

Regulatory advice 24

Guidance related to freedom of speech

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DRAFT

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Summary

1. This document provides guidance to registered higher education providers and their constituent institutions. It also provides guidance to relevant students' unions.¹ The guidance relates to their free speech duties under the Higher Education (Freedom of Speech) Act 2023.² It focuses on duties relating to:³
 - a. securing freedom of speech within the law (the 'secure' duties); and
 - b. the freedom of speech code of practice (the 'code' duties).⁴
2. [From 1 August 2024] the Office for Students (OfS) adjudicates on compliance with the secure duties through the free speech complaints scheme [...].⁵ It also separately regulates compliance with the secure and code duties for relevant students' unions, as set out at [...].⁶
3. This guidance sets out in broad terms how we will assess compliance with these new duties. It gives examples of steps that may, in a range of circumstances, be reasonably practicable for universities, colleges and relevant students' unions to take to secure free speech within the law.

¹ A 'constituent institution', in relation to a registered higher education provider, means any constituent college, school, hall or other institution of the provider. See HERA Part A1 section A4(4). A 'relevant students' union' is a students' union at a registered higher education provider that is eligible for financial support. This does not include a students' union for students at a constituent institution of such a provider. See HERA Part A1 section A5(6). This guidance refers to sections of the Higher Education (Freedom of Speech) Act 2023 by reference to the sections of HERA that the 2023 Act introduces or amends.

² See <https://www.legislation.gov.uk/ukpga/2023/16/contents>.

³ Providers and constituent institutions must also promote the importance of freedom of speech and academic freedom (the 'promote' duty). See HERA Part A1 sections A3 and A4.

⁴ See (a) HERA Part A1 section A1, A4, A5; (b) HERA Part A1 section A2, A4, A6.

⁵ See HERA schedule 6A. See also See www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-the-ofs-s-new-free-speech-complaints-scheme/annex-b-proposed-rules-of-the-free-speech-complaint-scheme/. In this document, we have linked to our consultation on the free speech complaints scheme. We propose that the final published document would link to the settled details of the scheme.

⁶ See HERA section 69B. See also See www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-the-ofs-s-new-free-speech-complaints-scheme/annex-b-proposed-rules-of-the-free-speech-complaint-scheme/. In this document, we have linked to our consultation on our approach to monitoring relevant students' unions on free speech matters. We propose that the final published document would link to the settled details of our approach.

Introduction

4. The core mission of universities and colleges is the pursuit of knowledge. Free speech and academic freedom are fundamental to this purpose. Without free speech there are no new ideas. There is no productive debate. There is no challenge to conventional wisdom. There is no social progress. Even where conventional wisdom reflects truth, it must be open to criticism and discussion. Otherwise, living understanding becomes what John Stuart Mill called 'dead dogma'.
5. All staff and students are therefore entitled to teach, learn and research in a culture that values vigorous debate. Perhaps most importantly, this includes difficult, contentious or discomforting topics.
6. The Higher Education (Freedom of Speech) Act 2023 ('the Act') amends the Higher Education and Research Act 2017 (HERA) to strengthen the legal requirements on universities and colleges relating to freedom of speech and academic freedom. It extends free speech duties, and OfS regulation, directly to relevant students' unions.⁷
7. The Act protects free speech within the law. It does not protect unlawful speech. The Act requires universities, colleges, constituent institutions and relevant students' unions to take steps to secure free speech within the law. It also requires them to maintain a free speech code of practice.

⁷ The OfS expects the duties covered in this guidance to come into force on 1 August 2024. This is subject to relevant secondary legislation being enacted.

Section 1: The ‘secure’ duties and the ‘code’ duties

8. HERA imposes duties on providers, and on their constituent institutions, in relation to freedom of speech and academic freedom. In brief, these duties require the governing body of each provider and constituent institution, among other things:⁸
- a. to take the steps that, having particular regard to the importance of freedom of speech, **are reasonably practicable** for it to take in order to secure freedom of speech within the law for its staff, members, students and visiting speakers; this includes, in relation to academic staff, securing their academic freedom (section A1 and section A4 of Part A1 of HERA) (the ‘secure duty’); and
 - b. to maintain a code of practice setting out matters relating to freedom of speech (section A2 and section A4 of Part A1 of HERA) (the ‘code’ duty).
9. HERA also imposes duties on relevant students’ unions in relation to freedom of speech. In brief, these duties require each relevant students’ union:
- a. to take the steps that, having particular regard to the importance of freedom of speech, **are reasonably practicable** for it to take in order to secure freedom of speech within the law for its members, students, staff, members and staff of the provider and of its constituent institutions and visiting speakers (section A5 of part A1 of HERA) (the ‘secure’ duty); and
 - b. to maintain a code of practice setting out matters relating to freedom of speech (section A6 of part A1 of HERA) (the ‘code’ duty).
10. This guidance sets out some factors that may be relevant to an assessment of whether steps are reasonably practicable. It also sets out a range of steps that may be reasonably practicable for providers, constituent institutions and/or relevant students’ unions to take to secure freedom of speech. Whether (and in what timescale) they are reasonably practicable may vary from one body to another. However, the OfS expects that in a wide range of circumstances it will be reasonably practicable to take many of these steps. It may also be reasonably practicable for providers and others to take other steps, in any particular case.

⁸ Providers and constituent institutions are also required to promote the importance of freedom of speech within the law and of academic freedom for academic staff, in the provision of higher education (section A3 and section A4 of Part A1 of HERA). This guidance does not cover the promote duty.

Section 2: Free speech within the law

‘Freedom of speech’

11. The Act defines freedom of speech as: ‘the freedom to impart ideas, opinions or information (referred to in Article 10(1) of the Convention as it has effect for the purposes of the Human Rights Act 1998) by means of speech, writing or images (including in electronic form).’⁹
12. The Act refers to Article 10(1) of the European Convention on Human Rights (‘the Convention’), ‘as it has effect for the purposes of the Human Rights Act 1998.’ One of the main effects of the Human Rights Act 1998 is to enshrine the Convention rights into English Law. Article 10 pertains to the right to freedom of expression and is set out below.

Article 10 of the Convention

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Therefore, domestic case law, and European Court of Human Rights case law, on Article 10 may be particularly relevant to assessments of compliance with the duties in the Act.

Freedom of speech ‘within the law’

13. All speech is lawful, i.e. ‘within the law’, unless restricted by law. Any restriction of what is ‘within the law’ must be set out in law made by, or authorised by, the state, or made by the courts. This includes (for instance) provisions of the Equality Act 2010 prohibiting discrimination. It also includes common law on confidentiality and privacy.
14. Freedom of speech within the law is protected. Unlawful speech is not protected. However, there is no need to point to a specific legal basis for speech. Instead, the starting point is that speech is permitted unless restricted by law.
15. Free speech includes lawful speech that may be offensive or hurtful to some. Speech that amounts to unlawful harassment or unlawful incitement to hatred or violence (for instance) does not constitute free speech within the law and is not protected.

