to which they promote or secure free speech or academic freedom in general or in relation to specific issues without regulatory intervention. However, this would not reflect the new statutory duties on providers, and the OfS, in relation to free speech. In addition, we do not consider that this form of competition would be in the interests of students. We therefore consider that other general duties, such as the need to promote quality, outweigh this general duty in this instance.
20. The OfS must have regard to the need to promote value for money in the provision of higher education by English higher education providers. We consider that freedom of speech within the law and academic freedom are essential conditions for higher education that is high quality and accessible. It follows that securing free speech is also a pre-requisite of value for money for students.

The Regulators' Code

21. We have had regard to the Regulators' Code⁶⁹ in developing these proposals.
22. Provision 1 of the Code states that regulators should carry out their activities in a way that supports those they regulate to comply and grow. We have framed our proposals in a way that will help providers, constituent institutions and relevant students' unions to comply. For instance, we are proposing that we would normally expect to publish the outcome of a free speech complaint and the reasons for our decision. We consider that publication may help providers and students' unions to comply in the future.
23. Provision 2 of the Code states that regulators should provide simple and straightforward ways to engage with those they regulate and hear their views. We have sought to explain both our proposals and our policy intention in making them throughout this consultation document. Where relevant, we have also explained the alternatives we have considered and discounted, to enable respondents to tell us if they consider we should not have discounted a particular option. We will promote and run several consultation events during the consultation period to engage with potential participants.
24. Provision 3 of the Code states that regulators should base their regulatory activities on risk. Our proposed approach to the free speech complaints scheme focuses on claims of breach of a duty to secure free speech within the law and consequent adverse consequences. We consider that it targets activity at areas of greatest regulatory risk in this area.

⁶⁹ See <https://www.gov.uk/government/publications/regulators-code>.

25. Provision 4 of the Code states that regulators should share information about compliance and risk. We are proposing to publish information about the outcome of free speech complaints. We consider that these proposals will inform providers, constituent institutions and relevant students unions about relevant risks to free speech and academic freedom.
26. Provision 5 of the Code states that regulators should ensure that clear information, guidance and advice is available to help those we regulate meet their responsibilities to comply. We have set out clearly in the proposed scheme rules how we will engage with respondents and the processes involved in the review of complaints. We are also proposing to publish information relating to the outcome of free speech complaints, including reasons for, and the evidence underlying, our assessments. We consider that this information will help providers, constituent institutions and relevant students' unions to meet their duties to comply.
27. Provision 6 of the Code states that regulators should ensure that their approach to their regulatory activities is transparent. We are proposing to make the complaints process transparent through publication of the scheme rules and by communicating in writing, to complainants and respondents, any decisions made following our review of a free speech complaint and our reasons for those decisions.

Public Sector Equality Duty

28. We have had regard to the Public Sector Equality Duty set out in section 149 of the Equality Act 2010. This duty states that the OfS 'must, in the exercise of its functions, have due regard to the need to:
- a. Eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010.
 - b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 - c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
29. Our proposals are intended to ensure that individuals in English higher education both feel free and are in fact free to express their views within the law. We are not consulting on whether we should implement a free speech complaint scheme. We will be required to do this under the Act. Rather, we are consulting on how we should do this.
30. Under existing legal and regulatory requirements, providers must comply with any relevant free speech duties and equality law duties, including the public sector equality duty where it applies. The matters on which we are consulting do not change this requirement. The proposed complaints scheme may support the lawful expression of views that others may find offensive. Some groups who share protected characteristics may consider that they will be negatively affected by the lawful expression of views that they find offensive.
31. However, the proposed complaints scheme may support those groups to put forward their counter views (within the law), and that may be a positive effect. Moreover, we consider that open, tolerant discussion of controversial matters may be more likely to promote good relations

between such groups than censorship or silencing. Censorship or silencing risks concealing tensions without going any way to resolving them.

32. Moreover, one of the relevant protected characteristics is 'religion or philosophical belief'. The proposed complaints scheme may offer a route for addressing, and may also disincentivize, unlawful discrimination, harassment and victimisation directed at persons who share this characteristic. This may be a positive effect.
33. This consultation gives stakeholders an opportunity to inform the development of our proposals. Through this consultation we are seeking views on any unintended consequences of our proposals, for example on particular types of provider or student. We are also seeking views about the potential impact of our proposals on individuals on the basis of their protected characteristics. Responses to this consultation will inform our assessment of the impact of our proposals on different groups.

Guidance issued by the Secretary of State

34. We have a duty to have regard to statutory guidance issued by the Secretary of State under section 2(3) of HERA. Guidance issued in March 2022⁷⁰ set out the government's view that it is essential for the higher education sector to uphold freedom of speech and for the OfS to regulate around freedom of speech and academic freedom: 'Freedom of speech and academic freedom are fundamental principles which underpin our HE sector. Without action to counter attempts to discourage or even silence unpopular views, intellectual life on campus for both staff and students may be unfairly narrowed and diminished.'
35. We consider that freedom of speech and academic freedom are fundamental and that steps should be taken to secure free speech in higher education. Our proposals are designed to ensure that our implementation of the requirements of the Act, including operating our free speech complaints scheme, is effective in upholding those fundamental principles.
36. The guidance recognised that the work of the OfS creates regulatory burden for the sector and stated that the OfS should work to ensure that this burden is proportionate to our regulatory requirements. The legislation will require us to operate a free speech complaints scheme. In formulating our proposals, we have made efforts to minimise unnecessary regulatory burden. For instance, we have proposed to focus our review on the elements of a complaint that are relevant to its free speech claims.

⁷⁰ See www.officeforstudents.org.uk/media/be054f0b-696a-41fc-8f50-218eb0e3dcab/ofs-strategic-guidance-20220331_amend.pdf.



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