

OfS's new free speech complaints scheme: Analysis of consultation responses

**A report by Pye Tait Consulting for the
Office for Students**

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Executive summary

Background

In 2023, the Higher Education (Freedom of Speech) Act 2023 was passed.¹ It has given the Office for Students (OfS) more powers and duties to regulate universities and colleges, their constituent institutions (such as colleges of universities) and their students' unions, on free speech issues.

The Act requires the OfS to set up and operate a free speech complaints scheme.

A public consultation setting out the OfS's proposals for how it will operate the new free speech complaints scheme was launched on 14 December 2023 and closed on 10 March 2024. The consultation was open to anyone interested in responding, either as an individual, organisation, or group. Details of what the proposals cover are contained in section 1.1.

In early 2024, Pye Tait Consulting, an independent research agency, was commissioned to undertake an analysis of the consultation responses. This report presents the findings from the analysis of all responses received to the consultation.

The OfS will publish its own response alongside this analysis report, which will give a more detailed analysis of the considerations it has taken into account, including other information and factors that may not be mentioned in this report.

Details of the methodology and interpretations and limitations that readers should be aware of are contained in section 1.3.

Key findings

Proposal A: What a free speech complaint is

Further clarity and/or guidance (34%) was requested to further define specific terms such as 'adverse consequences' and 'reasonably practicable steps'. Clarity was also sought on what could – or could not – be included in a free speech complaint (20%).

Complaints involving multiple respondents² were discussed (32%), with concerns raised about potential duplication and unnecessary burden, and how such cases would work in practice.

The issue of proportionality was raised (8%) with suggestion that a one-size-fits-all approach may not work for both higher education (HE) and further education (FE) institutions. The potential administrative burden for smaller providers and students' unions was also flagged.

Proposal B: Who can complain?

Many (62%) sought additional clarity on the definition of the term 'visiting speaker' – several (38%) suggested this should be at the point that an individual is formally invited.

Greater detail was requested on precisely which students (28%) and which staff (11%) would be in scope of the complaints scheme. Particular comment was made about whether

¹ See <https://www.legislation.gov.uk/ukpga/2023/16/enacted>

² The organisation being complained about is referred to throughout this report as the 'respondent'.

the OfS might be going beyond its remit by regulating FE (13%). Several (24%) also queried whether speakers at commercial events would be considered in scope.

Proposal C: Complaints that the OfS will not review

Many (63%) feel that the proposed 30-day limit between an internal process beginning and when a complaint may be submitted to the OfS is unreasonable, as it allows insufficient time for respondents to properly consider complaints. Over half (56%) requested the OfS does not begin investigation until after internal processes are complete.

Several (21%) also pointed to the student complaints scheme operated by the Office for the Independent Adjudicator for Higher Education (OIA) and the potential confusion between the two routes available.

A quarter (25%) also sought clarity on what complaints may be considered as vexatious or frivolous.

Several (19%) agreed with the proposal not to consider complaints from before 1 August 2024, although a few (3%) requested clarification on the term 'ongoing'.

Proposal D: Time limits

Several (27%) believe the phrase 'last occurred' is subjective, with some (23%) suggesting a change to the proposed submission date to 12 months after the initial breach occurred. Clarity was also sought around the term 'adverse consequences' (16%).

One in six (16%) asserted the submission deadline should begin 12 months after a complainant has completed the internal process of the respective respondent, which would be in line with the OIA's scheme.

Some (16%) also feel the term 'adverse consequences' is too ambiguous.

Proposal E: Submitting a complaint

Several (36%) do not believe it would be appropriate for the complainant to appoint a legal representative in an official capacity.

Several (18%) supported the proposal not to allow anonymous complaints, arguing it would be difficult to properly investigate such complaints. Some (10%) commented that, protecting a complainant's identity may make it difficult for a respondent to provide relevant information.

Proposal F: Reviewing a complaint

Around half (47%) disagreed with the proposal that the OfS 'may' seek representations and suggested that representation from the respondent is the minimum required action to help make an informed decision.

Many (41%) feel the respondent should always be notified that a review is underway to increase transparency.

Further clarity was requested (22%) on the OfS's processes and decision-making in cases where academic judgement or expertise is sought.

Several (20%) also requested setting a specific timeline for the OfS to review a complaint.

Proposal G: The OfS's decision and Notice of Complaint Outcome

Many (47%) queried whether the scheme would include procedures for any party to appeal an outcome which, it was argued, would help ensure fair outcomes and manage risks.

Several (39%) also requested the OfS sets a definitive timeline for providing a Notice of Complaint Outcome to help manage expectations.

Proposal H: Recommendations and suggestions

Just under one third (32%) suggested that the framing of recommendations should be less prescriptive and believe, as proposed, these are tantamount to regulatory requirements.

Clarity was requested on the scope of and differentiation between recommendations and suggestions (15%).

Some (12%) suggested the OfS should adopt a proportionate and consistent approach when making recommendations and suggestions. Information was requested on how financial compensation would be calculated (9%).

Proposal I: Suspension and withdrawal of a complaint

Several (35%) explicitly expressed some degree of support with this proposal. Again, further clarity was requested (29%), this time in relation to details around the timelines for when a complaint might be suspended.

Proposal J: Group complaints

Just under one quarter (24%) expressed support explicitly for the proposal.

Further detail was sought (21%) on the process of notifying the respondent and/or complainant of the decision to handle complaints as a group, as well as on the grouping process (12%).

Proposal K: Representations

The majority (68%) believe respondents should be given the opportunity to make representations in all eligible complaints, with differing views on at what point in the process this should occur. Some requested more detail on the process of representations.

Proposal L: Information requirements

Around half (53%) feel setting a timeframe for all parties to respond to information requests would be useful, with the most common suggestion of 30 days. Some (14%) caveated that requests should be proportionate and reasonable.

Proposal M: A respondent's duty to comply

Several (38%) suggested the OfS should take a proportionate approach in this regard, taking into consideration providers' and students' unions' capacity and resources. Some (13%) suggested respondents should be able to request extensions to information requests.

Proposal N: Advertising the complaints scheme

Around one third (35%) remarked that the proposed timeframe may cause a significant strain on resources that are already stretched. Some (12%) suggested a transition period to allow parties time and resource to comply with the proposals.

Alternative means of promoting the scheme were suggested (14%) such as webpages, digital platforms and codes of practice.

Some (16%) suggested advertisement material ought to make clear the difference between this scheme and the OIA's scheme.

Proposal O: Charges, costs and fees

One quarter (25%) explicitly expressed support, particularly around the proposal not to charge a complainant. However, more (29%) raised concerns around potential costs for respondents and feel they should not have to cover costs, with 13% suggesting the OfS does so instead. Others (17%) sought further detail about the potential costs involved.

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

Many (46%) believe the OfS should limit the publication of information to anonymised data, such as case studies or aggregated datasets.

Many (45%) also warned of risks associated with publicising complaints and the potential for reputational damage to providers, students' unions, and individuals. One third (33%) believe details of a complaint which the OfS has determined to be 'not justified' should never be published to avoid this.

General comments

Greater clarity was sought on how the proposals would work in practice for students' unions, and alongside the OIA's student complaints scheme, as well as existing legislation and duties such as the Equality Act and Prevent Duty.

Some raised concerns about the impact the proposals may have for students' unions (13%) and for providers (12%) including the potential burden this will place on them.

Some (19%) believe the scheme should be evaluated, with 12 months post-implementation commonly suggested. Gathering feedback from all stakeholders would, it was argued, help increase the scheme's efficiency and effectiveness. Some (14%) suggested that allowing internal processes to be resolved before complaints are submitted to the OfS would increase efficiency.

Over two in five (45%) suggested that the OfS should undertake and publish an Equality Impact Assessment.

Some (12%) suggested the scheme may result in a complaints hierarchy whereby free speech complaints are prioritised over complaints pertaining to other matters.

1. Introduction

1.1 Background

In 2023, the Higher Education (Freedom of Speech) Act 2023 was passed.³

The new legislation imposes free speech duties on registered universities and colleges, and their constituent institutions (such as colleges of universities). These include a duty to take reasonably practicable 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 non-student 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, or constituent institution (such as colleges of universities).

A public consultation setting out the OfS's proposals for how it will operate the new free speech complaints scheme was launched on 14 December 2023 and closed on 10 March 2024. The consultation was open to anyone interested in responding, either as an individual, organisation, or group. The proposals covered the following.

- Who can make a complaint.
- What and whom they can complain about.
- Complaints that the OfS can review, including time limits for bringing a complaint.
- How the OfS will deal with a complaint. This includes proposals on how it will review and make decisions on complaints and how it may deal with group complaints.
- What action the OfS may take if it decides to uphold some or all of a complaint.
- The OfS's approach to publishing information about complaints that it receives. These proposals set out what material it would normally expect to publish, and what it would not normally expect to publish, in connection with the operation and findings of the free speech complaints scheme.

In early 2024, Pye Tait Consulting, an independent research agency, was commissioned to undertake an analysis of the consultation responses. This report presents the findings from the analysis of all responses received to the consultation.

The OfS will publish its own response alongside this analysis report which will give a more detailed analysis of the considerations it has taken into account, including other information and factors that may not be mentioned in this report.

³ See <https://www.legislation.gov.uk/ukpga/2023/16/enacted>

1.2 Aim and objectives

The overarching aim of this research was to analyse all responses received to the consultation and to report the outcomes to the OfS. Specific objectives were to:

- conduct an objective and comprehensive qualitative analysis of all responses to the consultation,
- identify and categorise themes, focus areas or questions, and
- report on the findings.

1.3 Methodology

1.3.1 Consultation approach

The OfS developed the consultation questionnaire which comprised 18 core sections to seek views on different aspects of the proposals: an 'about you' section, one section for each of the 16 OfS proposals, and a final section capturing general comments. The final consultation questions can be found in Appendix 2, and the structure of this report mirrors that of the consultation. A summary of each proposal is provided at each section throughout the report, and Appendix 2 contains the detailed proposals and consultation documentation.

The consultation window was open from 14 December 2023 to 10 March 2024. The main route through which to submit responses was the OfS online 'smart survey' portal. In total, 178 responses were received, of which 174 were received through the online portal, while four offline responses were received by email or letter. This included three duplicate responses and nine blank responses, leaving 166 responses for analysis (see section 1.3.2 below).

The OfS shared all consultation responses with Pye Tait Consulting in line with OfS's privacy policy and data sharing agreement. Pye Tait Consulting then undertook onward analysis of all responses.

1.3.2 Approach to the analysis

Before undertaking a detailed analysis, responses were first reviewed and cleaned. This process involved checking for errors, blank, duplicate, or co-ordinated responses. Three duplicate and nine blank responses were found and removed, leaving 166 unique, valid responses for onward analysis.

Some co-ordinated responses (i.e. similar or identical responses created when a consultee reproduces material circulated by another individual or organisation to use as their own consultation response) were received – section 1.3.3 outlines how such responses were incorporated into the analysis.

Responses were analysed at an overall level, and subsequently sub-group analysis was undertaken to explore any notable differences by consultee type. Details of the grouping can be found in Appendix 1.

Qualitative analysis of responses received to the open-ended questions was undertaken by Pye Tait Consulting in three successive stages.

- a) High-level review of all responses to identify broad themes and sentiment.
- b) Identify key themes arising from each question. Based on this, a coding framework was developed by Pye Tait Consulting, with checks for inter- and intra-coding consistency, and finalised in collaboration with the OfS.
- c) A comprehensive review to code each response according to the coding framework, to identify frequency of themes overall and by consultee sub-group.

On completion of each pass, outcomes were discussed with the OfS before moving forward to the next phase.

1.3.3 Interpretations and limitations

An open consultation of this nature does not seek to be a representative sample of the whole population. The implication of self-selection bias is that an assessment of views can only be made for the consultees who choose to participate and will not represent the entire target population, but rather a small subset. As such, the findings should be interpreted with caution.

It should be noted that collective responses were collaborative responses with contributions from multiple organisations and/or individual members. Furthermore, it should be noted that some responses were received from sector bodies which therefore reflect the views of their community. Collective responses, including those from sector bodies, have not been weighted in the analysis – in effect, this means each response has an equal weight, although trends by consultee type are drawn out in the report. The reader is advised to bear these points in mind when interpreting the report.

Each sub-section outlines the number of consultees providing views in response to that particular question. Numbers and percentages quoted relate to each consultation question being discussed, not to the overall total number of consultees.

Some consultees provided comments which covered more than one of the themes that were identified as most commonly arising within each question and analysis. Responses for each theme or code were counted, meaning some responses were counted more than once per question as more than one theme or code was covered. The result is that numbers in the report may not sum to 100% due to cases where a consultee discusses multiple aspects within the same proposal.

Themes arising in response to each proposal are generally presented in order from most to least frequently mentioned, with the descriptors 'many', 'several', and 'some' being used in descending order to represent the relative extent of opinion from most to least common themes for each sub-section.⁴

In response to some proposals, there appears to have been a co-ordinated response (i.e. similar or identical responses from multiple consultees, where consultees have reproduced material that was circulated by, or available from, another consultee). For analysis and

⁴ Typically, 'most' is used where over 50% of consultees raise a point, 'many' is used where over 40% of consultees note a theme, 'several' where a point is raised by between 10% and 40% of consultees, and 'some' for themes raised by 25% or fewer of consultees.

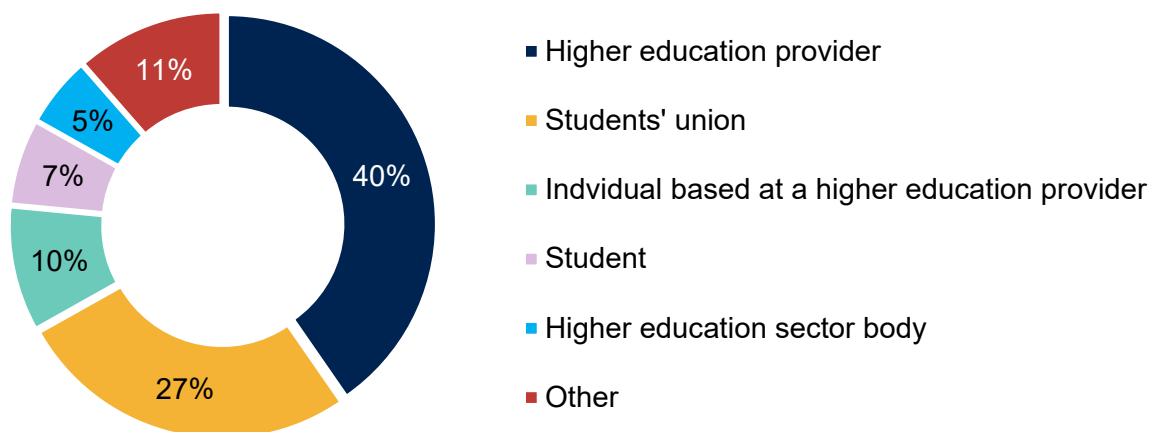
reporting purposes, each co-ordinated response was treated as a separate response, and all co-ordinated responses were counted and included in the analysis.

1.4 Consultee profile overview

Of the 166 responses analysed, most (136, 82%) were submitted as collective (or organisational) responses and others (30, 18%) were from individuals.