⁹ See HERA Part A1 section A1(13).

Equality Act 2010

16. Universities and colleges must comply with equality law. The relevant provisions relate to a set of 'protected characteristics' set out in the Equality Act 2010. These are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Discrimination

17. The Equality Act 2010 prohibits unlawful discrimination. There are two types of discrimination: direct discrimination and indirect discrimination.
18. Broadly, direct discrimination may occur where someone is treated less favourably than others, because of a protected characteristic. Direct discrimination is always unlawful, except in some situations where discrimination on grounds of age may be objectively, and so lawfully, justified.
19. Broadly, indirect discrimination may occur where a practice, policy or rule applies to everyone in the same way but has a worse effect on an individual because of a protected characteristic, or on a group of people who share a protected characteristic. For example, an employer may decide to introduce rules that have a worse effect on part-time workers than on full-time workers. If most part-time workers are women, and most full-time workers are not, this may amount to indirect discrimination on grounds of sex. Indirect discrimination can be objectively justified, if it can be shown to be a 'proportionate means of achieving a legitimate aim'. Whether it can, depends on the individual circumstances of the case.

Harassment

20. The Equality Act 2010 includes duties on providers, as employers and providers of higher education, and their staff in relation to harassment.
21. Harassment (as defined by section 26 of the Equality Act 2010) means unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person because of, or connected to, one or more of the person's relevant protected characteristics. (Marriage and civil partnership and pregnancy and maternity are not relevant protected characteristics for these purposes.)
22. In deciding whether conduct has the effect referred to, it is necessary to take into account: the perception of the person who is at the receiving end of the conduct; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect. The last point is important because it introduces an element of objectivity into the test. The perception of the person who is at the receiving end of the conduct is not the only relevant consideration in determining whether the conduct amounts to unlawful harassment.
23. The Protection from Harassment Act 1997 also prohibits harassment. Section 1 of that Act defines harassment by reference to a 'course of conduct' and states that 'the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.' This latter point introduces an element of objectivity into the test.

Public sector equality duty

24. The protected characteristics underpin an overarching equality duty with which public organisations must comply. This is called the public sector equality duty (PSED). It is set out in the Equality Act 2010. Universities and colleges that receive public grant funding from the OfS are public organisations for these purposes and so must comply with the PSED.
25. The duty states that a public authority must, in the exercise of its functions, have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Free speech and the Equality Act 2010

26. Providers, constituent institutions and relevant students' unions are obliged to take reasonably practicable steps to secure freedom of speech within the law. Speech that is not lawful is not protected and there is no obligation to secure it. Therefore, speech that amounts to unlawful harassment or unlawful discrimination under the Equality Act is not protected.
27. However, context is always relevant in determining whether speech does rise to the level of unlawful harassment. Universities and colleges have freedom to expose students to a range of thoughts and ideas, however controversial. Even if the content of the curriculum offends students with certain protected characteristics, this will not make it unlawful unless it is delivered in a way which results in unlawful harassment or is otherwise unlawful.¹⁰
28. In connection with harassment, the Equality and Human Rights Commission (EHRC) 2019 statement on harassment in academic settings is relevant:
- ‘The harassment provisions [of the Equality Act 2010] cannot be used to undermine academic freedom. Students’ learning experience may include exposure to course material, discussions or speaker’s views that they find offensive or unacceptable, and this is unlikely to be considered harassment under the Equality Act.’¹¹
29. The European Court of Human Rights has also affirmed that academic freedom should include freedom to ‘disseminate information and freedom to conduct research and distribute knowledge and truth without restriction.’¹² It has also stated that this freedom ‘is not restricted to academic or scientific research, but also extends to the academics’ freedom to express freely their views

¹⁰ See the OfS’s Insight brief 16, available at: www.officeforstudents.org.uk/publications/freedom-to-question-challenge-and-debate/.

¹¹ See <https://www.equalityhumanrights.com/guidance/freedom-expression-guide-higher-education-providers-and-students-unions-england-and-0>.

¹² See *Sorguc v. Turkey* (2009) ECHR 17089/03 and *Kula v. Turkey* (2018) ECHR 20233/06.

and opinions, even if controversial or unpopular, in the areas of their research, professional expertise and competence.¹³

30. Speech in academic contexts will therefore not amount to unlawful harassment by virtue of the viewpoint or opinion that it expresses, except in the most exceptional circumstances. Providers and constituent institutions should take reasonably practicable steps to secure such speech and not subject it to interference.
31. The PSED is a duty to 'have due regard' to the need to achieve the aims set out above. Providers, and if relevant constituent institutions, should be clear about the precise equality implications of their decisions, policies and practices. They must recognise the desirability of achieving the aims set out above. But they must do so in the context of the importance of free speech and academic freedom, particularly in higher education. Therefore, the PSED does not impose any general legal requirement on higher education providers or constituent institutions to restrict or regulate speech.
32. The PSED applies among other things to the protected characteristic of religion or philosophical belief. 'Philosophical belief' covers those that have the following characteristics: they must be:
 - a. genuinely held
 - b. a belief and not an opinion or viewpoint based on the present state of information available
 - c. a belief as to a weighty and substantial aspect of human life and behaviour
 - d. a belief that attains a certain level of cogency, seriousness, cohesion and importance
 - e. worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with the fundamental rights of others.¹⁴

In common law these include veganism, gender critical belief and Scottish independence.

33. The PSED therefore includes a duty to have due regard to the need to advance equality of opportunity and foster good relations between those who share such a protected belief and those who do not share it. Depending on the circumstances, steps that encourage an environment of tolerance and open debate, with regard to the subject matter of protected beliefs, may be relevant to meeting both the 'secure' duties and the PSED. Equally, steps that harass or discriminate against staff or students, because they share a religion or belief that is a protected characteristic, may be in violation of the Equality Act 2010.

¹³ See *Erdogan and others v. Turkey* (2014) ECHR 346/04 and 39779/04.

¹⁴ *Grainger plc v. Nicholson*.

Section 3: What are ‘reasonably practicable’ steps?

34. Providers, constituent institutions and relevant students’ unions must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for them to take to secure freedom of speech within the law. If such a step is reasonably practicable for it to take, a provider, constituent institution or relevant students’ union must take it.
35. The requirement to take ‘reasonably practicable steps’ includes taking positive steps. It also includes refraining from taking steps which would have an adverse impact on freedom of speech without compelling lawful justification. For instance (and depending on the circumstances), it might be a reasonably practicable step for a university not to fire a member of academic staff for lawfully expressing a particular viewpoint.
36. Factors that are relevant to an assessment of whether steps are reasonably practicable may include, among other things, the following:
 - a. the extent to which taking the step, or not taking it, would secure or restrict freedom of speech;
 - b. the practical costs (time, money, personnel, resources) of taking the step, or of not taking it; and
 - c. financial constraints.
37. In making this judgement the OfS will have particular regard to the importance of freedom of speech, when considering the second and third of these factors.

