

Consultation on the OfS's new free speech complaints scheme

**Analysis of consultation responses
and decisions**

Reference OfS 2026.34

Enquiries to regulation@officeforstudents.org.uk

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Executive summary

Free speech and academic freedom are fundamental to the core mission of universities and colleges – the pursuit of knowledge. The robust exchange of ideas provides the essential underpinning for a high quality education and as the statutory regulator for higher education in England, the Office for Students (OfS) will support institutions to safeguard this.

In August 2025 strengthened protections for freedom of speech in higher education came into force. On 17 June 2026, the Secretary of State for Education made regulations to commence provisions in respect of a new freedom of speech complaints scheme.¹ The scheme will open on 1 September 2026 and will be free to use.

Under the new scheme, past or present members of staff at English higher education providers and other non-student members (such as emeritus professors), 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 make free speech complaints about English higher education providers on the OfS register and about their constituent institutions (defined as a college, school, hall or other institution of the provider).

The complaints scheme is not open to students. Students can instead complain to the Office of the Independent Adjudicator (OIA).²

Engagement on the scheme

Between December 2023 and March 2024, we consulted on proposals for how we would operate the new free speech complaints scheme.³ This consultation followed the Higher Education (Freedom of Speech) Act 2023 receiving royal assent in May 2023. At the point of consultation, it was envisaged that the scheme would allow complaints by students and about students' unions. These classes of complainants and complaints are no longer in scope.

Since all the proposals we are taking forward were consulted upon, we assess that rerunning the consultation exercise because of the change in scope would significantly duplicate the original exercise, and therefore be inefficient for all parties.

During the consultation period we held webinars to give students, students' unions, universities and colleges and other stakeholders the opportunity to find out more about our proposals. These were not formal consultation events, but attendees could also respond to the online consultation survey. We also met with sector representative bodies.

We received 166 responses to the consultation from providers, students' unions, staff, students, sector bodies and other parties.

Overall, consultees were broadly supportive of the principle of having a free speech complaints scheme but sought greater clarity around the proposed framework to deliver it. Consultees

¹ See Gov.UK, [The Higher Education \(Freedom of Speech\) Act 2023 \(Commencement No. 4\) Regulations 2026](#).

² See OIA, [How to complain to us](#).

³ See OfS, [Consultation on the OfS's new free speech complaints scheme](#).

welcomed a dedicated mechanism to consider free speech complaints and improve accountability on this issue, but appealed for it to be implemented with a minimum of additional financial and administrative cost. We have responded to these sentiments, within the parameters of what legislation requires us to do. Table 1 highlights the key changes that we have made in response to the consultation.

Consultation outcomes

This document sets out our response to the consultation. It sets out our decisions and our reasons for making those decisions. These include the changes that we have made in response to the consultation and where we have decided to implement rules in the form in which we proposed them.

We have summarised the key decisions that we have made in Table 2. We have highlighted the changes that we have made from the version of the rules that we consulted on in Annex B. Annex C sets out the final scheme rules, which are also available as a standalone document on our website.⁴

Alongside this document we have published an independent report by the consultancy Pye Tait that provides a quantitative analysis of the consultation responses.⁵ Alongside this document we are also republishing Regulatory advices 18, 19 and 21, which now include some consequential amendments related to the launch of the complaints scheme.⁶

Free speech guidance

At the time of the consultation on the complaints scheme, many consultees asked for more guidance to support their compliance with the new free speech created by the Higher Education (Freedom of Speech Act) 2023. We consulted on our proposed guidance in spring 2024.⁷ We published the guidance as Regulatory advice 24 in June 2025.⁸ The guidance sets out how universities and colleges can take reasonably practicable steps to secure freedom of speech within the law. It also provides guidance on how providers can maintain a code of practice on freedom of speech.

We have updated the guidance to set out some clarifications that we have made publicly since then and to take account of the University of Sussex judgment.⁹

⁴ See OfS, [Free speech complaints scheme rules](#).

⁵ Available at OfS, [Consultation on the OfS's new free speech complaints scheme: Analysis of consultation responses and decisions](#).

⁶ See OfS, [Regulatory notices and advice](#).

⁷ See OfS, [Consultation on proposed regulatory advice and other matters relating to freedom of speech](#).