Consultees were manually assigned to a consultee category by Pye Tait Consulting in agreement with the OfS. Two in five (40%) responses are collective responses from higher education providers (HEPs), while around one quarter (27%) are from students' unions. One in ten (10%) consultees are individuals based at a HEP, while 7% are students, and 5% are higher education sector bodies. The 11% of 'other' consultees comprises individuals, law firms, free speech bodies, and other associations and representative bodies.

Figure 1 Breakdown of consultee types



Base: 166 consultees. Source: OfS consultation 2024.

A more detailed breakdown of consultees is provided in Appendix 1.

2. Key findings

2.1 Proposal A: What a free speech complaint is

Summary of Proposal A: What a free speech complaint is

- 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. In its proposed scheme, the OfS has 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 are set out at rules 3 and 4. In the consultation document, the OfS refers to those duties as 'relevant free speech duties'.
- Under the Act, an eligible person can bring a free speech complaint. (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'). The OfS proposes that a complaint may be about more than one such body.
- The Act states that the complaint must make what the OfS is 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. This is reflected in proposed rule 2.
- 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.

In total, 125 consultees provided substantive comments on Proposal A.

Further clarity and guidance requested

Around one third (44, 35%) requested further guidance and/or clarity from the OfS regarding aspects of this proposal.

Most requests pertained to the term 'adverse consequences' (41, 33%). It was suggested this term is too vague and subjective and that the OfS should clarify what may constitute 'adverse consequences', possibly with examples or a non-exhaustive list (including what may be considered minor/trivial consequences). Seven (6%) specifically asked the OfS to outline financial and non-financial 'adverse consequences'. Consultees also commented that the burden of proof (or standard of evidence) required to demonstrate 'adverse consequences' is not outlined in the proposals, nor how this would be kept consistent across all complaints – again, further clarity is requested.

About one in ten (15, 12%) sought further guidance on what the OfS is expecting from HEPs in terms of 'reasonably practicable steps' with regard to the relevant free speech duty. Specific examples were given to illustrate the requested level of guidance, such as that

providers ought to ensure that internal research ethics committees do not block research by members of academic staff for ideological reasons that are in breach of their duties to secure academic freedom.

A few requested further guidance specifically on visiting speakers. Comments related to:

- the unlikelihood of such an individual being present at an FE college (three, 2%),
- the proper procedure for cancelling a visiting speaker following a risk assessment (one, 1%),
- the proper procedure for instances in which visiting speaker events at universities with constituent colleges may give rise to dual decision-making (one, 1%), and
- querying a mechanism by which a HEP or students' union could decide that an external speaker had behaved in an unlawful way that would stand up against a counter claim without having to go through a criminal or civil legal process (one, 1%).

Complaints against multiple respondents

Complaints made against multiple respondents were discussed by just under one in three (40, 32%), some of whom (11, 9%) voiced concerns about potential duplication and unnecessary burden generated in addressing such complaints. Further clarity was requested on how complaints made against multiple organisations would work in practice. It was suggested that complainants could become confused when dealing with respondents of such complaints. Further, it was suggested that proposals should ask HEPs to make it clear who has ultimate responsibility to respond to complaints. One (1%) explicitly welcomed the OfS's inclusion of rule 42 in the proposals.

Further to this point, while it was acknowledged that complaints with regard to multiple respondents are proposed to avoid complainants having to submit separate complaints and to avoid potential delay in the process, one students' union (1%) queried the OfS's expectations on this, and whether the OfS perceives students' unions as having free speech responsibilities that are distinct from HEPs.

Subject of complaints

One fifth (25, 20%) provided their views on the subject of complaints in their response to Proposal A. Most of these (22, 18%) queried the OfS's plans to allow complainants to reference more than solely 'free speech claims', but that the OfS does not propose to review any aspects of the complaint not relating to free speech. While some comments on this aspect were supportive, there was suggestion that the OfS could define (or give examples of) what other claims may be included in a free speech complaint under rule 7, as this may help the complainant to avoid including claims that are entirely unrelated to the free speech complaint. One HEP (1%) requested that the OfS outlines its powers and expected course(s) of action in relation to complaints containing parts which are not free speech complaints, as Proposal H states they cannot be subject to recommendations from OfS.

Some (13, 10%) discussed complaints about governing bodies and students' unions. It was suggested that the current articulation of the proposal makes it ambiguous as to whom a free speech complaint can be brought against, i.e. whether this was against the students' union's governing body or its membership as a whole.

Other comments on this subject of complaints included:

- queries about how a complaint is to be taken forwards regarding staff or student action given the proposals that a complaint must be about a governing body or students' union (four, 3%),
- that the OfS clarify why a complaint must be about the governing body of a provider (pointing out the likelihood that a considerable number of complainants may not understand the nuance of this) (three, 2%), and
- that rule 1 does not specify whether this includes complaints about the HEP, or its officers and employees (three, 2%).

General support

Around a fifth (22, 18%) explicitly expressed some degree of support for Proposal A. Eight (7%) communicated outright agreement, while others broadly agreed but requested further clarity on some aspects.

Interactions with other legal duties

Potential concerns about interactions with other legal duties were discussed by one in six (21, 17%). Some (five, 4%) queried the OfS scheme's interaction with existing legislation, such as the Equality Act 2010. Greater clarity was sought on resolutions to potential conflicts of duty between the new duties imposed on providers through these proposals, and their existing duties to students and trustee boards.

One (1%) commented that failure to provide adequate definitions of 'adverse consequences' and 'reasonably practicable steps' might result in different approaches being taken by different HEPs, resulting in a failure to meet the duties of the 2023 Act.

One (1%) believes the OfS should make it clear that free speech has priority over other values that HEPs may endorse.

Students' unions

Several (15, 12%) discussed students' unions, of which nine are students' unions. Some sought further clarity from the OfS on what is considered a 'students' union' under the scheme, as well as clarity on the interaction between the free speech duties of universities and those of their associated students' unions.

Proportionality

Ten (8%) discussed proportionality of the proposals. Six (5%) specifically commented on FE institutions, arguing that a one-size-fits-all approach from the OfS, incorporating both FE and HE institutions, is inappropriate, and that a proportionate approach to regulating FE institutions is necessary. The administrative burden was highlighted, noting that students' unions affiliated with FE colleges can be understaffed and under-resourced relative to HE institutions, meaning that the OfS's proposals will disproportionately affect them. It was also suggested that some officers may be aged under 18, with some having complex support needs.

Other comments

Other themes raised in comments on Proposal A included the following.

- Commercial activities (six, 5%). While providers may hire out their facilities for commercial activities, it was suggested that the term 'commercial' lacks clarity in the context of the complaints scheme, and that further clarification is necessary to determine the legal status of commercial organisations or activities falling in and out of scope of the complaints scheme.
- Student societies (six, 5%). It was suggested that student societies have limited access to resources in comparison to larger providers. The extent to which students' unions and universities are responsible for the activities of student societies was also queried.
- Vexatious or frivolous complaints (four, 3%). It was suggested that care should be taken by the OfS to ensure that such complaints are avoided. Clarity was sought on what steps will be taken to avoid vexatious or malicious complaints.
- Safeguarding (four, 3%). Such comments directly related to Ofsted imposing safeguarding duties on FE institutions, particularly those with students who are aged under 18, and how this may potentially conflict with the proposal.
- Foreign influence (one, 1%). One commented in detail on the actions of a particular foreign government suggesting that members of UK HEPs may face threats, intimidation, or action by that government because of their own lawful speech on campus.

An additional 18 non-substantive comments were received on this proposal (i.e. where consultees wrote 'no', 'no comment' or 'not applicable'.)

2.2 Proposal B: Who can complain?

Summary of Proposal B: Who can complain?

- The Higher Education and Research Act (HERA) sets out who can make a free speech complaint about a provider, a constituent institution or a relevant students' union. These requirements are reflected in section B of the proposed scheme rules.
- 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.
- Under the proposals, a legal person (such as a corporation) may be eligible if they fall into one of those categories.

- Section T of the proposed scheme rules explained each of the terms: constituent institution, member, member of academic staff, member of staff, registered higher education provider, relevant students' union, student, visiting speaker.
- The OfS also proposes that it 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 it before they died.

In total, 149 substantive comments were received on proposal B.

Definition of a visiting speaker

Around three in five (92, 62%) commented on the definition of a visiting speaker. Many of these (62, 42%) believe the suggested approach is ambiguous and does not clarify who is able to make invitations, nor the process that would need to be followed for someone to become invited formally to speak. Consultees requested a clearer definition of what constitutes a legitimate invitation by a HEP or a students' union, suggesting it was not clear whether it:

- would only become an invitation once it has been fully vetted as part of a clearly defined policy by the provider, constituent institution or students' union (35, 23%),
- would only become an invitation once a formal agreement has been made between the invited party and the provider, constituent institution or students' union (21, 14%),
- is a formal request to attend a fixed and organised event and/or an informal request to take part in a future event as yet to be defined in scope, time and/or place (20, 13%), or
- is in written or verbal form (eight, 5%).

Around two fifths (56, 38%) stated the definition of a visiting speaker should be restricted to individuals who have been formally invited through an organisation's approvals process, arguing that following such internal procedures would mean organisations have full knowledge or control over individual invitations. These consultees remarked that HEPs' processes for visiting speakers are well established and are designed to enable free speech within the law.

Three (2%) queried whether the proposed definition includes visiting speakers who have been considered but who have not gone through an established internal approvals process. It was suggested that students' unions are required to follow Charity Commission guidance that visiting speakers are only formally invited following this approval process.

Two (1%) feel the proposed definition conflicts with existing guidance with one (1%) citing the case of *R (Butt) v Home Secretary* [2019] EWCA Civ 256 and the Court of Appeal's guidance at [169–72], and the other (1%) arguing the definition should be broadened slightly to meet the statutory purpose of subsections A1 (1) to (4) of HERA.

One (1%) suggested the definition of 'visiting speaker' should be extended to include all those for whom there is clear evidence that they would have been invited to speak, but who

were not. Another (1%) suggested that refusal to approve an invitation may be a breach of a duty to secure free speech.

Students

Half (74, 50%) commented on how the proposal would work in relation to students.

Around three in ten (41, 28%) sought clarity on how this proposal will be applied to students studying under a collaborative arrangement, and specifically those studying at a partner institution based overseas. These consultees suggested that such students will be subject to the laws of the country in which they are studying, and the imposition of UK law onto these students and/or partners will be unfeasible.

Several (20, 13%) believe that regulation of FE falls outside of the OfS's remit and raised concerns about the OfS's proposed definition of a 'student' not being limited to HE students (to note: the Act does not include any such limitation). These consultees stated that the OfS is solely tasked with regulating HE, which raises concerns on this proposal to involve FE students and staff, as colleges are primarily regulated by the Education and Skills Funding Agency (ESFA) and the Department for Education (DfE). The OfS should, it was felt, aim to minimise regulatory overlap and streamline compliance through collaboration with FE regulators.

It was further discussed how the college higher education sector is diverse, how levels of autonomy vary and how partnership contracts with HEPs differ widely. Extending the OfS complaints scheme to cover FE students and staff could, it was argued, create disparities between colleges registered with the OfS and those that are not, resulting in a lack of regulatory parity between providers that serve similar student populations.

Six (4%) stated the complaints scheme should only be open to students studying on higher education courses.

Two (1%) would like greater clarity on what constitutes a former student as the Act says (and the definition in section T of the proposed rules reinforces) that an individual does not become a 'member' of a university or college solely by having previously attended.

Individual consultees (one each, 1%) requested further detail on:

- the steps that would be taken to assist should a minor (student aged under 18) make a complaint,
- where associate members of students' unions would sit under this proposal,
- whether 'registered' students would be included in the OfS's definition, and
- cases where students are on sabbatical.

Commercial events or partners

One in six (24, 16%) sought clarification on whether the use of space by external organisations falls within the remit of the complaints scheme. They suggested that it should not, as speakers invited by external organisations are not engaging in HEP business and will not have been invited to speak by the provider.

Members of staff and academic staff

Several (23, 15%) highlighted how staff involved in the corporate governance of a students' union do not comment on political decision-making. It was felt that the current wording of the proposal does not align to the current long-held sectoral practice (reflected in employment documentation of students' union staff and drawn from the relationship between the civil service and ministers) that staff involved in the corporate governance of a students' union do not comment on political decision-making at the relevant students' union. This arrangement, it was argued, exists to prevent staff from being criticised in democratic spaces where they are ineligible to speak. It was therefore suggested that the OfS acknowledges that such an approach would be in accordance with existing practice and would not be seen as an infringement of free speech.

Several (16, 11%) discussed the definition of academic staff. Eleven (7%) commented on the inclusion of job applicants and how, under the proposal, individuals anywhere in the world could apply for an academic role regardless of their qualifications or experience and then use this as a vehicle to make a complaint.

Three (2%) were unclear why only academic members of staff who have applied for a job are allowed to make a complaint when all the other definitions relate to a member of staff. Other comments about job applicants were mentioned separately by individual consultees (one each, 1%) included the following.

- Further clarification is needed on how 'adverse impact' would be measured for job applicants.
- Additional information is requested on how such complaints would be considered and the evidence that would be required in such cases.
- The definition of a member of staff was felt to be very broad, such that it also includes casual or atypical staff who are not directly employed by the HEP.

Other comments were received relating to the definition of academic staff.

- Two (1%) sought clarification on which former members of staff will be in scope as the word 'was' implies former members of staff will be in scope, while the Act and rules suggest that an individual does not become a 'member' solely by having previously attended.
- One (1%) suggested broadening the definition to include emeritus positions as such individuals often remain active and perform academic activities.

Permanent right to complain

Twelve (8%) expressed concerns that the current wording would mean that graduates are able to make a complaint at any time in the future. A few (five, 3%) went on to say that the OfS should specify a time period following completion of studies by which a former student can make a complaint. One (1%) suggested that, without clear guidelines, there is potential for inconsistencies in handling complaints, which may undermine the effectiveness and fairness of HEPs' internal procedures.

Another (1%) remarked that the scheme may be misused by former students or staff as 'activists' seeking to make money out of being controversial 'speakers' to trigger complaints and pay-outs. One other (1%) requested eligibility is extended only to those who have a legitimate interest in the issue of dispute and to avoid institutions being open to wider challenges.

One (1%) sought clarity on eligibility criteria, and whether the member had to be a member during the time the complaint related to or at any time since the organisation's inception.

Deceased persons

Seven (5%) commented on deceased persons, of which three (2%) explicitly agree with the proposal that a complaint should only be accepted if it was made during a person's lifetime.

One (1%) suggested that, were a complainant to die, the OfS should only continue to pursue the complaint upon the request of a designated representative – consistent with the scheme run by the Office of the Independent Adjudicator for Higher Education (OIA).

Another (1%) considered that the OfS should not continue to pursue complaints from individuals after they have deceased, even if the complaint was submitted before their death, as the complainant will not be available to respond to any questions or provide any information required by the OfS, and pointed out that the OfS's proposals recognise that the complaint must be 'owned' by them.

Corporations

A few (six, 4%) discussed legal entities such as corporations. Three (2%) do not support allowing corporate bodies to bring complaints, two (1%) said it will introduce a risk around politicisation of the scheme for unintended purposes, while one (1%) suggested that a corporate body cannot be a student, a staff member, a prospective academic staff member or a governor of an institution.

General levels of support

Seven (5%) explicitly stated support for the proposal, while three (2%) objected to the proposal, without making further comments.

Other comments

Other themes arising from comments on Proposal B included the following.