Example 1

The ambassador of country A is due to address the politics society at University B. On a separate occasion, an activist is due to address University B’s debating society on alleged human rights abuses committed by the government of country A. Country A’s government is highly unpopular among students and academic staff at University B.

University B is considering security arrangements for the two events. Considering practical costs and the importance of freedom of speech, appropriate security arrangements would be reasonably practicable in both cases.

The decision-maker at University B notes that the ambassador of country A is likely to express an unpopular viewpoint (within the law). University B therefore does not provide security for the politics society event. As a result, the ambassador’s event is cancelled.

However, University B provides security for the activist speaker to address the university debating society. This event goes ahead.

Depending on the particular facts of the case, University B may have failed to take reasonably practicable steps to secure free speech. In the circumstances described, it is

likely to have been a reasonably practicable step, that University B should have taken, to have provided security for the ambassador's address.

Example 2

A lecturer, Dr A, has received death threats for (lawful) teaching of controversial content related to religion B. There is evidence that some of the threats come from students at College C, where Dr A is employed. College C refuses to take action to support the lecturer. It also refuses to investigate or punish the death threats. This is because doing so could damage its reputation among followers of religion B.

Depending on the particular facts of the case, College C may have failed to take reasonably practicable steps to secure free speech for Dr A. Dr A's freedom to express or discuss a particular viewpoint is more important than the reputational concerns of College C. In the circumstances described, it is likely to have been a reasonably practicable step, that College C should have taken, to have made a statement supporting Dr A's continued employment and investigated the threats against him.

Students or other members of staff at College C may be afraid to comment on religion B because of Dr A's experience. Depending on the particular facts of the case, College C may also have failed to take reasonably practicable steps that it should have taken to secure their freedom of speech. The importance of securing their freedom to express or discuss a particular viewpoint is likely to outweigh any reputational costs to College C.

38. Providers, constituent institutions and relevant students' unions must take reasonably practicable steps to secure free speech within the law. The OfS does not expect providers, constituent institutions or relevant students' unions to take steps that are not reasonably practicable for them.

Section 4: Steps to secure freedom of speech

39. Providers, constituent institutions and relevant students' unions must, having particular regard to the importance of freedom of speech, take reasonably practicable steps to secure free speech within the law. What this means in practice will depend on the circumstances. For instance, a step may be reasonably practicable for a large provider but not for a small relevant students' union.
40. However, the OfS expects that in a wide range of circumstances, the following may be reasonably practicable steps to secure free speech within the law. This list is illustrative and frames them as steps that providers, constituent institutions and/or relevant students' unions should take. There may be other steps which it is reasonably practicable for an organisation to take in any particular case.
41. Where a step is reasonably practicable for an organisation, it must be taken.

Admissions, appointments, employment and promotion

Admissions

42. The following may be reasonably practicable steps that a provider, constituent institution and (where applicable) a relevant students' union may take in connection with its practices and policies relating to admissions.
43. Providers and constituent institutions should not revoke an offer of admission to a person on the grounds of that person's opinions or ideas.
44. Providers and constituent institutions should not admit students or visiting academics on the basis of funding arrangements or other criteria that have the effect of restricting their or others' free speech or academic freedom within the law. They should be proactive about checking that those applying to be visiting academics do not pose risks to academic freedom.

Example 3

University A accepts international students every year through a programme of visiting scholarships funded by the government of country B. One condition of the scholarships is that recipients must accept the basic principles of the ruling party of country B. Another condition is that recipients must accept direction from country B's government via consular staff.

Depending on the circumstances, these arrangements may undermine free speech and academic freedom at University A. For instance, they may restrict the lawful expression of views by students. If so, amendment or termination of the scholarship agreement is likely to be a reasonably practicable step that University A should now take.

Appointments

45. Each provider and constituent institution must take reasonably practicable steps to achieve the objective of securing that, where a person applies to become a member of academic staff, the

person is not adversely affected in relation to the application because they have exercised their freedom within the law to question and test received wisdom, or to put forward new ideas and controversial or unpopular opinions. The following may be reasonably practicable steps.

46. Providers and constituent institutions should not require applicants to any academic position to commit (or give evidence of commitment) to values, beliefs or ideas, if that may disadvantage any candidate for exercising their academic freedom within the law.
47. Any academic appointment process should include a sufficiently detailed record of all decisions. This record should include evidence that the appointment process did not penalise a candidate for their exercise of academic freedom.
48. Providers and constituent institutions should ensure adequate training on freedom of speech and academic freedom for anyone on an appointment panel. (See paragraph 115 below.)

Example 4

Institute A in University B is jointly funded by University B and a commercial entity based in a foreign country C. A proportion of staff at Institute A are appointed through a process managed within country C. This process imposes an ideological test as a condition of appointment and of ongoing employment.

Depending on the circumstances, these arrangements may have the effect of penalising applicants to academic posts for their exercise of academic freedom. They may also have the effect of restricting the free speech and academic freedom of students and staff at University B. In these circumstances, terminating or amending these arrangements with Institute A is likely to be a reasonably practicable step that University B should now take.

Example 5

University A advertises for a lecturer in mathematics. The advertisement requires all applicants to demonstrate their commitment to political theory X.

Depending on the circumstances, this requirement may penalise candidates for opinions or speech that have no bearing on disciplinary competence. In these circumstances, removing this requirement before advertising is likely to have been a reasonably practicable step that University A should have taken. Withdrawing the advertisement, and re-advertising without this requirement, is likely to be a reasonably practicable step that University A should now take.

Employment

49. The following may be reasonably practicable steps that a provider, constituent institution and (where applicable) a relevant students' union may take in connection with its practices and policies relating to employment.
50. Providers, constituent institutions and relevant students' unions should promptly reject public campaigns to discipline, expel or fire a student or member of staff for lawful expression of an

idea or viewpoint. These may take the form of organised petitions or open letters, an accumulation of spontaneous or organised social media posts, or long-running focused media campaigns.

51. Depending on the circumstances, rather than publicly distancing itself, it may be more helpful for a provider, constituent institution or relevant students' union to reiterate the importance of free speech for all staff and students, including the person affected. It may also be especially important for the response to be timely.

Example 6

A postgraduate literature student, A, publishes a paper accusing Shakespeare of 'systematic racism' based on an analysis of the sonnets. A national newspaper accuses A of 'smearing a great British icon'. It mounts a campaign calling for A to be expelled from their postgraduate course. After two weeks the vice-chancellor of A's university, B, issues the following statement:

'University B regards free speech as a fundamental value that is at the heart of everything we do. This extends even to views that we consider wrong and that many in our community reject. The views of A do not represent the views of University B. University B is proud of Britain's great literary heritage.'

