

10 May 2024

Dear

Protests on campus: tackling harassment and securing freedom of speech

I'm writing in the context of the protests that are taking place on some university campuses at the moment, as students and staff express strongly held views about events in the Middle East. I wanted to let you know that we understand the challenges that these issues may be creating for you and your colleagues, and to set out how the OfS is currently thinking about its regulatory role on these issues.

We recognise that universities and colleges must ensure the physical safety of all their students and staff. We also recognise that they may face difficult decisions when balancing the right to freedom of speech within the law against the need to protect students from unlawful harassment and intimidation. We acknowledge that they may have to take these decisions quickly, on the basis of incomplete or conflicting reports, and in the presence of extensive media and public interest.

Later this month we expect to publish our plans for future regulation of harassment in universities and colleges. In parallel, we are currently consulting on several matters relating to free speech and academic freedom, in advance of strengthened legal requirements taking effect from 1 August 2024. In developing these two connected areas of our work we have taken time to ensure that we are setting out a consistent and coherent position: we want to avoid imposing obligations on institutions to prevent harassment that conflict with their new free speech duties.

The following principles are reflected in our current consultation on proposed guidance on free speech matters.¹ They are also consistent with our expected new approach to tackling harassment.² While every case should be judged on its own facts, we are sharing these principles with you now because you may find them helpful to keep in mind while these protests continue.

1. Higher education providers should continue to ensure the physical safety of all students and staff on campus. They should also uphold free speech within the law for students, staff and visiting speakers. But this does not, and cannot, include discrimination against, or harassment of, Jewish students or staff, or any other conduct prohibited by law.
2. Within these limits, universities and colleges need to take reasonably practicable steps to secure freedom of speech within the law for students, staff and visiting speakers. This includes making provision for a wide range of lawfully expressible ideas and opinions, and for peaceful protest. This duty does not extend to individuals who may have joined a protest on the grounds of a university or college but have no other relation to that institution.
3. Our expectation is that institutions should remain vigilant to identify unlawful harassment, or other speech or expression outside the law, and should:
 - a. Adhere to relevant policies and procedures in reporting unlawful harassment, and other potentially unlawful conduct to the police and other relevant authorities as a matter of urgency where appropriate.
 - b. Take timely and appropriate action, again in accordance with agreed policies and procedures, to support students or staff affected by unlawful conduct.
 - c. In the context of unlawful harassment, have in place clear policies so that students and staff understand how they can raise issues, and how they can expect these issues to be handled.
4. We recognise that for universities and colleges to manage their affairs effectively and safely, they may have to regulate the time, place and manner of expression, where there are compelling reasons to do so. For instance, a protest may directly interfere with others' learning, teaching or research (for instance by occupying a classroom). In those circumstances a university or college may need to act to ensure continuity of its essential functions.
5. Wherever reasonably practicable, restrictions on speech should focus on the time, place and manner of that speech. They should not, in intent or effect, restrict legally expressible viewpoints. Nor should they be framed so broadly that they may be used to punish or suppress a legally expressible viewpoint. For instance, a requirement that protestors should not intrude

¹ See www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-proposed-regulatory-advice-and-other-matters-relating-to-freedom-of-speech/.

² See www.officeforstudents.org.uk/publications/consultation-on-a-new-approach-to-regulating-harassment-and-sexual-misconduct-in-english-higher-education/.

into teaching spaces is suitably neutral as to the viewpoint expressed. By contrast, a requirement that protests should not undermine the university's values may suppress lawful expression of a particular range of viewpoints.

6. Restrictions on the time, place and manner of lawful speech should be the least intrusive ones necessary for ensuring safety and continuity of essential functions. For example, a student group may wish to set up, on a university lawn, an exhibition displaying flags, signs and leaflets that lawfully express viewpoints that many others find offensive. The university or college should not restrict the exhibition to a remote and inconvenient place or time, if a more suitable venue could be used temporarily and without disrupting essential functions.

The OfS does not currently have a role in regulating students' unions in relation to freedom of speech. However, we are aware that students' unions may currently be facing similar issues to providers in relation to the current protests. When the relevant provisions come into force, the new legislation will also impose duties on relevant students' unions relating to freedom of speech.³ To the extent that it may be helpful for them, both now and as they start to think about any new duties, you may wish to share and discuss these principles with your students' unions.

I'm looking forward to seeing many vice-chancellors, principals and other senior colleagues at meetings hosted by sector bodies and mission groups over the next few days. As always I would welcome your thoughts on these and other issues, at those events or separately.

Yours sincerely

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³ See www.officeforstudents.org.uk/advice-and-guidance/quality-and-standards/freedom-of-speech/changes-to-regulation/.