- Nine (6%) requested greater clarity on how the proposal will apply to other categories of students such as honorary members, life members, scholarships, studentships, fellowships, non-award and PhD students.
- Clearer guidance was requested on the boundaries of who can complain, as students' associations and society events commonly take place away from campus, in hired facilities or on online platforms (two, 1%).
- The category of those entitled to complain should be broader to include speakers who can show evidence of being in an institution's mind to be invited, but were ultimately not invited due to an institutional policy or practice (one, 1%).
- The proposal is unnecessary bureaucracy (one, 1%).
- It could assist both potential claimants and respondents if there was a definition of the term visiting speaker in the glossary (one, 1%).

An additional five non-substantive comments were received on this proposal.

2.3 Proposal C: Complaints that the OfS will not review

Summary of Proposal C: Complaints that the OfS will not review

- The Act states that a free speech complaint may contain claims that are not free speech claims. The OfS is proposing only to review those other claims if they include information that is relevant to the free speech claims.
- The OfS also proposes that:
 - a. It will only consider free speech complaints that it receives on or after 1 August 2024, when the free speech complaints scheme comes into effect.
 - b. It 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, the OfS proposes to review them in relation to the period from 1 August 2024.
 - c. It 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.
- The OfS proposes that it will not review a free speech complaint if it appears to the OfS 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.
- Similarly, the OfS proposes that it will not review a free speech complaint if it appears to it 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. The Act permits the inclusion of such a provision in the scheme rules.
- 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, the OfS proposes that it 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.
- The Act permits the OfS to dismiss free speech complaints, without considering their merits, where they are frivolous or vexatious. The OfS has proposed a rule in the scheme rules that will allow it to do this. That rule also sets out a non-exhaustive list of examples of where it may determine that a complaint is frivolous or vexatious.

In total, 148 consultees provided comments on Proposal C.

Reviewing alongside internal processes

The majority (121, 82%) commented on the OfS's proposal that it will normally only review a free speech complaint if the complainant has completed any internal process or, if earlier, once 30 days have elapsed since those proceedings began.

Most (113, 76%) expressed that this is unreasonable for the OfS to propose. However, it should be noted that, in doing so, some (25, 17%) seemed to have interpreted the OfS's proposal to mean that a provider's internal processes must have concluded within 30 days, after which a complaint can then be raised with the OfS.

Many (93, 63%) commented that only allowing 30 days maximum before the OfS can begin investigating a complaint does not allow HEPs sufficient time to consider the complaint and carry out a robust investigation. Specific concerns were raised.

- It was suggested that complaints will likely be highly complex (51, 34%), especially if a complaint involves multiple elements, only one of which is a free speech claim. Limiting a provider's ability to fully respond to the complaint is likely to impact the OfS's ability to make a decision on the substance of the complaint.
- The 30-day timeframe for a provider to consider a complaint before the OfS can investigate may generate a hierarchy of complaints, whereby free speech complaints are prioritised over complaints on other matters e.g. conduct, accommodation or service, etc. (22, 15%).
- This may result in confusion for the complainant (20, 14%) who may end up communicating with multiple organisations.
- It may add burden to the OfS's workload (16, 11%), allowing complaints that may have been resolved between the provider and the complainant to be brought to them unnecessarily.
- It may encourage some providers to rush (five, 3%) their consideration of the complaints they receive, and not allow proper time for balanced and careful outcomes.

As such, over half (82, 55%) requested that the proposal is amended to state that the OfS will not investigate a free speech complaint until a provider's internal investigations have concluded, with a few (11, 7%) requesting that the OfS wait until a provider issues a Completion of Procedures letter. Two in five (59, 40%) explicitly proposed that the OfS mirrors the OIA's practice of allowing 90 days for a provider to complete its internal complaints procedures before investigating a complaint. Nine (6%) proposed an extension to 90 days but did not suggest that this should require a provider to have completed internal processes – only that this would allow more time for careful consideration of a complaint. Others (30, 20%) suggested alternative timeframes. Several (18, 12%) suggested that if a timeframe is to be included, it ought to be 12 weeks, and three (2%) other students' unions also proposed an extension to 12 weeks. Two (1%) requested an extension to 60 days, and others requested unspecified extensions to the timeframe.

A few (eight, 5%) found the OfS's proposed timeframe to be reasonable, arguing that this will incentivise respondents to quickly resolve a complaint. Moreover, these consultees also opposed that the OfS should wait until a provider has completed its internal investigations before investigating a complaint.

OfS's complaints scheme compared with the OIA's student complaints scheme

The OIA's scheme was mentioned by over two in five (65, 44%) in contexts other than the OfS aligning to timeframes. Just over one in five (31, 21%) suggested that possible confusion may arise for complainants as to which complaints route they should follow (OIA or OfS) and the potential for overlap between OfS and OIA processes. As such, it was requested that the OfS, together perhaps with the OIA, offers clear guidance to minimise this confusion and to avoid duplication of investigation.

Several (23, 16%) queried how complaints containing non-free speech elements would be dealt with, and the potential confusion arising for complainants as to whether they should proceed via the OfS, the OIA, or both.

General support

Just over three in ten (46, 31%) explicitly expressed a degree of support for Proposal C. A couple (two, 1%) expressed outright agreement, while others agreed with various parts of the proposal, including that:

- the OfS proposes not to review complaints that are being or have been dealt with by the OIA, a court or a tribunal (29, 20%),
- the scheme will not consider complaints before its expected implementation date of 1 August 2024 (16, 11%), and
- a 30-day period should normally pass before the OfS investigates a complaint (five, 3%).

Vexatious and frivolous complaints

Further clarification and guidance on vexatious or frivolous complaints was requested by a quarter (37, 25%). While the OfS has provided a non-exhaustive list of vexatious or frivolous complaints, it was suggested it would be beneficial for all parties to have guidance on how the OfS will come to the decision on this. One (1%) suggested that 'no-platforming' should be explicitly listed as a frivolous complaint. Another (1%) was concerned that the OfS's aforementioned list does not include a requirement to have used and exhausted the respondents' internal processes.

Seven (5%) said they would welcome the option to make representations to the OfS when a complaint is considered to be vexatious or frivolous.

Retrospective complaints

Just under one quarter (35, 24%) discussed complaints that might be retrospective to the date of the scheme's implementation of 1 August 2024. Most (28, 19%) supported the OfS's proposal not to consider such complaints, arguing that the effect would be to judge the conduct and decisions of providers against duties that were not in force when the conduct occurred, or the decisions were made.

Concerns were raised (five, 3%) that the proposal may go beyond the OfS's remit through the use of the term 'ongoing', and a firm definition of this term was requested.

A students' union (1%) requested that, during this initial period of complaints review, which will establish precedents, there should be exemption from financial penalties for students'

unions lasting for at least one year, to reflect the sector's limited resources and to give the sector time to adapt to the new scheme.

Conversely, a few (five, 3%) suggested that the OfS should consider complaints retrospective to 1 August 2024 if similar infractions are still ongoing as of 1 August 2024, in order to help establish a pattern of behaviour. It was suggested this would be useful to establish a pattern of behaviour which could be taken into account by the OfS when making decisions.

Other comments

Other themes arising from comments on Proposal C included the following.

- The term 'offensively' (12, 8%) in one of the examples of frivolous and vexatious complaints. It was suggested that rule 18 is currently too vague, and it was queried whether only offensive behaviour towards the OfS will disqualify a complaint, or whether the OfS will simply not attempt to protect speech deemed offensive. A further list of examples of 'offensive' conduct was also requested. Moreover, differing views on whether 'acting offensively' should be removed from the list of cases where the OfS will not review a free speech complaint were voiced. It was also suggested that the proposal may impinge on free speech, with one HEP stating that when speech is deemed 'offensive', this is often the basis for censorship.
- Differing outcomes (10, 7%). Comments were made that having two investigations (one internal at the HEP, and another with the OfS) on the same subject could be inefficient and could result in different outcomes at the same time. Comments were made on the OfS reviewing a complaint post-completion of a provider's internal procedures, and the OfS's proposal that a 'court or tribunal' does not include an internal panel constituted by a respondent under its internal processes, with suggestion that these could lead to differing, perhaps opposing, proposed outcomes simultaneously.
- Visiting speakers (nine, 6%). Clarity was requested around whether complaints would be reviewed relating to students' unions both allowing and not allowing a controversial speaker.
- Police investigations (six, 4%). It was suggested that the normal procedure with other complaints processes in universities is to suspend investigation until the police complete their investigation. As such, these consultees strongly recommended that, for consistency, this applies to the OfS's scheme and to ensure that police investigations are not inadvertently interfered with or influenced, either intentionally or unintentionally.
- Use of official internal disciplinary routes (three, 2%). It was requested that the OfS clarifies what would happen if a complainant communicates their free speech complaint to the respondent in a manner that does not clearly fall into an official internal disciplinary, complaints, appeals, grievance or similar internal review process.
- Commercial activity (three, 2%). Clarity was sought on whether commercial events held at a provider's premises would fall within the scheme, and whether these would be included within the category of complaints that the OfS will not review.

- Potential conflict with other legislation (10, 7%). It was suggested that free speech complaints may be likely to include non-free speech elements intertwined with harassment and/or sexual misconduct issues. It was thought that this potential conflict could slow down the investigative processes of both complaints.

An additional five non-substantive comments were received on this proposal.

2.4 Proposal D: Time limits

Summary of Proposal D: Time limits

- The OfS proposes that a 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.

In total, 128 consultees provided comments on Proposal D.

Views on 12-month time limit

Around three quarters (98, 77%) commented on the time limit being 12 months after it appears to the OfS that the adverse consequences last occurred.

Half (64, 50%) queried the use of the phrase 'last occurred', with most of these (35, 27%) indicating that this is a subjective timeframe, and that a complaint could be brought to the OfS many years after the alleged incident initially occurred if the complainant argued that 'adverse consequences' were ongoing.

Several students' unions (20, 16%) requested that the OfS amends the term 'adverse consequences' to a less subjective and ambiguous term, such as 'continuing infringement'.

Two students' unions (2%) suggested that establishing the facts of the complaint may be difficult, as individuals and/or parties involved may no longer be associated with the organisation. They urged the OfS to be mindful that many elected officers, student committees and students in general will potentially have graduated by the time a complaint is received.

Some (17, 13%) suggested that recollections will likely be more accurate closer to the event and that the accuracy and volume of evidence relevant to a complaint is likely to decrease as the time increases between an alleged free speech infringement and an investigation. Two (2%) stated that, due to the General Data Protection Regulation (GDPR), organisations do not hold onto information unnecessarily, and suggested this may create difficulty for evidence gathering if complaints can be submitted up to 12 months after 'adverse consequences' last occurred.

Additionally, it was argued that, for instances where complainants argue adverse consequences have been ongoing for many years, investigations could be extremely burdensome and time consuming. As such, several (30, 23%) suggested that the OfS ought to change the submission date to 12 months after the date of the initial free speech breach, at the latest.

Several (47, 37%) suggested alternative submission deadlines to that proposed. Just over one fifth (27, 21%) considered internal processes in their comments to Proposal D, with most of these (20, 16%) asserting that the submission deadline for a complaint should be 12 months after a complainant has completed the internal processes of the respective provider. Indeed, three (2%) requested that the OfS amends the proposal to state that complainants must wait to submit their complaint(s) until a Completion of Procedures letter is issued by a provider, indicating that internal investigations have concluded.

Thirteen (10%) suggested a three-month deadline, and a dozen (12, 9%) suggested a six-month deadline. A few (seven, 5%) considered the proposed submission deadline to be reasonable (with a few noting this being conditional upon providers having an extended time to consider a complaint internally, such as 90 days). One student (1%) suggested that two years may be more appropriate, as it may take individuals some time to realise that they have been affected.

General support

One in three (42, 33%) explicitly stated a degree of support to Proposal D. Outright agreement was expressed by some (12, 9%). Others largely supported the proposal in principle but mentioned various concerns or suggestions, or put forward alternative submission deadlines.

Comparison to OIA's scheme

The OIA's scheme was mentioned (22, 17% - of which 17 are HEPs), with some (11, 9%) noting that the OfS's proposed 12-month deadline is in line with OIA practice. However, some (11, 9%), including some in the former group, requested that the OfS adopts the OIA's submission deadline of 12 months after the completion of a provider's internal processes. One HEP (1%) remarked that the proposed 12-month submission deadline is at odds with the 28-day time limit stated in its Complaints and Appeals procedure.

Another HEP (1%) stated that its Code of Conduct generally requires students to submit a complaint within three months of an incident occurring, and claims that are submitted outside this three-month period can be rejected by the provider.

Other comments

Other themes that emerged from comments on Proposal D included the following.

- Exceeding regulatory remit (seven, 5%). Such comments mostly pertained to the submission deadline 12 months after the 'adverse consequences' last occurred, and how the OfS may potentially be reaching beyond its remit by considering breaches alleged to have occurred years ago.
- Allowing for exceptional circumstances (seven, 5%). Concern was raised around the precise wording of the cut-off for proposed rule 19, which may mean that complainants with serious health or personal issues may be unable to comply with the proposed submission deadline.
- Statute of limitations (three, 2%). It was suggested that complaints should not only be brought within 12 months of the last occurrence of the adverse consequence, but that this should not be more than five years after the initial incident, citing expectations for providers to maintain records, and for accurate recall by individuals.

An additional 18 non-substantive comments were received on this proposal.

2.5 Proposal E: Submitting a complaint

Summary of Proposal E: Submitting a complaint

- The OfS is proposing that a free speech complaint must be made in writing by submitting a complaint form to the OfS. The OfS proposes to make the complaint form available on its website and that complainants will be able to submit the form, together with any supporting evidence, to the OfS online or through the post. The OfS will be able to make adjustments to this process for complainants who have a disability, to enable them to access the scheme.
- The OfS proposes 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. The OfS will process personal data, including sensitive personal data, in accordance with relevant data protection legislation. The OfS also proposes to ask for information that will help it to determine whether it can review the complaint under the scheme and make a decision on it.
- The OfS proposes that it will not review anonymous complaints. The OfS will make reasonable attempts to protect the complainant's identity if they ask it to do so, unless the OfS is legally required to reveal their identity. However, the OfS cannot guarantee that it will be able to maintain a complainant's anonymity. The OfS does not have formal powers to protect whistleblowers.
- The OfS also proposes that a complainant may appoint a representative to conduct their free speech complaint for them. The OfS proposes that it will normally then correspond with the representative in relation to the free speech complaint, rather than with the complainant. Under its proposals, a complainant does not need to appoint a representative.

In total, 127 substantive comments were received on Proposal E.

Legal representation

Around one in three (46, 36%) said they do not believe it would be appropriate for the complainant to appoint a legal representative in an official capacity. Eight (6%) highlighted this approach would be consistent with that of the OIA, which suggests that its processes are informal and do not require the use of a lawyer, while also recognising that complainants may benefit from having the support of peers, family or friends. A few (three, 2%) recommended similar guidance is established for the OfS scheme, wherein OIA has published guidance on representing a student. Around one fifth (29, 22%) would like further clarification on this as they feel the proposal is not clear about which individuals the OfS would permit as a representative.

Some (five, 4%) suggested the use of representatives by a complainant may result in a more litigious approach to complaints and could be counter-productive to resolving these in a timely manner. Two (2%) stated that legal representatives would add additional costs, while another (1%) suggested legal representation should be reserved for future stages.