In Example 6, the vice-chancellor of University B did not intervene for two weeks. This period of uncertainty may itself have penalised A. Depending on the circumstances, the statement may have undermined A by criticising their position. The statement was not explicit that University B would not expel A. In these circumstances a clear, prompt and viewpoint-neutral response is likely to have been a reasonably practicable step that University B should have taken.

Example 7

A lecturer, Dr C, writes a blog strongly defending the rights of trans people and claiming that these rights are under attack from activists. This provokes an intense response on social media, including widespread calls for Dr C to be fired. Dr C's employer, College D, immediately issues the following statement:

'College D will not limit the expression of its staff or students beyond the law. College D will not require any apology from, or take any action against, its members, staff or students for their lawful expression of any viewpoint.'

This statement may be helpful. It is prompt, categorical and neutral as to content. Depending on the circumstances, the statement may reduce pressure on Dr C. College D is likely to have taken some of the reasonably practicable steps that it should have taken to secure academic freedom for Dr C. There may be other reasonably practicable steps that College D should take.

52. Providers, constituent institutions and relevant students' unions should not terminate employment for, or deny reappointment to, any member of staff because they have exercised free speech within the law to express a particular viewpoint.
53. Each provider and constituent institution must take reasonably practicable steps to achieve the objective of securing that no member of academic staff is at risk of losing their job or any privileges because they have exercised their freedom within the law to question and test received wisdom, or to put forward new ideas and controversial or unpopular opinions.
54. Providers and constituent institutions should not require holders of any academic position to commit (or give evidence of commitment) to values, beliefs or ideas, if that may disadvantage them for exercising their academic freedom within the law.
55. Any process of dismissal for a member of academic staff should include a sufficiently detailed record of all decisions. This record should include evidence that the process did not penalise a member of staff for their exercise of academic freedom.
56. Providers and constituent institutions should ensure adequate training on freedom of speech and academic freedom for anyone involved in a process of dismissal. (See paragraph 115 below.)

Example 8

A member of catering staff at University A writes to the local newspaper expressing pro-life views (within the law). Students at the University start a petition to have the member of staff fired. Following an investigation, University A fires the staff member on the grounds that there are students who claim to feel unsafe because of the staff member's continued employment.

Depending on the circumstances, this may have been a breach of the free speech duties. This is because there was nothing to suggest that the staff member's speech was unlawful. For instance, claims that the staff member's employment makes others feel unsafe are not, by themselves, enough to make that member's speech unlawful. In these circumstances, retaining (and not disciplining) the staff member is likely to have been a reasonably practicable step that University A should have taken. Reinstating the staff member may now be a reasonably practicable step that University A should take.

Promotion

57. Each provider and constituent institution must take reasonably practicable steps to achieve the objective of securing that, where a person applies for academic promotion, the person is not adversely affected in relation to the application because they have exercised their freedom within the law to question and test received wisdom, or to put forward new ideas and controversial or unpopular opinions. The following may be reasonably practicable steps.
58. Providers and constituent institutions should not require applicants for academic promotion to commit (or give evidence of commitment) to values, beliefs or ideas, if that may disadvantage any candidate for exercising their academic freedom within the law.

59. Any academic promotion process should include a sufficiently detailed record of all decisions. This record should include evidence that the promotion process did not penalise a candidate for their exercise of academic freedom.
60. Providers and constituent institutions should ensure adequate training on freedom of speech and academic freedom for anyone on a promotion panel. (See paragraph 115 below.)

Example 9

University A requires all candidates for academic promotions to submit a 500-word statement of evidence of commitment to University A's work advancing equality of outcome.

Depending on the circumstances, University A may be restricting the lawful expression of certain viewpoints. For instance, University A's work on equality of outcome might focus on areas where a lecturer thinks that equality of opportunity is more important than equality of outcome. The lecturer may be deterred from expressing this view. If so, removing this requirement from promotion processes is likely to be a reasonably practicable step that University A should now take.

Codes of conduct

61. The following may be reasonably practicable steps that a provider, constituent institution and (where applicable) a relevant students' union may take in connection with its codes of conduct.
62. If any code, contract or policy that regulates speech, or has the effect of regulating speech, identifies a category of restricted speech (such as 'harmful speech'), then:
- such a category should be defined in a way which is not capable of restricting freedom of speech within the law, or academic freedom; and
 - that definition should explain that the interpretation of that category includes an objective element (so that it does not depend only on the perception of the alleged victim).
63. Taking the step described above does not by itself guarantee that adopting the code, contract or policy is not in breach of the free speech duties.

Example 10

College A's employment contract states: 'College employees must uphold the college's commitment to political theory X.'

Depending on the particular facts of the case, this statement may suppress a particular viewpoint. For instance, it may suppress scepticism about political theory X. If so, removing this contractual requirement is likely to be a reasonably practicable step that College A should now take.

64. The terms of any code, contract or policy should not be so broad that they suppress the lawful expression of a particular viewpoint or of a wide range of legally expressible content.

Example 11

University A's student handbook states: 'Misgendering is never acceptable. You must always address or refer to a person using their preferred pronouns.'

Depending on the facts of the case, University A's rule is very likely to restrict freedom of speech within the law. (For instance, a student writing a dissertation in criminology might refer to trans women as 'he' because the student considers this necessary for clarity.) If so, removing this blanket rule is likely to be a reasonably practicable step that University A should now take.

Example 12

University A's IT acceptable use policy says: 'Users must not transmit offensive material using University internet facilities.'

Many legally expressible views may be offensive to some. This includes contributions to academic debate. Depending on the facts of the case, this policy may restrict free speech within the law. If so, removing or amending it is likely to be a reasonably practicable step that University A should now take.

65. Policies and other statements should not discourage lawful speech by misrepresenting a provider's legal duties. This may include oversimplification – for instance, by omitting the importance of freedom of speech.

Example 13

University A's Prevent guidance document states (without qualification): 'The University has a duty to prevent extremism.'

Its Public Sector Equality Duty guidance document states (without qualification): 'The University has a duty to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.'

These misstatements of the law may restrict free speech within the law. For instance, they may encourage staff to control or restrict reading lists. In a politics course, for instance, staff might be reluctant to set unorthodox or radical texts.

It would be a reasonably practicable step that University A should now take to amend the guidance document to state these duties accurately. For instance, the guidance should refer to the duty to have due regard to the need to prevent people from being drawn into terrorism. And it should make clear that in carrying out its Prevent duty, University A must have particular regard to the duty to ensure freedom of speech and to the importance of academic

freedom. It should also refer to the duty to have due regard to (among other things) the need to foster good relations between the classes of people concerned.¹⁵

66. Policies that regulate

- a. protests and demonstrations;
- b. posting or distributing written material (such as flyers); or
- c. recruitment activities

should not restrict these activities because they express or support a particular legally expressible viewpoint.