⁸ See OfS, [Regulatory advice 24: Guidance related to freedom of speech](#).

⁹ See Courts and Tribunals Judiciary, [The University of Sussex -v- The Office for Students](#).

The complaints scheme: next steps

Further information about how the scheme works, including how to make a free speech complaint, has been published on our website.¹⁰ Before the launch of the scheme we will add material to our website that details the basis on which we will take decisions about adverse consequences and recommendations. These were areas on which consultees sought more detail. We maintain, as we did in the consultation, that our approach to these issues should be guided by the complaints we receive, and highlighted through the publications we make about those complaints. We recognise, however, that it will be helpful to set out how we will take these decisions from the scheme's launch. This will necessarily be an interim position, which will evolve as the scheme matures, but in the interests of transparency we will share it on our website before the scheme's launch.

The OfS is taking on a complaints handling function alongside its regulatory function, and we are conscious of the interaction between these roles. We expect to consult in autumn 2026 on our proposals related to new initial and ongoing free speech conditions of registration, which are due to come into force in April 2027.

We will publish information about the number and type of free speech complaints received by the OfS, the outcomes of these complaints and timescales for the OfS's handling of them. We will use the learning from our review of complaints to support and inform stakeholders, highlighting good practice as well as areas where we can see room for improvement.

Engagement will be essential in the successful implementation of this complaints scheme and we look forward to continuing engagement with stakeholders after the opening of the scheme.

¹⁰ See OfS, [Free speech complaints](#).

Table 1: Significant changes in response to consultation

This table sets out significant amendments to the final scheme rules we have made, following feedback from consultees to the consultation. This is not an exhaustive list of the changes we have made.

What consultees sought	What we said or did	Scheme rules reference
Clarity on the retrospectivity of the scheme	We have reframed the relevant rule to clarify that the scheme is not retrospective. This includes framing it by reference to the 'action or inaction' of the respondent rather than 'matters or events'. Illustrative examples are also included on our website.	Section C: Rule 11
A longer timescale obliging engagement with providers' complaints processes before the OfS complaints scheme can be used	We have extended the proposed period of 30 days of engagement to 90 days.	Section C: Rule 14
A reconsideration of the trigger for the time limit by which complaints must be submitted to OfS	We have changed the trigger for the 12-month time limit to the date that the action or inaction being complained about last occurred.	Section D
Whether and when we will share information with relevant parties	We have updated the rules to be definitive about our normal practice to share the complaint form with the respondent for its comment, and then seek the complainant's response to this comment. The material generated will then inform our review.	Section F: Rule 26
Clarity on the OfS's role in facilitating settlement between the parties	We have adjusted the rules to remove the implication that the OfS would facilitate settlement.	Section G: Rule 37
Clarity on the difference between suggestions and recommendations	We have dropped the proposal to make suggestions, and maintained the option to make recommendations.	Section H
Further clarity on aspects of the proposal around group complaints	The option to group complaints remains in place but we commit to determining each complaint individually. Complainants can express a preference to be included in a group.	Section J

What consultees sought	What we said or did	Scheme rules reference
Clarity on what routes of appeal are available	We have added the option for a complainant to request a reconsideration on a decision not to review their complaint, or to dismiss it.	Section K
Greater clarity on when representations would be sought and from whom	We have adjusted the rules to make it clearer that it will be our normal practice to seek representations from both parties on our provisional decision concerning determination (including proposed recommendations, and publication plans where relevant).	Section K: Rule 50
Greater flexibility on the requirement to advertise the scheme	We are no longer prescriptive about the specific text providers should use to advertise the scheme, and now require it to be advertised as soon as reasonably practicable before 1 January 2027, rather than from the scheme's launch.	Section N
Greater clarity on our approach to data collection and sharing	We have provided more detail on our approach to processing data and the statutory basis on which we do this.	Section P
That with respect to possible identification through publication, individuals associated with either the complaint or the respondent should be treated equally	We have adjusted the rules to make it clear that we do not expect to identify individuals from any party to the complaint through our publications, though it may be possible for identities to be inferred.	Section Q
Clarity on the definitions and key terms	As far as possible we have aligned the definitions with those published in Regulatory advice 24.	Section T: Glossary