In contrast, three (2%) remarked that the use of representatives would be more consistent with HEPs' complaint procedures. Meanwhile, two (2%) suggested both parties should be able to access legal representation.

A couple (two, 2%) mentioned that the current definition of representatives could result in politicisation of the process. One (1%) asked whether representatives might include legal or parliamentary representatives or extend to political, activist, or lobbying groups, while the other (1%) queried how the OfS will maintain integrity i.e. that representatives comply with complainants' instructions.

Anonymous complaints

Just under one fifth (24, 19%) support the proposal not to allow anonymous complaints. Some (nine, 7%) stated that it would be very difficult to properly investigate an anonymous complaint relating to free speech. A couple (two, 2%) mentioned that anonymity may lead to more frivolous or vexatious comments.

A few (three, 2%) discussed whistleblowing – one (1%) suggested that, by not reviewing anonymous complaints, whistleblowers may be disinclined to report serious problems to the OfS, one (1%) sought clarity on the interaction of the proposals with existing whistleblowing legislation, while the other (1%) suggested suitable safeguarding measures are established for whistleblowers' individual wellbeing in place of any protection through anonymity. Two (2%) supported the proposal to make reasonable attempts to protect a complainant's identity if requested as some may reasonably fear adverse consequences if their making a complaint becomes known to the respondent.

Confidentiality

Around one in six (20, 16%) commented on protection of complainants' identity. Several (13, 10%) suggested that it may be difficult for a respondent to provide relevant information if the complainant's identity is protected, arguing that some information would need to be made available to do so.

Some (four, 3%) supported the OfS's proposal to make reasonable attempts to protect the complainant's identity if requested, unless the OfS is legally required to reveal their identity, as such complainants may be reasonably concerned about adverse consequences should their complaint become known to the respondent.

A few (three, 2%) commented that there is no requirement for confidentiality on the part of complainants or their representatives in the rules. They commented that this lack of obligation could create the risk of high-profile complaints being taken up by campaigning organisations, with the resulting media attention potentially affecting the outcome as well as the reputation of the respondent.

Three (2%) were concerned that, while the complainant's identity is to be protected, there was no information about how the identity of the respondent is to be protected.

One (1%) suggested it would be useful for the OfS to provide a non-exhaustive list of examples where it may be legally required to reveal the identity of a complainant.

Separate individual consultees (one each, 1%) requested further clarification on:

- how the OfS will handle complaints where the identity of the complainant will not be revealed to the institution and how it will consider how this limits the institutions' ability to respond,
- the extent to which the OfS may or may not be able to guarantee anonymity in order to fully and fairly investigate the complaint,
- the difference between anonymity and confidentiality to avoid potential confusion, and
- in which circumstances the OfS envisages being 'legally required' to disclose identity.

General support

Eleven (9%) expressed explicit support for the proposal but made no further comment.

Complaints made by individuals aged under 18

Six (5%) agreed that complaints made by individuals aged under 18 should require signatures from a parent or legal guardian.

Two (2%), however, did not agree that under-18s should have to have a countersignature to make a complaint (citing the 1985 House of Lords ruling that a once a child has sufficient understanding and intelligence, they can decide on matters requiring a decision relating to their health), with one (1%) noting the complaint would be in a university context.

Submitting complaints

Eight (6%) suggested that complaints should be submitted in writing. Some (seven, 6%) believe the complainant should submit the initial complaint themselves and then consent to a representative corresponding with the OfS on their behalf.

Four (3%) welcomed the consideration afforded to ensure the scheme is accessible and encourage the OfS to expand on precisely how it will support disabled people to access the scheme.

Other comments

- Two (2%) also commented on Proposal E to ask whether a complainant will need to provide evidence that they have exhausted all internal procedures when submitting a complaint, and if so, what this might look like.

An additional 18 non-substantive comments were received on this proposal.

2.6 Proposal F: Reviewing a complaint

Summary of Proposal F: Reviewing a complaint

- The OfS proposes that when it first receives a complaint, it will consider whether it is one that is eligible for review under the scheme. This means that it 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. It cannot review some or all of the free speech complaint under section C of the scheme rules (see Proposal C – Complaints the OfS will not review) or section D of those rules (see Proposal D – Time limits).
- The OfS proposes that it may share information with the respondent or with others to help us to determine matters of eligibility. It will tell the complainant, and the respondent if relevant, whether and to what extent it is able to review their free speech complaint.
- The OfS's proposals give it discretion to determine what activities to undertake to conduct a review. The OfS proposes to consider the complaint form and any supporting information that the complainant submits with that form. The OfS may ask the complainant and/or the respondent specific questions or request additional information from them. The OfS may share some or all of the information that the complainant sends to it with the respondent and may seek their representations on that information.
- Where the OfS considers it appropriate, it may decide to have one or more face-to-face meetings with the complainant and/or the respondent and/or other persons that it considers may have information or expertise that is relevant to the free speech complaint. The OfS may ask the complainant, the respondent, or those other persons, questions at such a meeting. The OfS may allow the complainant, the respondent and/or those other persons to ask each other questions at such a meeting.
- The OfS proposes that, where it considers that a free speech complaint concerns academic judgement, it may seek expert academic judgement to inform its review. The OfS proposes that it will do this only if the OfS considers it appropriate. The OfS also proposes that it may seek expert advice from persons with other forms of expertise, where it considers it appropriate.
- The OfS is also proposing that it 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.

- The OfS proposes that it may decide to dismiss a complaint, during its review, if it decides that the complaint is not one that it can consider after all (that is, that the eligibility requirements referred to in the first bullet point above are not in fact met). The OfS may do this where, for example, new information comes to light during its review.

In total, 137 consultees provided comments on Proposal F.

Proposed approach to review

Over half (77, 56%) commented on the OfS's proposed process by which it intends to review a complaint. Around half (64, 47%) disagreed with the proposal that the OfS 'may' seek representations from the respondent on information provided by complainants. The main reasons why those commenting believe the OfS should seek representations from a respondent included:

- to aid the OfS in its investigation so it can make an informed decision (10, 7%),
- so the respondent can provide a 'counter-case' (nine, 7%),
- for the interests of transparency (six, 4%),
- to uphold 'natural justice' (five, 4%),
- to mirror equivalent complaint schemes (five, 4%),
- that information from a respondent should be a primary piece of evidence in any review (four, 3%), and
- that failing to allow representations runs counter to principles of regulation, and would undermine the credibility of the scheme (one, 1%).

In addition, one (1%) believes this proposal gives the OfS too much discretion to decide whether to share details of the complaint with the respondent.

Notification and communication protocols

Just over two fifths (56, 41%) feel the respondent should always be notified that a review is underway. Concern was raised that – according to the proposals – the OfS could potentially make a decision without input from respondents. Notifying respondents would, it was argued, increase transparency and ensure respondents can make timely representations.

One in ten (14, 10%) indicated that providers should always be informed of an ongoing free speech complaint at their institution. Seven (5%) suggested complainant details be shared with respondents to provide the context on which they can make representations.

Several (15, 11%) asserted that the OfS should have clear communication throughout with the complainant, outlining timescales, and providing updates on progress. Others (six, 4%) stated that a named point of contact at a provider should be agreed with the OfS to fulfil any information requests.

Academic and expert judgement

Around two in five (51, 37%) discussed the proposals to seek academic or expert judgement, with several (12, 9%) explicitly agreeing with this aspect of the proposal. The majority (30, 22%), however, requested further clarity over how the OfS will manage complaints relating to academic judgement, across various aspects.

- How and when academic judgement would be sought (12, 9%).
- How the OfS would ensure objectivity when consulting experts (five, 4%).
- The criteria in determining when academic judgement is relevant (two, 1%).
- Transparency regarding the credentials of the person selected (two, 1%).
- Whether the OfS would consider utilising academic judgement when a respondent deems it necessary (one, 1%).
- Whether the OfS would hold discussions with an HEP before seeking academic judgement. This may be useful as external expertise could run counter to the principle of the university's academic judgement (one, 1%).
- How the OfS defines academic judgement – what this includes or excludes (one, 1%).
- Whether the expert would be paid for their role (one, 1%).

Some (10, 7%) stated that seeking academic judgement has the potential to impinge on the academic freedom of a complainant.

Five (4%) suggested the proposal to seek academic judgement goes beyond the OfS's regulatory remit, arguing that this is overreach.

Timeframes for review

One in five (27, 20%) suggested the OfS should set intended timeframes to complete a review and to notify relevant parties of review outcomes. A standardised timeframe would help, three (2%) argued, as:

- HEPs and students' unions could commit to time parameters for the completion of internal reviews,
- the absence of a timeframe may cause further stress on both complainants and respondents, and
- a timeline would provide clarity and transparency throughout the review process.

Face-to-face meetings

Several (18, 13%) expressed concern regarding potential face-to-face meetings, and some (12, 9%) considered such meetings should not be part of the review process. A few (four, 3%) commented that meetings could become like judicial hearings if lawyers were permitted to represent either party. Three (2%) suggested that the OfS carries out a paper-based

review only without the need for in-person contact, with one (1%) suggesting it is beyond the OfS's regulatory remit to mediate such meetings.

Other comments on this included the following.

- Clarity was sought on what a face-to-face meeting would look like in practice (two, 1%), and whether these might also include online meetings (two, 1%).
- Reasonable adjustments would be required for individuals who may be unable to attend or who have certain needs (one, 1%).
- Whether the OfS would compensate relevant parties for their attendance (one, 1%).
- Whether meetings could be requested if the OfS decided to conduct a paper-based review instead (one, 1%).

Comparison to OIA's scheme

Several (16, 12%) suggested the OfS mirrors OIA practices, to involve the sharing of information with both complainants and respondents to facilitate reviews.

A few (seven, 5%) think the OfS should mirror OIA practice and dismiss complaints that relate in any way to academic judgement. Six (4%) feel reviewing complaints pertaining to this issue could affect institutional autonomy. A further five (4%) believe the OfS would be stepping beyond its remit by considering such cases.

Further clarification

Some (10, 7%) requested clarification regarding who would oversee the handling of reviews. A few (five, 4%) would like to understand the credentials and experience of a reviewer in relation to free speech matters, while others (three, 2%) questioned how many people from OfS will be involved in each review.

Some (nine, 7%) commented on the potential settlement of a complaint, with five (4%) seeking clarity on what such a settlement might look like (whether this is financial or otherwise), and whether a full settlement would prohibit any further proceedings.

Clarity on various aspects of the proposal was sought, including:

- how the OfS will manage the appointment of representatives (four, 3%),
- how the OfS plans to determine the eligibility criteria of a complaint (four, 3%),
- defining the term 'discretion' which was felt to be too ambiguous – greater transparency was requested on the types of processes that the OfS may use to review a complaint (two, 1%),
- what the OfS considers are 'reasonably practicable' steps to secure free speech within the law (two, 1%), and
- how the OfS will ensure a complainant is eligible, for example whether this requires confirmation of registered student status (one, 1%).

General support

Some (12, 9%) explicitly expressed support for the proposal. Eight (6%) outright agreed, for example describing it as 'reasonable'. Four (3%) supported parts of the proposal – for instance one (1%) agreed that seeking academic judgement was an 'excellent idea', while one other (1%) only disagreed with this aspect.

Other comments

Other themes that emerged from comments on Proposal F included the following.

- Whether the OfS intends to enforce a hierarchy of complaints depending on the severity of the claim (five, 4%).
- It was suggested that the OfS should include an appeals mechanism (four, 3%).
- Crossover with other complaints schemes (e.g. by providers or OIA) should be minimised by sharing of information between all relevant parties (two, 1%).
- An independent observer role could be created by the OfS to ensure the impartial mediation of a review (one, 1%).
- A suggestion that it is inappropriate for the OfS to review free speech complaints at FE providers as it undermines the role of the ESFA (one, 1%).
- Development and publication of performance indicators would aid transparency regarding the time taken to review complaints (one, 1%).

An additional 12 non-substantive comments were received on this proposal.

2.7 Proposal G: The OfS's decision and Notice of Complaint Outcome

Summary of Proposal G: The OfS's decision and Notice of Complaint Outcome

- The Act includes a requirement for the OfS to decide on the extent to which a free speech complaint is justified. The Act will also require the OfS to notify the parties of its decision and of its reasons for making it.
- The OfS proposes that it will make a decision about a complaint as soon as reasonably practicable. This reflects a requirement in the Act. The OfS will decide whether the complaint is justified, partly justified or not justified.
- The decision that the OfS reaches will depend on its 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.

- The OfS proposes that if it appears to it that each of a and b above is more likely than not, then it may decide that the complaint is justified. If it appears to the OfS that a is more likely than not, but b is not, then it may decide that the complaint is partly justified. Otherwise, the OfS may decide that the free speech complaint is not justified.
- The OfS is also proposing that when it has made a decision, it will notify the complainant and the respondent in writing of its decision and of its reasons for reaching it. The OfS proposes to do so in a Notice of Complaint Outcome.
- The OfS proposes that it will not make a decision about the extent to which a free speech complaint is justified where it has agreed a settlement (see Proposal F above). An agreed settlement would result in the withdrawal of a complaint by the complainant. However, the OfS proposes that it would issue a Notice of Complaint Outcome to confirm the terms of the settlement of the free speech complaint.
- The OfS also proposes that if a complaint is against more than one respondent then it will determine the complaint separately against each respondent.

In total 122 consultees provided comments on Proposal G.

Appeals procedure

Around half (57, 47%) queried whether the scheme would include procedures for parties to appeal outcomes reached by the OfS. While there was a range of views as to whether an appeals procedure should be available for respondents (38, 31%), or for both complainants and respondents (19, 16%), these consultees agreed that an appeals process would be crucial to ensure fair outcomes and manage legal and reputational risks that could be highly damaging.

Additionally, there were differing views on the grounds required for a party to be able to lodge an appeal against an OfS decision. A few (three, 2%) suggested this ought only to be available pending an outcome deemed unsatisfactory by the relevant party and when there were reasonable grounds to do so, but most (54, 44%) believe that a party ought to be able to lodge an appeal following any OfS outcome. It was suggested that any appeal should be considered by an independent panel of experts (26, 21%). A few (seven, 6%) suggested that the right to appeal a decision would be particularly useful as complaints may be complex and relative timeframes may be short.

One (1%) commented that the risk to an HEP's reputation from a serious adverse ruling may have possible knock-on impacts for student and staff morale, engagement and recruitment, and suggested it is imperative that respondents have access to an appropriate appeals process.

Further clarification and guidance

Additional clarification and/or guidance was requested by around two in five (51, 42%), with most (34, 28%) requests pertaining to the term 'adverse consequences'. It was suggested that the OfS provides an extensive but non-exhaustive list of examples of what may constitute adverse consequences, and on how the OfS intends to precisely determine these so as to minimise subjectivity of judgement.

Moreover, several (17, 14%) specifically focused on minor or trivial adverse consequences in their requests for further clarification or guidance, and commented that the proposal may generate confusion.

Further detail or examples of what constitutes minor or trivial adverse consequences was requested, and to make it clear that any adverse consequences deemed to not be minor or trivial be explicitly stated so in a complaint outcome.

Partly justified

Some (11, 9%) raised concerns regarding their understanding of the delineation between a fully justified and a partly justified outcome. A few (six, 5%) commented that an undefined boundary between partly and fully justified is unhelpful and may result in expensive judicial reviews, and so explicitly requested further detail or examples of what would constitute fully justified complaints.