Example 14

The students' union at University A bans the University Christian Society from its freshers' fair. This is because the students' union's freshers' fair policy bans all groups that take stances that are inconsistent with a stated set of values. In this case, the Christian Society's stance on assisted dying is taken to be inconsistent with those values.

Depending on the particular facts, the ban may suppress a legally expressible viewpoint. If so, lifting the ban and changing its policy are likely to be reasonably practicable steps that the students' union should now take.

67. Any other regulation of these activities should not be unnecessarily onerous.

Example 15

University A's policy on demonstrations requires that organisers complete a complex 25-page form at least six months before holding any demonstration or protest.

Example 16

College B requires students to seek written permission a month in advance for the posting of flyers, which must be posted on a designated noticeboard. The noticeboard is small, and flyers may not be posted anywhere else. It also requires students to seek written permission a month in advance for the handing out of leaflets anywhere on college premises.

Depending on the particular facts of these examples, these regulations may be unnecessarily onerous. If so, rewriting the regulations to relax them is likely to be a reasonably practicable step that University A and College B should now take.

¹⁵ See EA 2010 section 149 and CTSA 2015 section 26 and section 31.

Complaints and investigation processes

68. The following may be reasonably practicable steps that a provider, constituent institution or relevant students' union may take in connection with its complaints and investigations processes.
69. Providers, constituent institutions and relevant students' unions should not encourage students or staff to report others over speech that could include the lawful expression of a particular viewpoint.

Example 17

University A promotes an online portal. Students can use this portal to submit anonymous reports to senior staff of 'problematic speech'.

Depending on the circumstances, the portal may discourage open and lawful discussion of controversial topics, including political topics and matters of public interest. If so, removing such a portal and/or replacing it with a reporting mechanism that would not have this effect, are likely to be reasonably practicable steps that University A should now take.

70. Every complaints process should include a fair, objective and rapid triage process for complaints relating to speech. This should reject vexatious, frivolous or obviously unmeritorious complaints relating to speech.

Example 18

Professor A at University B takes part in a protest against the policies of country C. Professor A gives a speech at the protest. In the circumstances this speech is clearly a lawful expression of political views. However, Professor A's expressed views upset some students at University B. They bring a complaint against Professor A. There is a lengthy investigation process. At the end of this process, University B finds that there is no case to answer. This should have been clear to investigators at the outset, but University B was concerned that closing the investigation quickly would further offend the students who complained.

The prospect of a lengthy investigation with an uncertain outcome may deter students and staff from putting forward unpopular views on controversial topics. A rapid triage process may ensure swift dismissal of complaints about speech that do not warrant further investigation. Putting in place such a triage process is likely to be a reasonably practicable step that University B should now take.

71. Complaints processes should be concluded as rapidly as is reasonably practicable, compatibly with the interests of justice.
72. Providers, constituent institutions and relevant students' unions should not pursue vexatious complaints or trivial investigations into other matters against an individual because of their lawful expression of a viewpoint.

Free speech code of practice

Publication and format

73. The following steps, in connection with the publication and format of the free speech code of practice, may be reasonably practicable steps for a provider, constituent institution or relevant students' union to take to secure freedom of speech.
74. The document should be published in a prominent position. It should be visible on the provider's, constituent institution's or relevant students' union's website. It should be easily accessible by students, members of staff, visiting speakers and those considering applying to be students. It should be accessible without any form of password or security check.
75. There should be a clear and simple statement about the document. This statement should summarise its content. It should also make clear how to access it (for instance, by including a link). The statement should be:
- a. communicated directly to all students and staff in writing at least once each calendar year;
 - b. set out in any prospectus of the provider, constituent institution or relevant students' union;
 - c. set out in any student or staff handbooks; and
 - d. included prominently in any other document stating or explaining any policy that may affect free speech or academic freedom (for instance a bullying and harassment policy, or research ethics policy), along with a statement that nothing in that other document should be read as undermining or conflicting with the free speech code of practice; and that in case of any conflict the free speech code of practice will take precedence.

This includes all policies relating to any of the following matters:

- admission, appointment, reappointment and promotion
- disciplinary matters
- employment contracts (that may include conditions on speech)
- equality or equity, diversity and inclusion, including the Public Sector Equality Duty
- harassment and bullying
- IT, including acceptable use policies and surveillance of social media use
- Prevent duty
- principles of curricular design
- research ethics

- speaker events
- staff and student codes of conduct.

Values relating to freedom of speech

76. HERA requires providers, constituent institutions and relevant students' unions to set out, in their free speech codes of practice, their values relating to freedom of speech together with an explanation of how those values uphold freedom of speech.¹⁶
77. Providers, constituent institutions and relevant students' unions are well-placed to articulate for themselves their values relating to free speech and academic freedom. However, providers and constituent institutions (and, where appropriate, relevant students' unions) should consider including the following:
- a. A statement about the overarching value of freedom of speech within the law for the organisation in question.
 - b. A statement about how those values uphold freedom of speech within the law at the provider, constituent institution or relevant students' union.
 - c. A statement emphasising the very high level of protection for the lawful expression of a viewpoint and for speech in an academic context.
 - d. A statement that freedom of speech within the law may include speech that is offensive.

Procedures to be followed by staff and students

78. HERA requires that the code of practice sets out procedures to be followed in connection with the organisation of meetings and other activities. In connection with that section of the code, the following may be reasonably practicable steps for a provider, constituent institution or relevant students' union to take to secure freedom of speech.
79. The scope of the procedures section of the document should be broad. It should not be limited to policies relating to external speakers or events. The code of practice should apply (and be linked) to the procedures to be followed by staff and students of the provider, constituent institution or (if applicable) relevant students' unions when organising any activities that relate to academic life, whether those activities take place on or off campus. This includes activities listed in paragraph 75d above.
80. The content of the procedures section should clearly and expressly require decision-makers, in making any decision or adopting any policy that could directly or indirectly (and positively or negatively) affect freedom of speech, to act compatibly with the statutory free speech duties.
81. This section of the code of practice should also include a link to the OfS's free speech complaints scheme together with the following text:

'The Office for Students (OfS) operates a free speech complaints scheme. Under that scheme, the OfS can review complaints about free speech from members, students, staff,

¹⁶ HERA Part A1 Section A2(2)(a), Section A4 and Section A6(2)(a).

applicants for academic posts and (actual or invited) visiting speakers. Information about the complaints that the OfS can review is available on its website. [LINK]¹⁷

82. The procedures for organising room bookings and speaker events should adhere to the following principles, which are widely recognised:

- a. They should make clear that the starting point for any event is that it should go ahead and that cancellation is exceptional and undesirable.
- b. The procedures should be clearly set out.
- c. The process should not take longer than necessary.
- d. There should be a single, identified point of contact for questions about the process.
- e. There should be an identified person responsible for deciding whether and how an event may proceed.
- f. There should not be onerous requirements for information.