Introduction

What we were consulting on

1. Freedom of speech and academic freedom are fundamental to higher education. The core mission of universities and colleges is the pursuit of knowledge. The principles of free speech and academic freedom are fundamental to this purpose. They provide a necessary context for advancing new ideas, encouraging productive debate and challenging conventional wisdom.
2. All staff and students are therefore entitled to teach, learn and research in a culture that values vigorous debate. This is especially true in relation to difficult, contentious or discomforting topics.
3. The Higher Education (Freedom of Speech) Act 2023 amends the Higher Education and Research Act 2017 to require the OfS to set up and operate a new free speech complaints scheme. The free speech complaints scheme will be free to use. It will operate from 1 September 2026.
4. Under the new scheme, past or present members, members of staff, applicants for academic posts and visiting speakers will be able to make complaints to the OfS about free speech issues.¹¹ They will be able to complain about English higher education providers registered with the OfS and constituent institutions of the former (defined as a constituent college, school, hall or other institution of the provider).
5. Between December 2023 and March 2024, we consulted on how we will operate the new free speech complaints scheme.¹² Our proposals covered matters such as:
 - who can make a complaint and what they can complain about
 - complaints that we can and cannot review
 - how we will review and make decisions on a complaint
 - publication of information about a complaint.
6. This document explains how we are taking our proposals forward.

Conducting the consultation

7. The consultation was open from 14 December 2023 to 10 March 2024. It was a public consultation. A summary of the proposals and the questions it included can be found in Annex A. Consultees were asked to share their views by submitting written responses to an online survey. We received 166 responses to the consultation. During the consultation

¹¹ 'Members' excludes those who are members solely by reason of being or having been a student.

¹² See OfS, [Consultation on the OfS's new free speech complaints scheme](#).

period, we also hosted a series of webinars for students, providers, students' unions and others, to support their understanding of the proposals.

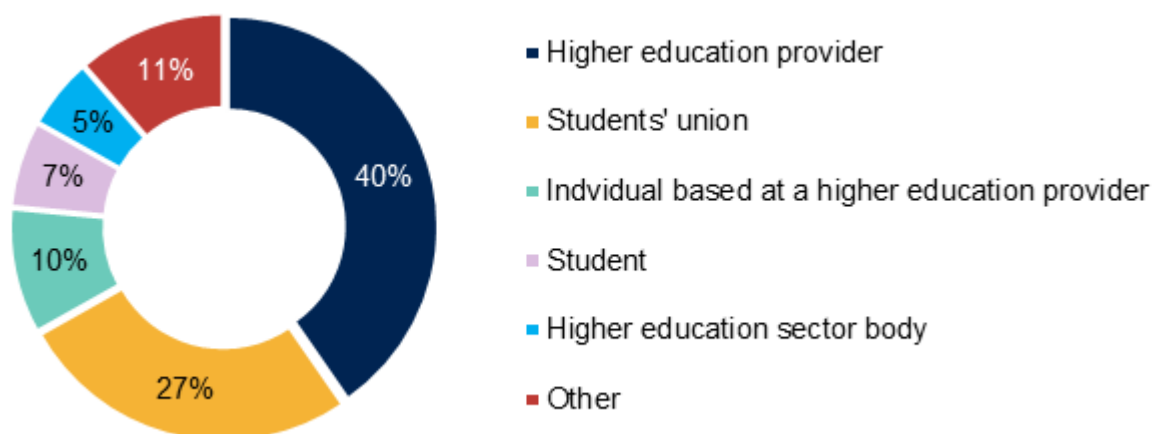
8. The consultation asked consultees an open question on each of 16 sections of the proposed scheme rules. It also asked questions relating to any unintended consequences, any potential impacts on groups on the basis of their protected characteristics, whether any aspects of the proposals were unclear and whether the objectives of the consultation could be delivered more effectively.
9. We recognise that more than two years have passed since the end of the consultation. This is because in summer 2024 the new government paused work on the implementation of the scheme as part of a review of the free speech legislation. In April 2026 it announced that the scheme would open on 1 September 2026. We nonetheless assess that running a new consultation exercise would be significantly duplicative of the 2023-24 exercise. It would represent an unnecessary burden to respond, and an inefficient use of OfS resources to run. We recognise that following the government's review, the scope of the complaints scheme has changed so that free speech complaints by students or about students' unions are not included. This represents a narrowing of the scope consulted on, and all the aspects of the scheme that we are now taking forward were featured in the original consultation.
10. Where those who responded to the consultation commented on proposals that are no longer being taken forward (i.e. those concerning complaints from students and about students' unions), this commentary is not summarised in this document. Equally, we do not respond formally to this commentary except where it bears on a proposal that is being taken forward. However, the Pye Tait report we are publishing in parallel summarises the commentary as it was originally made by consultees in 2023-24, and we are publishing it now in the interests of transparency.¹³
11. We have tried to be as definitive as possible in our scheme rules and have made numerous clarifications in response to consultation commentary (see Table 1). There are aspects of the scheme rules, however, that provide for flexibility around our approach, expressed in terms of what we will 'normally expect' to do, and indicating that we will make determinations on a 'case-by-case' basis. We are taking this approach to account for this being a new scheme with considerable uncertainty around volume of complaints, and because of the value of flexibility when working with complainants and respondents to achieve satisfactory outcomes. The framing of the scheme rules will allow us to adapt as we learn, and respond to feedback, rather than locking all parties into processes that may bear refinement. Significantly, this approach manifests in concrete expectations around timings largely not being written into the rules. We will, however, be as clear as possible in the guidance material on our website about the practice we pursue. As the scheme matures, we may seek to take practices that prove robust and codify them in future iterations of the scheme rules.