One (1%) remarked that the meaning of 'partly justified' in these proposals differs from the meaning of 'partly upheld' in the OIA framework, and that this may be misinterpreted by parties involved in either scheme.

Timeframes for complaint outcomes

Just under two in five (47, 39%) requested that the OfS sets a definitive timeline for providing a Notice of Complaint Outcome. It was suggested that 'as soon as reasonably practicable' is not useful for complainants or respondents in terms of understanding when they may receive notice of a decision, and that a definitive timeline would help to manage the expectations of all involved in a complaint.

Moreover, some suggested that, since all other parties involved in the scheme are subject to various timeframes, the OfS also ought to be subject to definitive timeframes. However, a few acknowledged that there may be instances where a definitive timeframe cannot be adhered to, particularly regarding complex complaints. Should this occur, it was suggested the OfS provides justification to all parties as to why the timeframe has not been adhered to.

Two (2%) requested that the OfS completes all reviews within six months, to be able to make a civil claim.

One (1%) requested that the OfS completes all reviews in a timely fashion so that individuals with specific protected characteristics are not subject to repeat offences of violations of freedom of speech.

Ongoing review

Three in ten (36, 30%) commented on the OfS engaging in regular review of the scheme. Around one quarter (28, 23%) suggested the scheme itself is reviewed – the majority consider this should be done 12 months after the scheme starts, highlighting that this area of work is new to the OfS, and that feedback from all stakeholders (such as providers, students, complainants, and respondents) on the efficacy of the scheme would be vital to understand and address any negative or unintended impacts.

Just under one fifth (23, 19%) believe the OfS should incorporate a panel of independent experts to review decisions and Notices of Complaint Outcome. It was suggested that this would provide transparency and fairness to those involved in a complaint.

Comparison to OIA's scheme

Several (15, 12%) compared the OfS's proposal to OIA's current practice. Most (10, 8%) suggested that the OfS aligns to the OIA's established practice of normally completing reviews and issuing decisions within 90 days.

Four (3%) requested that the OfS develops best practice guidance similar to that of the OIA. For example, a higher education body thought that information on remedies for adverse consequences, especially non-financial remedies, would be helpful for both providers and complainants.

One HEP (1%) highlighted possible confusion that complainants and respondents might experience from the differing meaning of the word 'partly' in the OIA scheme and the proposed OfS scheme. It was suggested that, in OIA terms, 'partly' means that one part is upheld while another part is not upheld, rather than 'adverse consequences' being 'partly' justified as is in the OfS scheme.

General support

Several (13, 11%) consultees, mostly HEPs, explicitly expressed support for Proposal G. A few (four, 3%) provided justification for their support, such as agreement with:

- the distinction between partly justified and justified,
- only considering aspects of a complaint categorised as free speech claims, and
- support conditional on the respondent having the right to make their own representations prior to an OfS decision.

Other comments

Other themes raised in the comments on Proposal G included the following.

- Civil procedures (nine, 7%). These comments supported the OfS's proposed standard of proof ('more likely than not' being akin to the civil burden of 'on the balance of probabilities').
- Settlement process (seven, 6%). HEPs sought clarification on:
 - whether this includes purely financial elements,
 - the role the OfS will play in negotiating settlements,
 - consequences for a provider if the OfS is concerned about compliance or progress with a settlement offer, and
 - concern that the OfS would produce and release a Notice of Complaint Outcome in instances where a case is settled and a complaint withdrawn.
- Separate findings (five, 4%). Information was requested on how ruling on more than one respondent would be resolved (e.g. joint complaints against both a students' union and HEP), especially where responsibilities are not clearly delineated.

- Fast track process (three, 2%). It was suggested that, if four months have passed since a complaint has been received by the OfS and a decision about a complaint has not yet been made, then the OfS should provide a 'fast track' review process to these complainants, guaranteeing completion of the review within another two months, based on whatever information is available.
- Support for staff named in a complaint (one, 1%). Consideration should be given to how named staff members will be supported if any complaint against them is found to be justified, with clear procedures and mechanisms in place to provide support and guidance, especially should this impact their professional standing or wellbeing.
- Indeterminate outcomes (one, 1%). A suggestion was made that the OfS should consider the addition of an outcome covering situations where it is not possible to determine an outcome.
- Suggested distinction (one, 1%). A consultee outlined that the OfS should consider if the respondent has an appropriate procedure and risk management framework in place that has been followed in a reasonable and fair way to enable robust decision-making.

An additional 22 non-substantive comments were received on this proposal.

2.8 Proposal H: Recommendations and suggestions

Summary of Proposal H: Recommendations and suggestions

- 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. The Act defines what a recommendation is. 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 the OfS may only make recommendations that arise from the free speech claims in the complaint. The OfS's proposed scheme rules reflect these requirements.
- The OfS's proposals expect the respondent to comply with any recommendation that it makes in full, within the time limits that it sets and to report to the OfS when it has done so. Any recommendations would be set out in the Notice of Complaint Outcome.
- The OfS also proposes that it may make suggestions in any Notice of Complaint Outcome, whether or not it decides that the complaint is justified or partly justified. The OfS may suggest that the respondent considers doing something or not doing something.

There were 130 consultees providing substantive comment on Proposal H.

Framing of recommendations

Greater than one third (44, 34%) considered that recommendations should be less prescriptive than proposed in the consultation. Around one quarter (30, 23%) believe the current wording makes 'recommendations' tantamount to regulatory requirements, which they consider would be in breach of paragraph 7(5) of Schedule 6A of HERA. Several (20, 15%) highlighted the importance of institutional autonomy, commenting that the current draft wording of the scheme's rules implies that recommendations are something that must be done, whereas the Act's wording is that 'the scheme may not authorise the OfS to require anyone to do or not do anything'.

A few (three, 2%) said that, given the sector's financial health, consideration should be given to support institutions to recognise and improve free speech practices rather than imposing monetary penalties.

Clarifications on scope and timelines

Several (19, 15%) sought further clarity on the practical scope of 'recommendations' – understanding this, it was argued, will provide confidence that recommendations will be appropriate and proportionate to the sector and to the resources of those regulated.

A few (four, 3%) would like an indication on the time limits that the OfS intends to set in respect of complying with any recommendations arising from a justified or partly justified complaint. They further sought clarity on the process to enable dialogue if the recommendation put forward was not felt to be practicable for the respondent within the OfS's timeframe. Six (5%) expressed concerns about the regulatory burden on HEPs for the potential practical implications of complying with recommendations within specified time limits.

Suggestions

One in six (20, 15%) discussed the OfS's reference to 'suggestions' within the proposal.

Several (18, 14%) sought clarification on the difference between a recommendation and suggestion, with some referring to their understanding that recommendations should be adhered to, but that the respondent can decide whether or not to follow suggestions. Two (2%) queried whether action would be taken against a respondent if they choose not to comply with a suggestion.

Some (four, 3%) would welcome the OfS providing further information on examples of what recommendations and/or suggestions may include, and the process for determining them, and four (3%) believe the OfS should produce a framework outlining likely outcomes.

One (1%) welcomed the proposal to include suggestions in all cases, regardless of whether a complaint is found to be justified, partly justified, or not justified. Another (1%) suggested that if a complaint is not justified, and a respondent is found to have complied with its free speech duty, there can be no basis for any further suggestion.

One (1%) queried whether the Act allows for 'suggestions' and whether an amendment would need to be made to the Act in this respect.

Another (1%) sought reassurance that the distinction between what is a recommendation and what is a suggestion is made in the any Notice of Complaint Outcome. One other (1%) would like recommendations and suggestions to be public information and for there to be public information on compliance with them.

Proportionality

Several (15, 12%) believe the OfS should adopt a proportionate and consistent approach in making any recommendations and suggestions. A couple (two, 2%) feel there should not be an exhaustive list of recommendations at this point and were encouraged to see the OfS take a principles-based rather than rules-based approach. Another two (2%) encouraged the OfS to ensure recommendations are made on the basis of a comprehensive and evidence-based consideration of risk, drawing on all available information, including from the respondent to any complaint.

One (1%) urged the OfS to ensure that recommendations and suggestions protect institutional diversity and reflect the nature of the provider or students' union receiving them.

Forming recommendations

Just under one in ten (12, 9%) would welcome further clarity on financial compensation and how such compensation would be calculated, suggesting that information about the level of compensation available to complainants is key to help respondents to understand the risk and financial exposure.

Seven (5%) recommended following the OIA in publishing indicative scales, using categories of moderate, substantial and severe to determine the value of compensation. Another (1%) mentioned that payments could have significant financial consequences for respondents and should therefore be outlined in more detail, with guidance on how settlement or compensation figures will be determined.

A few (four, 3%) suggested the OfS commits to working with a respondent to formulate recommendations, rather than seeking to impose them in a vacuum. Another (1%) suggested the OfS works with relevant stakeholders with expertise on specific issues (for instance, specific protected characteristics) to develop recommendations.

One (1%) suggested a wide range of possible remedies is available, including (for example) ordering public apologies or withdrawals of certain statements.

Regulatory requirements

Several (17, 13%) sought further clarity on how complaints received under the scheme would interact with and feed into regulatory requirements. In this regard, some (eight, 6%) referenced how free speech requirements will be managed alongside those relating to harassment and sexual misconduct. Some (five, 4%) sought clarity on how free speech complaints will feed into OfS decision-making on regulatory compliance.

General support

Eleven (8%) explicitly expressed support for the proposal but provided no further comment.

Other comments

Other themes raised in the comments on Proposal H included the following.

- Some (six, 5%) mentioned an appeals process (for respondents to appeal against the imposition of recommendations), and four (3%) would like to see this built into the OfS's proposals, while two (2%) requested further information about it.

- Two (2%) suggested the OfS develops a framework of adverse consequences.
- Two (2%) were concerned that, without clear limits as to what 'recommendations' might be made by the OfS, there is the potential that recommendations may interfere with a provider's established, democratic processes. One (1%) further remarked that any recommendation may be at odds with a students' union's duties under charity law.
- Two (2%) suggested that publishing case studies drawing out broad themes may be of more use than a detailed report.

An additional 15 non-substantive comments were received on this proposal.

2.9 Proposal I: Suspension and withdrawal of a complaint

Summary of Proposal I: Suspension and withdrawal of a complaint

- The OfS proposes that it may suspend its initial consideration or review of a free speech complaint if the complainant either:
 - a. Does not provide the OfS with information as required (see Proposal L below), or
 - b. Cannot be contacted using the contact details that they have given to the OfS.
- The OfS may also decide to suspend its initial consideration or review of some of the complaints in a group complaint while it focuses on one of the complaints in the group, under Proposal J below.
- The OfS proposes that the complainant may withdraw their complaint at any stage before it issues a Notice of Complaint Outcome or dismisses the complaint.

In total, 62 consultees provided substantive comments on Proposal I.

General support

Around one third (22, 35%) explicitly expressed some degree of support for the proposal. Outright agreement with no further comments were recorded by 13 (21%).

Further clarity and guidance requested

Just under three in ten (18, 29%) requested further clarity or guidance, with most (16) being HEPs. The most common request (14, 23%) was regarding the suspension of a complaint – further clarity was sought on the maximum length of time a complaint may be suspended before it is either taken forward, dismissed, or must be resubmitted. In addition, justifications

for each of these outcomes was requested, e.g. when there is no further evidence submitted by the complainant(s).

Guidance on the next steps following the suspension of a complaint would also be welcomed, along with clarity on procedure should the lead from a group complaint no longer be contactable.

Timelines for suspension and withdrawal

A few (seven, 11%) HEPs suggested that clear timelines should be implemented for the receipt of information by the OfS from a complainant before a complaint is suspended.

Regarding the complainant being uncontactable, four (6%) HEPs requested a definitive timeline be implemented as to when a complaint would be suspended, to make it clear to all parties the expectations of submitting information.

Four (6%) agreed with Proposal I but requested that the OfS publishes definitive timelines for allowing a complainant to withdraw before a decision is reached if they wish to do so.

Further separate, individual comments were received around timelines for suspending or withdrawing a complaint.

- Provisions should be included if litigation is started by the complainant after submission (one, 2%).
- Indicating the expected receipt of a Notice of Complaint Outcome, which may have a bearing on withdrawal (one, 2%).

Group complaints

Four (6%) queried whether the OfS would decide whether to include a complaint in a group or whether this would only be done with the complainant's consent – it was suggested that group complaints should be made with the knowledge and approval of all complainants, to discourage potentially spurious claims being lodged.

One (2%) was concerned that suspending part(s) of a group complaint could raise issues of equity, and commented that due consideration ought to be given to the impacts on complainants and respondents.

One (2%) remarked that all parts of a group complaint should be considered by the OfS.

Another (2%) sought guidance on the outcome of a group complaint should a lead complainant become uncontactable.

Frivolous complaints

That a complaint could be withdrawn at any stage raised concerns (four, 6%) that this may result in frivolous complaints – while it was acknowledged that the OfS will not consider such complaints, the workload and potential risk of reputational damage to an HEP was suggested to be significant. One (1%) raised concern that no action would be taken against a complainant who is simply able to withdraw a vexatious or frivolous complaint at any time. Another (2%) requested the OfS publishes further guidance in the scenario of recurring vexatious complaints which are withdrawn.

Other comments

Other themes raised in the comments on Proposal I included the following.

- Making a withdrawal publicly known (three, 5%). It was suggested that if a complaint is made public knowledge, then the withdrawal should also be made publicly available.
- Charging a fee to submit a complaint (three, 5%). It was suggested that a refund could be issued once the Notice of Complaint Outcome is published, to decrease the number of cases in which substantial work is undertaken, only for a complaint to be suspended or withdrawn.
- Notifying parties following suspension or withdrawal (three, 5%). These HEPs suggested that respondents and/or all parties are informed when a complaint is suspended or withdrawn, to avoid the allocation of unnecessary resources.
- Consideration of international students (one, 2%). It was suggested that consideration be given to students for whom English is a second language, as this may affect their ability to provide further information as a complainant.
- Provision of alternative contact details (one, 2%). One suggested allowing a complainant to provide an email address not linked to their institution, to avoid the situation of their HEP withdrawing access to the account and making it impossible for the OfS to contact them.

An additional 59 non-substantive comments were received on this proposal.

2.10 Proposal J: Group complaints

Summary of Proposal J: Group complaints

- The OfS proposes that it 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. The OfS also proposes that it may decide to review a representative one among such complaints (a lead complaint) while suspending its review of the others, pending the outcome of the lead complaint.

In total, 89 substantive responses were received on Proposal J.

General support

Just under one quarter (21, 24%) explicitly stated support for the proposal. A few (five, 5%) said that dealing with complaints which are of the same nature collectively is sensible as this would save both time and money, while two (2%) mentioned this seems well thought out and workable in practice, and a further two (2%) commented that it seems reasonable and appropriate.

Notification

Just over one in five (19, 21%) commented on the process of notifying the respondent and/or complainant of the decision to deal with a complaint as a group complaint, with nine (10%) seeking further clarification on exactly how respondents will be notified of this decision.

Some (four, 4%) believe that respondents should be notified of any group complaints that are made, and argued this should be the case even if the OfS decides to suspend the review of other complaints pending the outcome of the lead complaint. Two (2%) suggested the proposal was unclear as to whether all respondents will be notified about group complaints.