83. A provider, constituent institution or relevant students' union should set out in this section of the code of practice a process for the timely consideration of risks to the event. The purpose of the process would be to put in place steps that permit the event to go ahead. The document should specify who would be responsible for planning and taking these steps. (See also paragraph 108 below.)

Required conduct

84. HERA requires that the free speech code of practice sets out the conduct required in connection with relevant meetings and other activities. The following steps, in connection with this section of the free speech code of practice, may be reasonably practicable steps for a provider, constituent institution or relevant students' union to take to secure freedom of speech.

85. The scope of this section should replicate that in the procedures section of the free speech code of practice. See paragraph 79 above.

86. The content of this section should be consistent with the following principles:

- a. Everyone has the right to free speech within the law.
- b. Providers, constituent institutions and relevant students' unions should seek to expose their members and students to the widest possible range of views.
- c. If a speaker breaks the law, it is the speaker who is culpable.

¹⁷ See www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-the-ofs-s-new-free-speech-complaints-scheme/.

- d. Protest is itself a legitimate expression of freedom of speech. However, protest must not shut down debate.¹⁸

Criteria for passing on security costs

87. HERA requires that a provider, constituent institution or relevant students' union must secure that, apart from in exceptional circumstances, use of its premises by any individual or body is not on terms that require the individual or body to bear some or all of the costs of security relating to their use of the premises.¹⁹
88. The criteria for 'exceptional' circumstances, in which the provider, constituent institution or relevant students' union may pass on security costs to the organiser of an event, are for the provider, constituent institution or relevant students' union to set. However, HERA places a duty on providers, constituent institutions and relevant students' unions to set out in the free speech code of practice the criteria for determining whether there are exceptional circumstances.²⁰
89. As a reasonably practicable step to securing freedom of speech, these criteria should be clear, objective and neutral. This means that both the criteria for assessing security costs, and the definition of what counts as exceptional circumstances, should not (so far as is consistent with the law) depend on any of the following:
- a. in relation to any individual, their ideas or opinions;
 - b. in relation to any body, its policy or objectives or the ideas or opinions of any of its members; and
 - c. in relation to the event, the ideas or opinions likely to get legal expression at it.
90. The criteria should be framed in such a way that 'exceptional' circumstances only arise very rarely.
91. For instance, a relevant students' union might have a stated policy that it will not pass on the first £X of security costs associated with the use of its premises by an individual or body, where X is stated as a numerical quantity that applies to all individuals or bodies regardless of their ideas, opinions, policies or objectives; and where security costs rarely exceed £X.

Example 19

Students' union A's policy on the use of its premises states: 'We will not pass on security costs for outside events except in exceptional circumstances. "Exceptional" circumstances may include those in which the views expressed at such an event are exceptionally offensive or especially likely to shock or disturb.'

¹⁸ Similar principles are set out in the Joint Committee on Human Rights report 'Freedom of Speech in Universities', 2018. See <https://committees.parliament.uk/committee/93/human-rights-joint-committee/publications/reports-responses/>.

¹⁹ HERA Part A1 section A1(10), section A5(2).

²⁰ HERA Part A1 section A2(2)(d), section A4, section A6(2)(d)(ii).

Example 20

Students' union B's policy on the use of its premises states: 'We will take reasonably practicable steps not to pass on security costs for outside events except in exceptional circumstances. Circumstances are "exceptional" when security costs exceed £X. In these circumstances we will pass on the residue of security costs to the organisers.'

In example 19 the students' union has defined 'exceptional circumstances' vaguely and in a way that depends on the viewpoints that may be expressed. Replacing this definition with a clear, objective and neutral specification of 'exceptional' circumstances, as in example 20, is likely to be a reasonably practicable step that the students' union should now take towards securing freedom of speech within the law for visiting speakers and others.

92. It may also be a reasonably practicable step for the provider or relevant students' union to apply its policy uniformly. That is, it will always pass on security costs above the first £X (or whatever the stated threshold is) where these arise. It should not apply the policy in a manner that depends to any extent on the matters stated in 89a-c.

Example 21

University B has a stated policy that it 'may' pass on security costs above £X to the organisers of an event.

A national Islamic society hires premises of University B to host a conference. There is reason to expect serious disruption at the event. As a result, University B estimates security costs to be £2,000 above the threshold. However, it covers these costs in their entirety.

Two weeks later, a national Jewish society hires the same premises to host a conference. There is reason to expect serious disruption at the event. As a result, University B again estimates security costs to be £2,000 above the threshold. It covers the first £X but passes on the remaining £2,000 to the organisers. As a result, the event is cancelled.

In this example University B may have applied its policy inconsistently to two groups in a way that depends on the policies or objectives of those groups or on the ideas and opinions of their members. If so, University B is likely to have breached its free speech duties. Covering costs for both groups is likely to have been a reasonably practicable step that University B should have taken towards securing freedom of speech within the law for visiting speakers.

93. As a reasonably practicable step the provider, constituent institution or relevant students' union should supply the organiser of the event with a clear written summary of its calculation of the expected security cost and an explanation for this calculation. It must also where reasonably practicable have in place a process for appealing this calculation to an independent review, and for the provider, constituent institution or relevant students' union to supply this summary in enough time for the event organiser to appeal the calculation.
94. In this section of the code, a relevant students' union must also set out its criteria for making decisions about its support and funding for events and activities to which the 'secure' duties are

relevant.²¹ It may be a reasonably practicable step to state here that neither affiliation to the relevant students' union, nor any associated benefits, is denied to any student society on the grounds specified in paragraph 89b above.

Free speech complaints scheme

95. The following may be reasonably practicable steps that a provider, constituent institution or relevant students' union may take in connection with the free speech complaints scheme.
96. From 1 August 2024, providers, constituent institutions and relevant students' unions should include the text in paragraph 98 below in a prominent place in the following documents or information sources:
- a. staff and student induction materials;
 - b. freedom of speech code of practice and any process or procedure for managing speaking events, for internal or external speakers;
 - c. any disciplinary, complaints, appeals, grievance or similar internal review process; and
 - d. in the case of a provider or constituent institution, application materials for applicants to become a member of academic staff.
97. At least once a year, providers, constituent institutions and relevant students' unions should bring this scheme to the attention of the following persons:
- a. In the case of a registered higher education provider or constituent institution: students, members and members of staff of that registered higher education provider or constituent institution (as the case may be);
 - b. In the case of a relevant students' union:
 - i. members or members of staff of the relevant students' union;
 - ii. students of a registered higher education provider to which the relevant students' union relates; and
 - iii. members or members of staff of a registered higher education provider to which the relevant students' union relates or of any of its constituent institutions.