¹³ Available at OfS, [Consultation on the OfS's new free speech complaints scheme: Analysis of consultation responses and decisions](#): minor amendments have been made to the framing of the report to prevent it being misleading if read in isolation.

Response to the consultation

12. In Figure 1, we have set out a breakdown of the responses received, by type of consultation respondent.

Figure 1: Breakdown of consultation respondent types



13. We commissioned Pye Tait Consulting to review consultation responses and produce a summary of consultees' views. The Pye Tait report is published alongside this response document.¹⁴
14. We also undertook a qualitative analysis of responses. Our analysis is set out in this document, question by question, where we have summarised and responded to the themes and key points made by consultees. Where we refer to consultee sentiment we have tried to be as precise as possible as follows: 'a few' means fewer than 10 per cent of answers to that question, 'some' means between 10 per cent and 29 per cent, 'many' means between 30 and 49 per cent, and 'most' means more than 50 per cent.

Our decisions

15. In this document, we have also set out the final decisions that we have made following our consideration of the consultation responses. We have set out the other relevant matters to which we have had regard in making our final decisions in Annex D to this document.
16. We will implement the new free speech complaints scheme. We will operate the scheme from 1 September 2026. We are required to do this by the Higher Education and Research Act 2017, as amended by the Higher Education (Freedom of Speech Act) 2023. References to 'the Act' hereafter mean the Higher Education and Research Act 2017 (HERA), as amended.
17. We have decided to implement the rules of the scheme in the form set out in Annex C.
18. We have carefully considered the responses made by consultees to our consultation and as a result have made some changes to the rules that we proposed. In Annex B, we have

¹⁴ Available at OfS, [Consultation on the OfS's new free speech complaints scheme: Analysis of consultation responses and decisions](#).

highlighted the changes that we have made. We have also made changes to account for the narrowing in the scope of the scheme, reflecting the elements of Schedule 6A of HERA to be commenced on 1 September 2026, subsequent to the consultation.¹⁵ The changes to the scheme rules, and our reasons for making them, are explained in more detail in the relevant sections of this document. We have also explained why we have decided to implement other rules of the scheme in the form in which we proposed them.

19. We have also decided to make the amendments to Regulatory advice 21: Publication of information that we proposed in the consultation, with some amendments and one addition, which accounts for consultation commentary and the scheme's scope. This means that, in Regulatory advice 21, we set out the information that we would normally expect to publish and the information that we would not normally expect to publish in relation to the free speech complaints scheme. We are publishing the revised Regulatory advice 21 alongside this document.¹⁶ We are also making minor consequential amendments to Regulatory advices 18 and 19, and publishing the updated versions alongside this document.¹⁷
20. The OfS is an independent regulator. We must handle all complaints impartially. This means that whenever we make a decision relating to a complaint, we will do so on the basis of the facts of that case and the law. We must take our decisions objectively, fairly and without bias. We will determine whether a complaint is justified in light of the evidence in relation to the complaint – i.e. whether we are satisfied, having heard from the complainant and the respondent, that it is **more likely than not** that:
 - a. The respondent has breached or is breaching its free speech duty; and that as result of that breach
 - b. the complainant has suffered adverse consequences that are more than minor or trivial.