A few (three, 3%) encouraged the OfS to communicate with respondents when considering grouping of complaints, to identify if there may be any further complainants arising from their internal processes or to identify if any complaints may be frivolous or vexatious.

Suggestions around notification, each made by separate consultees (one each, 1%), included:

- where the OfS believes it is appropriate to consider complaints that have been submitted individually as part of a group complaint they should write to each complainant to explain their intention,
- ensure complainants are made aware of the OfS's decision to group their complaint in a timely manner,
- notifying respondents of any group complaints that are made even if these do not progress, and
- clarifying how information would be shared with individual complainants who are part of a group complaint.

Complainants' right to opt out of the group complaint

Seven (8%) requested further detail on whether an individual complainant can disagree with the OfS's decision to group their complaint with others.

In a similar vein, three (3%) requested further detail on whether an individual complainant can disagree with the OfS's decision to determine a lead complainant.

Some (four, 5%) suggested that clear mechanisms need to be in place to ensure consent is sought from a complainant to having their individual complaint incorporated into a group complaint, and to make provision for a complainant to join or exit from a group complaint at a later stage.

A couple (two, 2%) feel the OfS should consider representations from complainants who feel that grouping their complaint may not be appropriate.

Grouping process

Several (12, 13%) would like the OfS to explain what criteria will be used (and by whom) to group two or more complaints to provide transparency on this process. One (1%) sought clarification as to whether the OfS would seek permission from individuals to group their complaint with others.

The same number (12, 13%) agreed that grouping of complaints could be an efficient way of dealing with complaints from multiple individuals on the same issue which will help save time and expense for complainants and respondents.

Some (five, 6%) suggested that complainants will need a careful and clear explanation as to how their individual complaint will be reviewed as part of the group complaint.

Some (six, 7%) would like clarification on how the lead complainant will be determined.

A couple (two, 2%) remarked that HEPs are able to group together free speech complaints in their internal procedures. One (1%) requested guidance on how to manage internal group complaints relating to free speech.

Consideration of differences between individual complaints

While some (eight, 9%) feel it makes sense to consider two or more complaints together if they are about the same respondent and the same subject-matter, it was suggested that subject matters, if complex, can be interpreted in different ways and therefore individual complaints should be reviewed carefully before grouping together. One (1%) suggested the potential risk that issues raised in an individual complaint within a group may not receive adequate attention.

One (1%) believes that grouping complaints by themes may minimise the important differences between cases and suggested the OfS is clear in its decision-making around grouping complaints.

One (1%) also suggested that any adverse consequences should be at the same level for all individuals in the group so that any case that is heard does not disadvantage different members of the group, to avoid exacerbating any existing challenges or inequalities.

A couple (two, 2%) commented the proposed approach may increase the complexity of the investigations of complaints and may risk some issues being glossed over or omitted in the interests of faster resolution.

Whether severity is linked to the number of complaints

Some (eight, 9%) would welcome clarification on whether the OfS will use the number of individual complaints received as a factor in making assessments about severity, pointing out that this could prove problematic if there are organised efforts to submit multiple complaints. Two (2%) believe the OfS should not use the number of complaints as a factor in assessments about severity for this reason, and instead feel the OfS should consider the timing of receipt of complaints and the genuineness of individual complaints received.

Other comments

Other themes raised in the comments on Proposal J included the following.

- Clarity was requested on how outcomes to complaints that have been compiled from multiple sources will be issued (six, 7%).
- Clear guidelines were requested on how communication will be handled in relation to group complaints when those other than the lead complaint have been suspended (four, 5%).

- A few (three, 3%) referenced how OIA has begun to consider group complaints. They feel it would be beneficial to benchmark timing with OIA and also to acknowledge that smaller providers may be disproportionately burdened by this proposal, and that speaking with OIA may help to inform best practice.
- A couple (two, 2%) would like further clarity on the difference in how the OfS will handle a group of individual complaints and a complaint by a group.

An additional 29 non-substantive comments were received on this proposal.

2.11 Proposal K: Representations

Summary of Proposal K: Representations

- The OfS proposes that it may seek representations from the complainant and/or the respondent as appropriate before reaching a final decision about:
 - a. Whether it 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.

There were 123 consultees who provided substantive comments on Proposal K.

Respondents' right to representation

Around two thirds (84, 68%) believe respondents should be given the opportunity to make representations in all eligible complaints.

Several (16, 13%) suggested that the OfS commits to seek representations from the respondent at the point of complaint, and the point of making recommendations, and the point of publishing any information, in all cases.

Some (10, 8%) urged the OfS to always seek representations from the respondent about a complaint they have decided to review, to ensure there is a comprehensive information-gathering stage at the beginning of any review, and to ensure the process is fair and robust.

A dozen (12, 10%) stated there should be an opportunity for a respondent to provide a counter-case and, if required, to make factual corrections to the evidence provided by the complainant, should information be inaccurate, incomplete or out-of-date.

Some (six, 5%) highlighted that, under its proposals, the OfS could make a final decision on a complaint, having sought no representation from the respondent, which they feel to be procedurally unjust. They were not convinced the intention of the Act should mean the scheme could operate at odds with common law concerning procedural fairness.

Five (4%) commented that, given the potential reputational and financial risk associated with a partially justified or justified complaint, the OfS should always seek representation from a respondent. It was suggested that relying solely on information from the complainant, and the absence of relevant contextual information, could lead to potentially ill-informed decision-making.

A few (three, 2%) were concerned that the discretion retained by the OfS violates due process and feel the respondent must be given opportunity to know the substance of a complaint and to make representations in all cases where the OfS may yet uphold the complaint.

Other comments on respondents' right to representation outlined how:

- this offers opportunity for respondents to provide evidence or offer clarifications for any actions or inactions taken relating to the complaint (three, 2%),
- seeking representations from both complainant and respondent will ensure balanced perspectives are considered (one, 1%), and offers respondents the right to respond (one, 1%),
- it may be a breach of duties if respondents are not granted the opportunity to make representations (one, 1%), and infringes the principles of good regulation, which undermines the credibility of the complaints scheme (one, 1%),
- allowing representations would enable respondents to offer appropriate support to complainants under their welfare processes if required (one, 1%), and
- the opportunity to make representation is critical for all types of penalty and is consistent throughout the regulatory framework for higher education for both monetary and non-monetary penalties such as suspension of registration and deregistration (one, 1%).

General support

One in ten (12, 10%) explicitly expressed support for Proposal K, and two (2%) added further comment that unnecessary representations may introduce delay to the process.

Clarification requested

Further clarification was sought from the OfS on various points. Detail was requested on:

- how long respondents will have to provide representations (five, 4%),
- exactly what a 'representation' entails (four, 3%), and whether this should be submitted in writing or in-person (one, 1%),
- the factors influencing the decision to seek representations to boost transparency and ensure a perception of fairness (two, 2%),
- who the OfS would write to regarding requirements for further information from a provider (one, 1%),
- how the OfS will seek representations in the case of group complaints where there are multiple complainants (one, 1%),

- whether this proposal will include representations to consider settlements (one, 1%), and
- whether each party's representations would be shared with other parties – in line with the OIA scheme (one, 1%).

Notification of complaint

Seven (6%) believe that the OfS should make a notification of the complaint, with five (4%) suggesting this notice is communicated to both the respondent and the complainant, while two (2%) mentioned only the respondent. A further two (2%) queried whether a respondent would be notified of a complaint even if representation is not sought.

Two (2%) feel notification should be made at the point where the OfS has everything it needs in order to make a decision, and further suggested the OfS notifies both the complainant and the respondent in writing, as is common practice in the OIA complaints scheme.

A couple (two, 2%) suggested that no complaint is made public until it is resolved, in line with OIA practice.

Other comments

Other themes raised in the comments on Proposal K included the following.

- Five (4%) discussed how the right to make representations should not undermine a right to appeal against a decision. These consultees would like to see an appeal option developed and for the OfS to set out the scope of, and process for, an appeal. Appeals would not necessarily, one (1%) suggested, be a re-hearing of a complaint but should be considered by those not involved in handling the original case to avoid the potential for prejudice.
- The sole recourse for respondents would be through judicial review which was felt to be a disproportionate financial and administrative burden (two, 2%).
- Representations may disproportionately affect individuals for whom English is not their first language (one, 1%).
- While a complainant is entitled to a representative, they would not be expected to need legal representation (one, 1%).
- Consideration should be given to granting face-to-face representation with the OfS should a complainant and/or respondent request this (one, 1%).
- The OfS should request evidence from a respondent that any internal processes have been resolved as this may help to mitigate the potential financial and reputational risk associated with justified complaints (one, 1%).

An additional 20 non-substantive comments were received on this proposal.

2.12 Proposal L: Information requirements

Summary of Proposal L: Information requirements

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

In total, 79 consultees provided substantive comments on Proposal L.

General support

Just under one in five (15, 19%) explicitly noted support for this proposal, of which five (6%) had no further comments.

Definitive timeframes

Around half (42, 53%) commented that the OfS should set a timeframe for parties to respond to requests. Several (16, 20%) believe any timelines should be 'reasonable', while some (eight, 10%) suggested the OfS adopt the OIA's approach of 30 days – another four (5%) separately recommended a minimum of four weeks. Four (5%) stated how timeframes should consider the varying resource capacities at different providers.

Others (three, 4%) argued that an agreed timeframe is important as, depending on circumstances, information may be difficult to obtain. Indeed, six (4%) queried whether the OfS would consider extenuating circumstances, for example if a complaint is particularly complex or if the institution is in a busy period. One (1%) stated that clear timelines are essential for setting expectations and avoiding unnecessary delays. Three (4%) also suggested that a right to request an extension should be considered.

Proportionality

Fourteen (18%) believe that information requests by the OfS must be proportionate and reasonable, and should take into consideration HEPs' resources and the complexity of a complaint.

Information being requested

Just under one in ten (11, 9%) raised concerns over data protection and confidentiality. Further clarity was requested on whether the OfS will have secure mechanisms to collect and share information. One (1%) suggested that there may be legitimate data protection grounds to turn down a request, if the information is commercially or strategically sensitive.

Seven (7%) remarked that any information request must be wholly relevant to the complaint, with two (3%) adding that the OfS should not use information requests to conduct 'fishing expeditions'. Two (3%) argued that a mechanism to dispute an information request should be implemented.

A few (three, 4%) asked for further clarity on the types of information that may be required, while two (3%) believe the OfS should provide an accompanying explanation as to why certain information is being requested.

Four (5%) sought further clarity on the OfS's proposed process should a complainant not comply with the information request, and one (1%) questioned whether this would result in the dismissal of a complaint. Similarly, two (3%) asked what sanctions would be placed on respondents who fail to meet information requests.

Other comments

Other themes raised in the comments on Proposal L included the following.

- An agreed point of contact at a provider to receive information requests should be established (two, 3%).
- Reasonable adjustments should be considered for those who may struggle to complete a request, for example individuals with a disability (two, 3%).
- The OfS should complete an internal review first before requesting information from relevant parties (one, 1%).
- Confusion over the OfS's powers to enforce information requirements and how this reflects the provision set out in paragraph 7(5) of HERA (one, 1%).
- The OfS could instead seek an alternative method to gathering information that does not involve a direct request – although no alternative was suggested (one, 1%).
- Clarity was sought on the differences between seeking representations (Proposal K) and information requirements (Proposal L) (one, 1%).
- Respondents should always be given opportunity to supply information relevant to a complaint (one, 1%).
- Clarity was requested on how the OfS will approach communication with under-18s as part of an information requirement (one, 1%).
- The OfS should commit to minimising the number of separate requests (one, 1%).

An additional 41 non-substantive comments were received on this proposal.

2.13 Proposal M: A respondent's duty to comply

Summary of Proposal M: A respondent's duty to comply

- 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 the OfS that it is unable to comply, the OfS may enforce the requirement in civil proceedings for an injunction. The OfS proposes to include rules in the scheme that reflect those provisions.
- 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 the OfS sends to the respondent under the proposed information requirements in the scheme (see Proposal L).

Proposal M accumulated 77 substantive responses.

Timeframes for response

Around two fifths (29, 38%) suggested the OfS adopts a proportionate and reasonable approach to its requests. Most of these (25, 32%) discussed the importance of a proportionate approach with respect to timeframes, with the primary concern (10, 13%) that some HEPs or students' unions may not have the capacity or resources to fulfil their duties in a short space of time. Two others (3%) would welcome the OfS giving examples of potential requirements along with likely timeframes for guidance purposes. One (1%) suggested that setting a timeframe would set approximate expectations from the start of the process.

Several (16, 21%) feel respondents should be granted certain rights, for example to request an extension (10, 13%) on any duty imposed. One (1%) claimed this may be relevant if a respondent needs to seek external legal advice. The inclusion of an appeals mechanism was suggested by four (5%), in the interests of fairness and natural justice. One (1%) outlined the importance of allowing respondents to make representations at the start of a complaint, before requirements are imposed.

General support

Around one in five (17, 22%) explicitly expressed support for this proposal. Nine (12%) supported the proposal with no further comments. Others welcomed that the OfS may enforce the requirement in civil proceedings (five, 6%), for others the proposals seemed reasonable and appropriate (two, 3%), and one (1%) welcomed this to ensure accountability and adherence to the process.

Clarification sought

Just under one in ten (seven, 9%) asked for clarity over the OfS's use of the term 'requirement'. Of these, three (4%) would welcome definitive clarification that a respondent's duty to comply with requirements is in relation to information requests rather than any

recommendations given in the aftermath. Two (3%) suggested that a clearer distinction was required in the proposals between requirements, requests for information and recommendations.

In reference to paragraph 7(5) of the 2023 Higher Education Act: 'the scheme may not authorise the OfS to require anyone to do or not do anything', four (5%) interpreted this as an inability for the OfS to be able to impose requirements.

Failure to comply

Three (4%) would appreciate examples of possible sanctions if a respondent does not comply with their duties as part of a complaint.

Two (3%) questioned how enforcement would work, for example how the OfS would determine whether a respondent has complied with requirements.

A few (three, 4%) would like the OfS to commit to an alternative resolution before any legal proceedings are pursued.

Other comments

Other comments and considerations were each separately raised by individual consultees (one each, 1%).

- To understand the OfS's proposed protocol if a provider is no longer registered with the OfS.
- A suggestion that legal sanctions on respondents should also apply to complainants.
- The OfS already has significant powers relating to a provider's duty to comply under registration condition F3.
- Concerns that costly court proceedings could divert funds away from budget that are already stretched.
- The OfS should be aware that seeking an injunction may take time.

An additional 45 non-substantive comments were received on this proposal.

2.14 Proposal N: Advertising the complaints scheme

Summary of Proposal N: Advertising the complaints scheme

- The OfS proposes 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.
- The OfS has 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.
- The OfS is 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.

A total of 122 substantive responses were received on Proposal N.

Timeframes for implementation

Just over two in five (50, 41%) discussed the OfS's intended timeline for implementation. Many of these consultees (30, 35%) suggested that the proposed timeframe may cause a significant strain on resources that are already stretched. Some (six, 5%) commented how making the necessary preparations by 1 August 2024 could be challenging and stated that some student induction materials for the 2024/2025 academic year may already be in production or finalised, meaning that it will be difficult to include such material. A few (three, 2%) also suggested that the outcome of this consultation and the OfS's response should be published as soon as possible to allow time to implement changes.