98. The text is as follows:

'The Office for Students (OfS) operates a free speech complaints scheme. Under that scheme, the OfS can review complaints about free speech from members, students, staff, applicants for academic posts and (actual or invited) visiting speakers. Information about the complaints that the OfS can review is available on its website. [LINK]²²

²¹ HERA 2017 Part A1 sect. A6(2)(d)(i).

²² See www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-the-ofs-s-new-free-speech-complaints-scheme/.

Governance

99. The following may be reasonably practicable steps that a provider, constituent institution or relevant students' union may take in connection with governance.
100. Providers, constituent institutions and relevant students' unions should record all decisions that could directly or indirectly (and positively or negatively) affect free speech within the law. These records should demonstrate how the organisation has had particular regard for the importance of free speech within the law.
101. Providers, constituent institutions and relevant students' unions should put in place and follow delegation arrangements setting out clearly and explicitly which committees or individuals are authorised to make decisions about matters that could directly and/or indirectly (and positively or negatively) affect compliance with any free speech duties.
102. Providers, constituent institutions and relevant students' unions should ensure that terms of reference, of all committees that could affect compliance with free speech duties, expressly provide for consideration of this impact. This includes committees responsible for any of the following matters:
- a. admission, appointment, reappointment and promotion processes
 - b. disciplinary processes
 - c. employment contracts (that may include conditions on speech)
 - d. processes and policies relating to equality or equity, diversity and inclusion, including the Public Sector Equality Duty
 - e. harassment and bullying policies
 - f. IT policies and processes, including acceptable use policies and surveillance of social media use
 - g. Prevent duty
 - h. principles of curricular design
 - i. research ethics
 - j. speaker events
 - k. staff and student codes of conduct.
103. Providers and (where relevant) constituent institutions should ensure that decisions about the curriculum and the way it is delivered safeguard:
- a. the ability of academics to teach and communicate ideas that may be controversial or unpopular but lawful; and
 - b. opportunities for students to be exposed to such ideas.

Research

104. The following may be reasonably practicable steps that a provider, constituent institution or (if applicable) relevant students' union may take in connection with research.
105. Staff and students should be free to undertake academic research within the law. This freedom should not be restricted or compromised in any way because of a perceived or actual tension between:
- a. any conclusions that the research may reach or has reached or the viewpoint it supports, and
 - b. the organisation's policies or values.

Nor should it be restricted or compromised in any way because of any external pressure connected with a.

Example 22

A research associate at College A works on the connection between violent crime and religion B. She publishes research suggesting a strong connection. Because her work reaches this conclusion, students at College A petition for her to be fired. The petition gains hundreds of signatures internationally.

Following investigation, College A finds that the conclusion of this research conflicts with its value of respect for all religions. On this basis it terminates her employment.

Depending on the circumstances, College A may have restricted the research associate's academic freedom. If it has, then retaining her (without disciplining her in any way) is likely to have been a reasonably practicable step that College A should have taken. In some circumstances, reinstating her is likely to be a reasonably practicable step that it should now take.

Example 23

Dr A is an international relations scholar at University B. Dr A has written articles criticising the foreign policy of country C. The ambassador of country C calls the vice-chancellor of University B, pressuring the University to censor Dr A. As a result, University B does not support Dr A's work as it relates to country C. For instance, University B does not support his application for a research grant that would have supported work relating to country C. Nor does it take any action when Dr A's visa from C is revoked, so that he cannot enter C for purposes of conducting academic research.

Depending on the circumstances, University B may have failed to secure academic freedom for Dr A. If so, supporting Dr A's application, and protesting or taking other action when Dr A's visa was revoked, are likely to have been reasonably practicable steps that University B should have taken.

Speaker events

106. Providers, constituent institutions and relevant students' unions must take reasonably practicable steps to secure freedom of speech for visiting speakers and others. This objective includes securing that the use of any premises of the provider, constituent institution or relevant students' union is not denied to any individual or body on the following grounds:

- a. in relation to an individual, their ideas or opinions
- b. in relation to a body, its policy or objectives or the ideas or opinions of any of its members

and that the terms on which such premises are provided are not to any extent based on such grounds.²³

107. Depending on the circumstances, it may occasionally be consistent with this duty that the provider, constituent institution or relevant students' union regulates which premises may be used for a particular event and at what time they may be used, on grounds related (for instance) to the policy or objectives of the body to which it is making the premises available.

Example 24

A political society that supports the governing party of country A seeks to hold its annual conference at University B. It deliberately attempts to book a venue next to prayer rooms used by students and staff belonging to the C faith. The current regime of country A has a long history of persecuting the C minority in that country. University B declines to permit the political society to use those premises, but instead offers other premises in another part of the campus.

In this example University B has not made available the premises requested by the society, and it has made that choice based in part on the policy of that society. However, it has not restricted the expression of any viewpoint because it has made appropriate alternative premises available. University B is likely to have taken some of the reasonably practicable steps that it should have taken to secure freedom of speech within the law.

108. It may be a reasonably practicable step for the provider, constituent institution or relevant students' union to have in place a process for the timely consideration of controversial events. The purpose of the process would be to put in place mitigating steps that permit the event to go ahead. The process should specify who would be responsible for planning and taking these steps.

²³ See HERA 2017 Part A1 sect. A1(3) and (4) and sect. A5(3) and (4).

Example 25

Professor A is due to visit University B to give a seminar on animal experiments. She has warned the organisers that the event may be controversial. However, University B has no effective notification process for external speakers. Therefore, the warnings are not escalated. Hours before the event, staff at University B learn of a credible threat that animal rights activists will attempt to disrupt the event and to attack the speaker. The university cancels the event.

In this example University B may have had no alternative to cancelling the event on the day that it was due to take place. However, if it had had in place, and acted upon, an external speaker policy that enabled timely escalation of the issue, then it need not have got into that position in the first place. There would have been time to consider suitable security arrangements to enable the event to go ahead. Having in place such a policy, and acting on it, are likely to have been reasonably practicable steps that University B should have taken.

109. It may be a reasonably practicable step for a provider, constituent institution or relevant students' union not to cancel any event on the basis of the legal expression of any viewpoint by any speaker, in response to objections or protests, however widespread.

Example 26

A student politics society arranges a seminar between the local MP and representatives of opposing parties. The seminar is to be held in the students' union. One of the proposed speakers has previously, and legally, campaigned to raise awareness of human rights abuses against members of a minority group in country A by the A majority population. Local activists collect signatures for a petition that criticises the event as a form of victimisation of the A community. The students' union cancels the event. It says that it has done this 'out of respect for the feelings of the local A community.'

Depending on the circumstances, the students' union in this example may have restricted freedom of speech within the law for a visiting speaker. If so, then not cancelling the event is likely to have been a reasonably practicable step that the students' union should have taken.