As the initiator of the complaint, the burden of proof will substantially rest on the complainant to demonstrate that the complaint is justified.

21. Further information about how the scheme works, including how to make a free speech complaint, has been published on our website.¹⁸ Before the launch of the scheme we will add material to our website that details the basis on which we will take decisions about adverse consequences and recommendations. These were areas on which consultees sought more detail. We maintain, as we did in the consultation, that our approach to these issues should be guided by the complaints we receive, and highlighted through the publications we make about those complaints. We did, however, give an indication of the principles we plan to work to in proposal H paragraph 121 of the original consultation. We plan to design recommendations aiming to put the complainant in the position they would have been in before the circumstances of their complaint occurred, where appropriate and possible. Our recommendations may also relate to broader issues such as a change in the respondent's processes or practices. We recognise, however, that from the scheme's launch it will be

¹⁵ See UK Parliament, Higher Education Freedom of Speech Statement April 2026; Gov.UK, The Higher Education (Freedom of Speech) Act 2023 (Commencement No. 4) Regulations 2026.

¹⁶ See OfS, Regulatory advice 21: Publication of information.

¹⁷ See OfS, Regulatory notices and advice.

¹⁸ See OfS, Free speech complaints.

helpful to set out as far as possible how we will take these decisions. This will necessarily be an interim position, which will evolve as the scheme matures.

22. The complaints scheme represents an important new safeguard for freedom of speech at English higher education providers. The objective of the scheme, to safeguard freedom of speech at English higher education providers, is one that providers share. We are consciously aiming to operationalise the scheme in the most efficient way that allows us to achieve that objective. It is a new scheme and that comes with uncertainties. This consultation has represented a major engagement exercise, but it is far from the end of our engagement. We look forward to listening to, and working with, the scheme's stakeholders as it matures.

Table 2: Summary of key decisions

Proposal	Decision
Scope changes to account for commencement of Higher Education (Freedom of Speech) Act 2023	We have adjusted our scheme rules to reflect the commencement of the Higher Education (Freedom of Speech) Act 2023. The parts of this Act enabling complaints by students or about students' unions are not being commenced, in line with the published decisions of the Secretary of State for Education. Our scheme reflects this.
Other claims Section C Rule 10	We have clarified that, while free speech complaints may include other claims, we will only determine those other claims to the extent necessary to determine whether the free speech claim is justified.
Retrospectivity Section C Rule 11	We proposed to limit the scheme to complaints about matters or events that took place on or after 1 August 2024, when the relevant provisions of the Act were due to come into force.¹⁹ We have decided to include a rule to that effect in our final rules, referring instead to 1 September 2026, the date that the scheme now comes into force. To do otherwise would introduce an element of retrospectivity that is not provided for in the Act. However, we have decided to frame the relevant rule by reference to the 'action or inaction' of the respondent that is the subject of the free speech claims in the complaint, rather than by reference to 'matters or events' as we had proposed. 'Action or inaction' is the language of the statute and addresses confusion around 'ongoing' matters or events highlighted in the consultation responses.
Completing internal review processes Section C Rule 14	We proposed a rule requiring a complainant to engage with any internal review process before complaining to the OfS. We have decided to include a rule to that effect in our final rules. Complainants may complain to the OfS once that process has completed; or, if earlier, once 90 days (rather than 30 days as we proposed) have elapsed since the start of the process. The rule does not require the provider or constituent institution to have completed its internal review process within 90 days. It simply opens the door to the free speech complaints scheme, for the complainant, after 90 days. This will ensure that the provider or constituent institution has an opportunity to resolve the free speech issues in the first instance, while also ensuring that free speech issues are addressed promptly without scope for excessive delay becoming a punishment in itself.
Frivolous and vexatious complaints Section C Rule 15	In our proposals, we set out a non-exhaustive list of complaints that we may determine to be frivolous or vexatious. We have decided to