Several (15, 12%) suggested that the OfS refrains from taking enforcement action for any delays – given the time and resources needed to comply with this proposal. One (1%) added that a grace period would be welcome to allow HEPs time to implement necessary changes.

Means of promoting the scheme

Several (17, 14%) gave alternative suggestions to the proposals laid out by the OfS. Rather than updating materials and bringing the scheme to the attention of relevant parties on an annual basis, it was suggested that such information about the scheme could be made permanently available through other means. Examples of possible channels included the following.

- A bespoke free speech webpage.

- Digital platforms external to application materials.
- Complaints and grievance policies.
- Free speech codes of practice.

Some (10, 8%) believe the OfS should set minimum expectations regarding how providers and students' unions advertise the complaints scheme on an annual basis.

Three (2%) others believe that the OfS should allow institutions full autonomy on how to advertise the scheme, while four (3%) asked for further detail on how the OfS recommends providers advertise the scheme – one (1%) sought clarity on what the OfS regards as a 'prominent place' to advertise the scheme.

Five (4%) suggested the OfS adopts the OIA's current approach whereby the scheme would be signposted in a 'completion of procedures' letter setting out their right to take the matter to the OfS.

Advertisement content

Several (19, 16%) suggested that any advertisement should clarify the differences between the OfS and OIA complaint schemes, making clear which should be pursued in the first instance. This would, it was argued, ensure students are aware of all options at their disposal. Some (15, 12%) also claimed that any relevant materials should signpost students to internal processes first before the OfS scheme is mentioned.

Guidance on the short paragraph of text that should be used in relevant documents and information sources – set out in rule 60 of the consultation document – was welcomed as a useful aspect of the proposal (five, 4%). The same number would also appreciate the development of templates that could be used to update relevant materials, with one noting this would be especially valuable for bodies with limited resources and capacity.

A few (five, 4%) questioned whether the OfS will include a description of its role in higher education, as students may not be aware of the regulator's functions.

One (1%) suggested that students aged under 18 may need more than a short paragraph for them to be able to understand the complaints scheme.

Burden and compliance

Nine (7%) described the proposal as either 'excessive' or 'prescriptive'. These consultees feel the OfS is creating an unnecessary burden through this advertisement proposal, and thought that it does not account for differences in resources across different institutions – creating a relatively greater burden for smaller providers. Three (2%) feel that this proposal goes beyond the OfS's role as a regulator and infringes on institutional autonomy, while five (4%) sought clarity on how the OfS plans to ensure compliance with, or assess the effectiveness of, Proposal N.

Potential consequences

Some warned of potential consequences as a result of these proposals.

- Advertising the scheme could increase the number of spurious, vexatious or ineligible claims, which in turn may cause a strain on resources (three, 2%).
- Advertisement could lead to misconceptions regarding the scale of free speech issues in higher education (two, 2%).

General support

Around one in eight (15, 12%) explicitly expressed support for the proposal, with most (11, 9%) providing no further comments. Two (2%) feel it is essential students are supported to understand the scheme, while the other two (2%) believe it is important for the scheme to be promoted.

Other comments

Other comments and considerations were each separately raised by individual consultees (one each, 1%).

- Individuals aged under 18 working at students' unions in FE colleges should not be expected to carry out this advertising duty.
- The scheme's advertisement should be included in application materials for all professional staff – not just applicants for academic posts.
- Clarification was requested on how the scheme should be advertised to external speakers.

An additional 19 non-substantive comments were received on this proposal.

2.15 Proposal O: Charges, costs and fees

Summary of Proposal O: Charges, costs and fees

- Under its proposed rules, the OfS will not charge any fee to the complainant for reviewing their free speech complaint. This reflects provisions in the Act.
- Under the Act, the OfS may recover costs from respondents in relation to its review of a complaint where the OfS finds the complaint justified or partly justified.

Proposal O received 126 substantive responses.

General support

One quarter (32, 25%) expressed support for the OfS's approach, of which seven (6%) provided further comment. Generally, the most commonly supported aspects are the

proposal not to charge a complainant (21, 17%), and that a respondent could be liable to cover costs (five, 4%).

Cost recovery

Just over one in five (27, 21%) welcomed plans for the future consultation on potential respondent costs and looked forward to providing comments. Many of these (15, 12%) feel the OfS should set a timeline for this promptly ahead of the scheme's introduction in August. One (1%) believes the OfS should allow at least 12 weeks for this consultation, which is suggested in the government's code of practice on consultations.⁵

Several (38, 30%) raised concern over the potential costs for respondents, feeling they should not be obliged to cover the costs associated with the review of a complaint.

Several (16, 13%) claimed the OfS should cover costs. One in ten (13, 10%) alluded to the recent increase in registration fees, and stated this increase should be used to fund – among other services – the review of free speech complaints.

One (1%) suggested the proposed method of cost recovery is inconsistent with processes adopted by other regulators, such as the Charity Commission.

Determining costs

Several (21, 17%) feel more clarity is needed surrounding the potential costs involved in carrying out a review. Ten (8%) expressed concern about the potential scale of costs, and asked the OfS to confirm what the upper limits might be. Seven (6%) questioned how costs will be determined and itemised in relation to the review of a complaint. Others (10, 8%) also requested clarity as to whether the OfS will recover costs from complainants in relation to frivolous or vexatious claims.

Some (12, 10%) feel costs must be proportionate to the breach in free speech duties, and not overly excessive. Some (five, 4%) suggested costs should be capped, for example at a proportion of the available resources of a respondent.

An appeals mechanism was suggested (seven, 6%) to allow a respondent to challenge any costs they deem unreasonable.

Clarity was also sought on:

- what costs will be sought, and by whom, when a complaint is not upheld (five, 4%),
- what costs might be recovered if complainants seek legal representation (one, 1%), and
- what the money recovered would go towards (two, 2%).

Potential consequences

Several (15, 12%) think that recovering costs could lead to an incentive for the OfS to find complaints partly or wholly justified, and clarity was requested on how the OfS will prevent this from occurring. Three (2%) suggested recovery of costs should be independently

⁵ Note that the OfS's 'Consultation on proposed regulatory advice and other matters relating to freedom of speech' was live from 26 March to 26 May 2024 and sought feedback on the topic of cost recovery.

regulated to ensure objectivity. Some (11, 9%) were worried about the impact of recovering costs on the wider student experience.

Some (10, 8%) warned that costs would divert funds away from already scarce resources. A few (six, 5%) were also concerned about the potentially disproportionate effect this may have for students' unions, which have more limited resources than HEPs. One (1%) commented that students' unions are non-profit organisations that run on charitable funds and may not be in a financial position to cover costs.

Another potential consequence suggested by some (three, 2%) is that cost recovery may compel respondents to settle, even if they feel the claim is unjustified.

A few (three, 2%) feel the OfS should implement a subscription model similar to the OIA. This would mean additional costs are only paid if the OfS receives more than a specified number of complaints at a given provider. Meanwhile, another three (2%) believe the OfS should not recover any costs until an internal process has been exhausted.

One (1%) suggested the scheme may be misused if complainants are never charged.

Other comments

The following comments each formed part of separate, individual responses (one each, 1%).

- A suggestion that the OfS should conduct an SME impact assessment to ensure costs do not disproportionately impact smaller providers.
- Concern that providers would be powerless to mitigate any cost recovery.
- Clarity requested on whether costs would be in addition to a fine if a complaint is upheld.
- Concern that a respondent might be charged for a complaint they are unaware of, or where they have not been able to make any representations.

An additional 17 non-substantive comments were received on this proposal.

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

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

- Under section 67A of HERA, the OfS has a statutory power to publish notices, decisions and reports in the performance of its functions; this includes publishing decisions to conduct or terminate an investigation.

[...]
- The OfS has previously published guidance for providers on the approach it will take to the publication of information about providers and connected individuals. This guidance is set out in 'Regulatory advice 21: Publication of information'. This guidance was published following consultations on its proposed approach.
- The guidance sets out how the OfS normally uses its powers in sections 67A to 67C of HERA and contains its general policy for the publication of information about providers and individuals connected with them. It sets out the information the OfS would normally expect to publish and the information that it would not normally expect to publish. It also sets out the factors to which the OfS will have regard in making a publication decision.
- The OfS is now proposing to amend Regulatory advice 21 to set out the information that it would normally expect to publish, and the information that it would not normally expect to publish, in relation to the OfS free speech complaints scheme.

In total, 118 substantive responses were received on Proposal P.

Limiting publication to anonymised data

Nearly half (54, 46%) believe the OfS should limit the publication of information to anonymised data, such as case studies, to promote good practice and to act as a resource for the sector to learn from. Several (21, 18%) of these stated that this procedure would emulate the OIA's approach.

In a similar vein, one in five (24, 20%) suggested the publication of broader, aggregate data. Suggestions for publication in this regard included information on the:

- number of complaints received (11, 9%),
- types of complaints received (thematic reporting) (nine, 8%),
- number of complaints upheld (four, 3%),
- the number of complaints dismissed (four, 3%),
- the number of vexatious or frivolous complaints received (one, 1%), and

- a summary of cases that does not name the provider (one, 1%).

Five (4%) of these responses suggested the OfS publishes these data on an annual basis.

Just under one in five (20, 17%) were particularly concerned with the naming of an individual. Half (10, 8%) warned of significant reputational damage as a result. One (1%) feels that personal information should be kept anonymised, while another (1%) believes that publishing someone's name could lead to politically motivated claims against an individual. Two (2%) further asked for the OfS to clarify whether complaints should be about an organisation rather than an individual, with one (1%) noting that individuals may end up as a 'scapegoat' rather than an organisation taking responsibility. One (1%) also suggested that naming an individual could affect subsequent proceedings if the investigation is ongoing.

Others (four, 3%) believe that publishing complainant details may deter someone from making a complaint in the first place, and further to this three (3%) requested the OfS clarifies instances in which complainant details might be published. One (1%) further suggested the OfS considers other factors related to the complaint that may lead to an individual being identified.

One (1%) queried whether there would be any limitations or restrictions on the sharing of information that was requested and collected under the scheme.

Potential risks associated with Proposal P

Over two in five (53, 45%) suggested risks associated with publicising complaints. Most of these (43, 36%) expressed concern over the potential for reputational damage for both providers, students' unions and individuals. Some (five, 4%) feel there is a risk to reputation even if a complaint is not upheld. Two (2%) raised concerns that published information could be misleading, for example that complaints against a provider may be linked to the volume of external speakers rather than to prevalence of any internal issues.

Considering this perceived risk, one third (39, 33%) believe details of an unjustified complaint should never be published. Several (15, 13%) feel that respondents should also be informed of an intention to publish personal information and should be allowed to make representations. Others (14, 12%) thought publications are fair only when a complaint is found to be justified or partly justified – it was argued that publishing 'not justified' decisions risks damaging an HEP's reputation. Nine (8%) added that the OfS should never publish an ongoing review.

A few (four, 3%) raised data protection concerns and suggested the proposal may conflict with other legislation such as the GDPR. One (1%) believes that the OfS's proposals do not currently demonstrate that its processes are sufficiently rigorous to ensure personal and data safety.

Two (2%) warned that publishing information has the potential to influence ongoing internal processes and prejudice the outcome of those reviews.

General support

One in six (19, 16%) explicitly expressed support for the OfS's approach, of which ten (8%) provided no further comment. Reasons for agreement included that it would provide useful insight into the OfS's approach (five, 4%), and that publications would be a good source of guidance on best practice (two, 2%).

Further clarity

Further clarity was requested on how the OfS will handle the publication of information relating to:

- vexatious or frivolous complaints (six, 5%),
- dismissed complaints (four, 3%), and
- settled complaints (three, 3%).

One (1%) also sought clarity on how the 'conduct of an individual' would be included when publishing information.

More generally, four (4%) feel the language in Proposal P is overly technical. Two (2%) affirmed that, while they found it understandable, the intended meaning needed to be conveyed more simply for students and potential complainants. The other two (2%) were confused by the legal 'jargon' used throughout the proposal.

An additional 25 non-substantive comments were received on this proposal.

2.17 General comments

2.17.1 Unclear aspects of the proposals

Consultees were asked if there were any aspects of the proposals they believe are unclear, and 102 substantive comments were received. Of these, 75 (74%) referred to comments that related to a specific proposal – such points have been captured under the relevant preceding sections 2.1 to 2.16. This section discusses the other (27, 26%) responses which provide broader views about unclear aspects of the proposals in general.

Students' unions

Six (6%) discussed students' unions, with three (3%) commenting how the proposals appear to show limited evidence of understanding how student-led activities work.

Two (2%) believe it was unclear what constitutes a students' union and requested clarification on this before the scheme is launched, in particular whether a students' union can be held responsible for the behaviour of its societies, elected voluntary officers, or any student member.

Two (2%) feel that the absence of any guidance from the OfS on whether students' unions and HEPs should have separate codes of practice raises questions about best practices and consistency in governance – it was suggested that clarification on this would help establish clear standards across the sector.

Interplay with OIA scheme and other complaints processes

Some (four, 4%) thought greater consideration needs to be given to the interplay between this scheme and the OIA's complaint scheme, and other complaints procedures. Specific comments were as follows:

A couple (two, 2%) would welcome guidance on the process in a situation where a complaint is submitted to OIA prior to the OfS, or whether complainants would be expected to submit to the OfS in preference to OIA.

One (1%) sought further clarity on how the OfS will handle complaints that are also under consideration by OIA in relation to the same matters but having been brought by different complainants.

One (1%) sought further detail on the process in a situation where a complaint that is with the OfS is also a matter that is part of a separate, ongoing legal process, and suggested that the complainant should be obliged to inform OfS of any developments.

Accessibility

A few (three, 3%) stated the production of a plain English version of the proposals would help ensure the document is accessible to all.

One (1%) suggested creating an abbreviated version of the scheme for the general public that will also be more accessible for people with cognitive impairments.

Current legislation

One (1%) queried the process when free speech requirements seemingly conflict with other duties, e.g. Charity Law, or the Equalities Act. One (1%) suggested that providers are obliged to intervene to restrict speech to lawful speech, under the Prevent Duty.

Another (1%) would appreciate confirmation that the regulation of elections remains the responsibility of the provider's governing body, unless free speech has been infringed upon, which they understand would allow a complaint to be made to the OfS, as per the Education Act 1994 that regulation of the elections is the responsibility of the provider's governing body.

Other comments

There were a range of other comments each raised separately by individual consultees (one each, 1%).

- Clarity was sought on whether the OfS intends that complaints related to infringements on academic freedom would be investigated through a separate process.
- More explicit reference to the overlaps between free speech and academic freedom and harassment was requested.
- It was unclear whether the single question in the National Student Survey is fit for the purpose of assessing free speech.

- Guidance was requested on what constitutes a breach of guidelines, along with worked examples. Another requested the OfS defines a minor or trivial breach of freedom of speech duties.
- Clarity was sought as to whether complaints can be made against student societies as well as students' unions.
- With proposed rule 69 stating that rules may be amended from time to time, clarity was requested on how often this may occur and the timeframe for how this may be communicated.
- Comments that no accompanying draft guidance for providers, constituent institutions, or students' unions has been published regarding how they are meant to comply with their new statutory duties and with the new regulatory requirements to be enforced by the OfS.

An additional 20 non-substantive comments were received on this question.

2.17.2 Areas where efficiency could be improved

Consultees were asked whether, in their view, there are ways in which the objectives of this consultation could be delivered more efficiently or effectively than proposed by the OfS, and 102 substantive comments were received.