110. It may be a reasonably practicable step for a provider, constituent institution or relevant students' union not to interfere with free speech or academic freedom any more than is necessary to ensure that the event goes ahead safely and within the law.

Example 27

College A is due to hold a seminar series on political violence. One of the speakers, Dr B, is expected to discuss (within the law) some especially extreme and polarising examples that are likely to upset some students in the audience. College A requires Dr B to omit those examples from the discussion.

Depending on the circumstances, College A might instead have taken mitigations short of restricting the content of Dr B's academic speech. For instance, it might have approached its own welfare services to provide support for people affected by the issues raised, rather than preventing them from being raised at all. In many circumstances, these are likely to have been reasonably practicable steps that College A should have taken.

Teaching

111. The following may be reasonably practicable steps that a provider or constituent institution may take in connection with teaching.
112. Providers and constituent institutions should not treat a student unfavourably, or less favourably than it treats or would treat another student—
- a. in the way it provides education for the student;
 - b. in the way it affords the student access to a benefit, facility or service;
 - c. by not providing education for the student;
 - d. by not affording the student access to a benefit, facility or service;
 - e. by excluding the student; or
 - f. by subjecting the student to any other detriment
- on the grounds of that student's opinions or ideas.
113. Academic staff should not be constrained or pressured in their teaching to endorse or reject particular value judgements.

Example 28

University A requires that all teaching materials on British history will represent Britain, and British foreign policy, in a positive light.

In so far as this requirement suppresses a particular viewpoint, removing it is likely to be a reasonably practicable step that University A should now take.

Example 29

Department A of University B applies for accreditation to a charter body with links to the fossil fuel industry. The accreditation process requires it to sign up to a set of principles. These include the principle that 'Fossil fuel exploration is one of the best ways to meet our future energy needs.'

Depending on the circumstances, institutional endorsement of this principle may discourage expression of legally expressible views. Not implementing the provisions of any accreditation

that risks undermining free speech and academic freedom is likely to be a reasonably practicable step that University B should now take.

Training and induction

114. The following may be reasonably practicable steps for a provider, constituent institution or relevant students' union to take in connection with training and induction.
115. Providers, constituent institutions and relevant students' unions should offer adequate training on freedom of speech and academic freedom. This training should be required for all staff involved in making decisions in relation to the following:
- a. admission, appointment, reappointment and promotion processes
 - b. disciplinary processes
 - c. employment contracts (that may include conditions on speech)
 - d. processes and policies relating to equality or equity, diversity and inclusion, including the Public Sector Equality Duty
 - e. harassment and bullying policies
 - f. IT policies and processes, including acceptable use policies and surveillance of social media use
 - g. Prevent duty
 - h. principles of curricular design
 - i. research ethics
 - j. speaker events
 - k. staff and student codes of conduct.
116. 'Adequate training' means that staff will have an up-to-date understanding of:
- a. the free speech code of practice and how it applies in practice, including its application in detail to the member of staff's role in the organisation;
 - b. the requirements of HERA, the Human Rights Act (HRA) and the Equality Act 2010 in relation to freedom of speech and how they apply in detail to the member of staff's role in the organisation; and
 - c. the free speech complaints scheme and its relevance to the member of staff's role in the organisation.
117. Providers, constituent institutions and relevant students' unions should make available, to all staff and students, adequate induction on freedom of speech and academic freedom. This

induction should be required for all staff and students. 'Adequate induction' means that all staff and students will have at least an up-to-date understanding of:

- a. the free speech code of practice and how it applies in practice;
- b. their own free speech rights under HERA, the HRA and the Equality Act 2010;
- c. the free speech rights of members, members of staff, students and visiting speakers under HERA, the HRA and the Equality Act 2010; and
- d. the free speech complaints scheme and their own right to use it.

118. Providers, constituent institutions and relevant students' unions should not require training or induction that imposes a requirement to endorse any controversial viewpoint or value-judgement.

Example 30

A department at University A requires incoming students to complete race awareness training. As part of the training, they must complete a test. One question on the test is as follows: 'All white people are complicit in the structural racism pervading British society. True or false?' The only answer marked correct is 'True'.

Depending on the circumstances, this training may impose a requirement to endorse a controversial viewpoint. For instance, it may penalise anyone who thinks that some white people are not complicit in racism. If so, removing this question from the training is likely to be a reasonably practicable step that University A should now take.

Annex A: Relevant legislation

Counter-Terrorism and Security Act 2015

<https://www.legislation.gov.uk/ukpga/2015/6/contents>

Equality Act 2010

<https://www.legislation.gov.uk/ukpga/2010/15/contents>

Higher Education and Research Act 2017

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

Higher Education (Freedom of Speech) Act 2023

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

Human Rights Act 1998

<https://www.legislation.gov.uk/ukpga/1998/42/contents/42/contents>

DRAFT

Annex B: Glossary of terms

Academic freedom

Academic freedom is defined at Part A1 of HERA (as amended by the Act):

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

(a) to question and test received wisdom, and

(b) to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of being adversely affected in any of the ways described in subsection (7).

A1 (7) Those ways are—

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

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

Academic staff

A member of staff who is employed, or otherwise engaged, for the purpose of teaching or conducting research.

Constituent institutions

Constituent institution is defined at Part A1 Section A4 of HERA:

'Any constituent college, school, hall or other institution of a registered higher education provider.'

Governing body

As defined at section 85 of HERA.

Member

Whether a person is a 'member', in relation to a registered higher education provider or constituent institution, is a product of the legal constitutional arrangements of the provider (for example, the membership provisions in a Royal Charter or legislation for a higher education corporation) and/or contractual arrangement.

A member does not include a person who is a member of the provider or constituent institution solely because of having been a student of the institution.

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

Premises

Includes all land, buildings, facilities, and other property in the possession of, or owned, leased, used, supervised or controlled by the university, college or students' union.

Prevent duty

Defined at section 26 of the Counter-Terrorism and Security Act 2015:

'A specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism.'

Section 31 of the Counter-Terrorism and Security Act 2015:

'(1) When carrying out the duty imposed by section 26(1), a specified authority to which this section applies—

- (a) must have particular regard to the duty to ensure freedom of speech, if it is subject to that duty;
- (b) must have particular regard to the importance of academic freedom, if it is the proprietor or governing body of a qualifying institution.'

Registered higher education provider and governing body in relation to such a provider

These terms have the same meanings as at Part 1 of HERA (see section 85). The OfS publishes a Register of registered higher education providers on its website.

Registered higher education provider that is eligible for financial support

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

Relevant students' union

Relevant students' union is defined at Part A1 section A5 of HERA (as amended by the Act):

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

Staff

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

Students

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

Students' union

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

Visiting speakers

A person who was invited to speak at a registered higher education provider, constituent institution or relevant students' union. It does not include a person who wanted or requested an invitation to speak but was not invited. It may include a person whose invitation has not been approved through an internal approvals process.

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