¹⁹ As per paragraph 16, references to 'the Act' in this document mean the Higher Education and Research Act 2017 (HERA), as amended.

	implement that rule in the form in which we proposed it, with two changes. We have added a new example to the list, concerning a complainant not responding to our information requests. We also have amended the example about a complainant acting aggressively, to make clear that this captures aggressive or abusive behaviour towards the OfS in our dealings with the complainant.
Time limits Section D Rule 16	In our proposals, we included a time limit within which complaints must be submitted to the OfS to support the timely submission of complaints. We framed the time limit by reference to the date of the last alleged adverse consequence that the complainant claims they suffered. We have decided to change that trigger and instead implement a time limit rule by reference to the date that the action or inaction being complained about last occurred. We did this because consultee commentary highlighted that 'last adverse consequence' represented an unstable anchoring point, meaning that the time limit may never start.
Protecting complainants' identity Section E Rule 19	In our proposals, we included a commitment to make reasonable attempts, upon the complainant's request, to protect the identity of a complainant from the respondent. We have decided that we would only do this in exceptional circumstances, where the complainant has made a compelling case on grounds such as a threat to safety.
Reviewing a complaint Section F	In our proposals, we indicated that we may share some or all of the information that a complainant sends us with the respondent. The final rules are clearer that, once we have decided that a complaint is eligible for review, we will normally share the details of the complaint with the respondent and give the respondent an opportunity to respond to the complaint. The rules also indicate that we will also normally share the respondent's comments with the complainant and give them an opportunity to respond to those comments. As the initiator of the complaint, we expect complainants to demonstrate how their complaint is justified.
Recommendations and suggestions Section H	We proposed rules that allow for both 'suggestions' and 'recommendations' to be made in a Notice of complaint outcome. Having reflected on responses to the consultation we have decided to drop the proposal to make 'suggestions' and will only make 'recommendations'.
Group complaints Section J	We proposed rules that will allow us to group complaints together to make our review of complaints about similar issues more efficient. We have retained similar provisions in our final rules. However, we have made clear in those rules that we will review and determine each complaint in a group individually. We have also included an option for complainants to express a preference to be grouped.

Reconsiderations and representations Section K	We proposed that we may seek representations from the complainant, the respondent or both, as appropriate, before reaching any final decision about whether a complaint is eligible for review, the extent to which a complaint is justified, and any recommendations. We have amended the final rules to be more definitive in specifying when we will normally seek representations and from whom. In the case of decisions on justification, recommendations, publication or cost recovery we will seek representations from both complainant and respondent before making a final decision. We have included within section K the concept of ‘reconsideration’, which allows for the complainant to request a reconsideration of a decision not to review a complaint, or to dismiss it, if they believe we have made an error.
Advertising the scheme Section N	We proposed that from the start of the scheme, providers and their constituent institutions should advertise the scheme in relevant materials using text we proposed. The final rule states that this should be done ‘As soon as reasonably practicable after 1 September 2026 and, in any event, no later than 1 January 2027’. The rule includes suggested advertisement text but does not require providers to use exactly that text.
Publication matters Question P	We have decided to make the amendments to Regulatory advice 21 that we proposed, with some amendments. This means that, as we proposed, we would normally expect to publish information about complaint outcomes, including any recommendations we make, and in doing so we would ordinarily identify the respondent to which the complaint outcome pertained. We have made it clearer that we would not normally identify any individuals (either complainants or individuals associated with respondents) in making these publications. As we proposed, we also intend to publish statistical information about the number and type of complaints that we receive. We have additionally stated that we would normally expect to publish information about the OfS’s timescales for handling complaints.

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

Summary of Proposal A: What a free speech complaint is (section A of the rules)²⁰

The Act²¹ will require the OfS to operate a free speech complaints scheme. The Act also states that the scheme must review free speech complaints. In our proposed scheme, we have defined ‘free speech complaint’ in rule 2 and this reflects the requirements of the Act. Free speech complaints must relate to the free speech duties that we have set out at rules 3 and 4.²² In this document we refer 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’). We are proposing that a complaint may be about more than one such body.