Evaluation of the scheme

Several (19, 19%) suggested that there is a need for an evaluation of the proposed scheme – this was predominantly suggested by HEPs and students' unions. Almost all of these (17, 17%) proposed that the OfS ought to review the scheme after 12 months, highlighting that this area is new to the OfS. It was suggested that feedback is invited from all stakeholders including providers, students, complainants, and respondents on the efficacy of the scheme, with a view to addressing any negative or unintended impacts that come to light during the first year of operation. One (1%) suggested the scheme is reviewed in a similar manner after two years, while another (1%) suggested the OfS undertakes a review of the scheme, encouraging regular and open dialogue with the sector.

One (1%) queried how the OfS will engage with students within the monitoring aspect of the scheme.

Sector consultation

The same number (17, 17%) suggested that greater sector consultation with HEPs, students' unions, and students would help to deliver the scheme more effectively. Most such comments were aligned to a suggested review of the scheme, which would prompt feedback from the aforementioned stakeholders on the efficacy of the scheme.

One (1%) believes the consultation objectives could be met more efficiently and proportionately if the OfS were to work alongside other sector regulators such as the DfE or the ESFA. They suggested this would help to reduce burdens for providers by streamlining duties to be efficient.

Reflecting back on development of the proposals and consultation process, one (1%) expressed disappointment that the roundtable discussions hosted by the OfS were not used as an opportunity to gather feedback on the proposals. Another (1%) would have welcomed the OfS discussing proposals with students' unions more widely prior to launching the consultation and feel this would have helped to increase the OfS's understanding of the sector and to identify areas of good practice.

Meanwhile, seven (7%) suggested alternative means of promoting this consultation, for instance producing an infographic, or an abbreviated version that highlights the main points, as well as more in-person events or shorter, more accessible forms of providing feedback alongside this more detailed model.

Consideration of internal complaints processes

Several (14, 14%) believe that it would be more efficient, effective, and economical for complainants to have first exhausted internal complaints processes before submitting a complaint to the OfS scheme, and requested that the OfS implements this procedure into its proposals. One (1%) commented that the OfS may receive many claims which have not had the chance to be resolved internally, given the 30-day timeframe. One (1%) suggested that, in cases where a complaint raised via the OfS scheme has already reached an outcome within a provider's internal processes, the provider ought to be allowed to make representations to the OfS as to why the complaint should not be considered.

Comparison to OIA scheme

Several (12, 12%) compared the scheme to that of OIA. Some (six, 6%) proposed that the OfS's scheme should align with the OIA's to some degree, perhaps through extending the 30-day limit for internal review to 90 days, or mirroring the OIA with respect to timeframes, processes and approaches to publication.

Two (2%) requested a clear distinction between the remits of the OfS and the OIA, and how duplication between the two schemes will be avoided (e.g. through information sharing).

However, two (2%) suggested that it be made explicit that either the OfS or the OIA is the sole body making judgements on free speech complaints, with one of these (1%) feeling the OIA has longstanding expertise in such matters.

Additional clarification and guidance

Eleven (11%) suggested that clarifying further aspects may improve the scheme's efficiency and effectiveness. Three (3%) requested the OfS offers worked examples to provide clarity on how the scheme will work. Two (2%) suggested the OfS produces best practice documents for stakeholders to follow, such as those published by the OIA. One (1%) simply requested the OfS clarifies how the scheme applies to students who are not on higher education courses.

Three (3%) suggested the OfS develops guidance on formal processes for inviting speakers for HEPs to follow. It was suggested that such processes should be as streamlined and burden-free as possible.

One (1%) commented that it was not yet possible to determine the implications around fees or financial compensation and requested more information in this regard.

One (1%) suggested the OfS produces a submission template for all those wishing to raise a complaint to utilise.

Transition period

Some (eight, 8% – six of whom were students' unions) suggested that a transition period would enable the objectives of the scheme to be delivered more efficiently and effectively. It was suggested that allowing more time between the final guidance document from the OfS, expected in summer 2024, and the scheme's implementation on 1 August 2024, would allow both the OfS and sector stakeholders to adequately respond to their new duties. One (1%) remarked how the OfS has historically provided more time between these two milestones. One students' union (1%) commented that its capacity over the summer period – when important information will be released – is expected to be reduced compared with term time. Suggested transition periods between the final best practice document and implementation of the scheme ranged from three to twelve months.

Other comments

Other comments and considerations included the following.

- Four (4%) suggested a review panel is created to oversee the OfS's recommendations and ensure they are fitting for each case. It was also requested that the OfS set up an internal appeals process with a panel of independent experts.
- Four (4%) requested that the OfS provides training to HEPs and students' unions to aid them in understanding the operation of this scheme.
- One (1%) suggested the consultation should have taken greater account of other existing legislation, and does not eliminate responsibilities that institutions have under the Equality Act 2010.

An additional 27 non-substantive comments were received on this question.

2.17.3 Potential impact on individuals on the basis of their protected characteristics

Consultees were asked whether they feel the OfS's proposals may have an impact on individuals on the basis of their protected characteristics and 107 substantive responses were received.

Equality Impact Assessment

Over two in five (48, 45%) urged the OfS to undertake an Equality Impact Assessment (EIA). Just under one in five (20, 19%) added that this should be made publicly available. One (1%) claimed an EIA should be published before the scheme begins, while another suggested sharing it 12 months after the scheme's implementation. Some (six, 6%) argued that an EIA would ensure individuals with certain protected characteristics are not disproportionately impacted by the scheme's introduction. Three (3%) stated that the OfS should be particularly

mindful of protected groups in the public eye, for example transgender staff and students, and Jewish staff and students.

Potential conflict with existing duties

Over two fifths (45, 42%) raised concerns about the potential conflict the proposals may have with existing legislative requirements and duties. Several of these (17, 16%) were worried about a perceived clash between free speech duties and the statutes of the Equality Act 2010, which legally protects individuals from discrimination in the workplace – consultees believe there will be an inevitable tension between the rights of those seeking to exercise free speech and those who consider themselves – based on their protected characteristics – to be adversely affected by it. One (1%) cited some specific examples and suggested that although within law, offensive speech relating to such matters has the potential to cause significant distress.

One in ten (11, 10%) suggested a potential conflict with the Prevent Duty – which requires educational authorities to mitigate the risk of individuals supporting terrorism. Consultees requested clarification from the OfS on how they should balance this with free speech duties.

The interplay between free speech and other sensitive issues such as harassment and sexual misconduct was also raised across several (15, 14%) responses and requests were made for the OfS to provide support to HEPs to assist in balancing these duties against their free speech duties.

Other duties or legislation that consultees believe may conflict with the proposals include the Public Sector Equality Duty (four, 4%) and Charity Law (three, 3%).

Impact for certain groups

Several (19, 18%) discussed certain groups of individuals that may be impacted as a result of the OfS's proposals.

Nine (8%) believe those with a physical disability may struggle to adhere to different requests such as face-to-face meetings, and that reasonable adjustments should be made.

The protected characteristic of age was also discussed by five (5%) who raised concerns regarding the appropriateness of proposals for FE colleges and their students' unions. On this, one (1%) commented that students' unions at FE colleges may entirely comprise unpaid minors (aged under 18) who do not have a legal envelope, and therefore suggested the OfS considers how its proposals will impact this group. Similarly, another (1%) questioned what safeguarding measures the OfS will have in place to protect the interests of students aged under 18. One (1%) also urged the OfS to consult more widely with statutory bodies that are responsible for regulation in the FE sector.

Five (5%) mentioned that some free speech complaints may likely focus on gender identity and race. They warned that already minoritised individuals may become part of public arguments concerning conflicting rights.

Other impacts and support

Four (4%) were concerned about the scheme's impact on an individual's mental health. One (1%) suggested the OfS extends funding for mental health support, as it is plausible that interaction with the scheme may cause feelings of isolation.

For individuals who speak English as a second language, one (1%) asked whether adjustments would be made during the review process.

Some (five, 5%) disagreed that protected characteristics were important in relation to the OfS's proposals, arguing that free speech does not impact individuals, and that it should be differentiated from hate speech.

Two (2%) commented that free expression and ideas have been censored due to the impact on one's protected characteristics. They believe the proposals will help in part to address this issue.

Other comments

Other comments received included the following.

- The scheme may deter people from challenging views in fear of a complaint being made against them (two, 2%).
- The scheme may encourage complaints against people with protected characteristics who have vocal opposition (one, 1%).
- The OfS should monitor complaints based on complainants' protected characteristics (one, 1%).
- The scheme should include a question for complainants that asks whether anything relating to their protected characteristics should be considered (one, 1%).

An additional 24 non-substantive comments were received on this question.

2.17.4 Unintended consequences

In total, 101 substantive comments were received about whether any unintended consequences arising from the proposals are foreseen.

Potential legal considerations

Just under one quarter (24, 24%) suggested possible legal issues arising. Some (six, 6%) were formulated as issues associated with the 2023 Act, specifically the definitions of 'student' and/or 'staff' as a means by which, it was suggested, the OfS may potentially be reaching beyond its remit.

Some (seven, 7%) referred to what they considered to be the delicate 'balancing act' for HEPs to maintain between their free speech and Prevent duties, and suggested that the OfS's proposals risk the unintended consequence of allowing unlawful speech taking place on campus and allowing students to be drawn into terrorism due to the risks to providers of not approving events.

Others queried the scheme's alignment with other OfS work yet to be finalised, such as its harassment and sexual misconduct duties. It was suggested that there is likely to be a conflict between the two protections (protection of freedom of speech and protection from harassment), and thus three (3%) feel the two should not have been considered in isolation.

Two (2%) raised concerns regarding students' unions and FE colleges having potentially conflicting duties as a result of the implementation of these proposals (two, 2%), particularly in relation to Prevent duties imposed by Ofsted, and the Equality Act 2010.

Other comments about potential legal issues included the following.

- Competing requirements between the Charity Commission and the OfS as regulators (two, 2%).
- The scheme's jurisdiction to determine legal rights and obligations may be vulnerable to legal challenge (two, 2%). It may be that confidence in the use of the scheme is undermined if the absence of express statutory language means that the OfS's due diligence in cases leaves them open to interpretative legal challenge.
- Transnational students (one, 1%). Students may be at risk where they are studying at an institution which has free speech definitions which contradict those set out under English law. Students may access the scheme without considering the implications of this under the laws of the country they reside or study in, which could lead to significant ramifications for the individual.

Impact for students' unions

Several feel the scheme may disproportionately affect certain bodies and the effects on students' unions were regularly mentioned (13, 13% – eight being students' unions), especially with regard to the limited funding, resources and specialist knowledge it was suggested they have compared with larger HEPs. The administrative burden for students' unions to manage complex complaints alongside their other functions and regulatory duties was also mentioned. A few (four, 4%) also remarked that some of their students' union staff are aged under 18 and may struggle to grasp the nuances of free speech and what constitutes a breach.

Four students' unions (4%) expressed concern that they may be forced to run fewer events, due to their relative lack of funding and resources, and to adopt blanket policies against inviting potentially controversial speakers, due to their fear of being subject to free speech complaints and the burden this places on them.

Three (3%) suggested the proposals may disincentivise students' unions from having meaningful complaints processes as complaints may instead be passed to the OfS.

Impact for providers

Comments were also made about perceived disproportionate effects of the proposals on smaller providers (12, 12% – ten of which were HEPs or higher education sector bodies). These comments related to smaller providers having limited access to legal resources and limited capacity to handle complex free speech complaints, meaning that administrative costs would be disproportionately large. It was also suggested that these proposals may have disproportionate effects on FE institutions (five, 5%), mostly pertaining to conflicting duties, such as Ofsted's Prevent Duty, and staff being aged under 18.

Various institutional burdens arising as unintended consequences of these proposals were also suggested (19, 19%). Several (10, 10%) commented on administrative burden generally, but financial cost was also raised by a few (five, 5%) and the relative lack of funding that smaller providers have at their disposal to deal with free speech complaints was

mentioned. One (1%) also suggested the potential reputational burden to the provider (one, 1%).

Others focused on the perceived burden of multiple processes running simultaneously (three, 3%), raising concerns about the burden of an institution having to complete its own internal investigations alongside the OfS's investigation. Indeed, five (5%) raised concerns that the OfS may intervene in internal complaints which have yet to conclude.

Three (3%) believe that smaller providers with staff and/or affiliates aged under 18 may potentially look towards market exit due to unintended consequences arising from the proposals such as confusion or stress, and a full consultation with the DfE, ESFA and Ofsted was requested.

Complaints hierarchy

Twelve (12%) believe that the implementation of the proposals may result in the creation of a complaints hierarchy within institutions, whereby free speech complaints are prioritised over complaints relating to other matters e.g. conduct, accommodation or service, etc. Concerns predominantly relate to the proposed timeframes, and the proposal that individuals can bring complaints to the OfS after 30 days. These consultees believe this will result in a knock-on impact to reduce a provider's ability to address other complaints, and further that this will acutely affect smaller providers with less capacity.

Interaction with and comparison to OIA scheme

Some (eight, 8%) commented on the OIA, with four (4%) suggesting the potential for confusion arising about the perceived difference in goal or purpose of the OfS and OIA schemes, for both complainants and respondents. It was suggested that transparency of communication between the OfS and OIA may help mitigate this.

That these OfS proposals differ in some respects to established OIA practice was mentioned by two (2%), who believe this approach could create confusion due to the differing processes and timeframes, and that this in itself may result in complaints.

Other comments

Other comment arising included the following.

- Collaborative institutions (five, 5%). These consultees queried the extent to which a provider is responsible for the actions of its partnerships, both those based in the UK and overseas.
- Spurious complaints (five, 5%). The scheme's creation may result in spurious, malicious, or vexatious complaints, generating an increased number of these for providers and the OfS to deal with.

An additional 24 non-substantive comments were received on this question.

Appendix 1: Consultee profile

This section outlines a more detailed profile of those responding to the consultation.

Consultees were presented with several categories and asked to select which best described themselves. Some chose a pre-selected category, while others typed in a freeform response that did not align to a pre-defined category.

Consultees were therefore manually reviewed and grouped by Pye Tait Consulting in agreement with the OfS into one of six categories that were determined jointly following the consultation's conclusion. Grouping consultees into a small number of categories means that each category has a higher number of responses, making subsequent sub-group analysis more meaningful, particularly in instances where categories listed in the original consultation question received a very low number of consultees.

Consultee type

All consultees, including those submitting responses offline, were grouped – in agreement between Pye Tait Consulting and the OfS – and are reported according to the following categories.

Consultee type	Count	Per cent
Higher education provider	67	40%
Students' union	44	27%
Individual based at a higher education provider	16	10%
Student	11	7%
Higher education sector body	9	5%
Other	19	11%

Base: 166 consultees. Source: OfS consultation 2024.

Appendix 2: Consultation questions

The full OfS consultation questions and wording are listed below.

The full consultation guidance, including supplementary wording and context provided for consultees, is available here:

<https://www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-the-ofs-s-new-free-speech-complaints-scheme/>

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?

A report prepared by:

Pye Tait Consulting

Registered in England, Company No: 04001365, VAT No: 755 8312 14

Registered office address:

5 Merus Court, Meridian Business Park, Leicester, LE19 1RJ

email (enquiries related to this report): t.wilson@pyetait.com

email (general enquiries): info@pyetait.com

website: www.pyetait.com

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