The Act states that the complaint must make what we are calling ‘free speech claims’. They must claim that the person making the complaint has suffered adverse consequences (which need not be financial) because of something that the respondent has done or not done. For example, a student may have been removed from their course or a member of staff may have been disciplined. They must also claim, or give rise to a question as to whether, the respondent’s action or inaction was a breach of its duty to take reasonably practicable steps to secure free speech within the law. 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.

Summary of responses

Overarching comments about the free speech complaints scheme and about free speech matters

23. Some consultees indicated broad agreement with our proposals on what a free speech complaint is. Where objections were registered to the introduction of a free speech complaints scheme by the OfS in itself, we have explained in ‘Our response’ below that legislation requires that we set up the scheme. This being the case, we were not consulting on the concept of a scheme, and have therefore not summarised these comments in detail in this document.
24. Some consultees commented more broadly on matters relating to freedom of speech within the law in English higher education providers. Common themes included the need to balance

²⁰ See OfS, [Proposal A: What a free speech complaint is](#).

²¹ ‘The Act’ here means the Higher Education and Research Act 2017 as amended by the Higher Education (Freedom of Speech) Act 2023.

²² Where an aspect of the original proposal is no longer relevant because the scope has changed, we retain it but in struck-through text.

student safety and mental health with protecting free speech, and challenges around the interaction of policies and processes relating to equality, diversity and inclusion with securing free speech. Some consultees queried how the OfS would determine whether speech is 'within the law', including in the context of a free speech complaint where the complainant was complaining that allegations of harassment against them meant that their free speech had not been secured. Reference was made to the (then) government's recent announcements on combatting antisemitism in higher education providers. It was suggested that that should be integrated into our proposals for the free speech complaints scheme.

25. Some consultees commented specifically on the wording of the duty to take 'reasonably practicable steps' to secure free speech within the law, which underpins the scheme. It was suggested that the proposed scheme rules did not make that formulation sufficiently clear and that the OfS should provide further guidance on what constitutes 'reasonably practicable steps', and on what is and is not 'within the law', including in relation to 'hate', 'harmful' or 'offensive' speech. Consultees also set out what they considered to be the correct approach to determining whether an organisation has taken 'reasonably practicable steps'. Some sought specific clarification of the scope of the duty, including the extent to which it relates to activities in clinical settings or commercial activities of a provider, especially in relation to events organised by third parties that have rented a provider's premises for that purpose. It should be noted that these comments were all made prior to the June 2025 publication of Regulatory advice 24: Guidance related to freedom of speech.²³
26. Consultees cited specific real-life or hypothetical examples. They queried whether the OfS would determine the speech or actions in those examples to be within the law. A common theme related to the boundaries between free speech within the law and harassment, and how the OfS would manage complaints about such matters. One consultee queried how the Act and the free speech complaints scheme apply to transnational education, for example to provision delivered on overseas campuses of English higher education providers, or by their overseas partner providers. One consultee commented in detail on matters relating to the actions of a particular foreign government in English higher education providers, and the threat that they perceive this poses to free speech.

Organisations about which free speech complaints can be made

27. The Act, as commenced, sets out the organisations about which a free speech complaint can be made. In summary a complaint may be made about the governing body of a registered provider, or of a constituent institution of such a provider. In our proposals, we used the same language as the Act. In our draft rules, we referred to the organisation about which a free speech complaint is made as a 'respondent'. We also proposed that a free speech complaint may be made about more than one respondent.
28. Consultees asked the OfS to provide a comprehensive list of eligible respondents, suggesting that this would aid understanding of the reach of the free speech complaints scheme.
29. Some consultees asked why our proposals referred to complaints about the 'governing body' of a provider or of a constituent institution, rather than complaints about the provider or constituent institution itself or complaints about its staff. They suggested that the governing body would not have a role in dealing with many of the matters that may give rise to a free

²³ See OfS, [Regulatory advice 24: Guidance related to freedom of speech](#).

speech complaint. Some commented that complainants may see their complaint as being against a provider, its management or staff, and so may be confused by the reference to a 'governing body'.

30. Consultees also sought more clarity on what constitutes a 'constituent institution'. Queries included whether the term covers delivery partners, for example a provider that delivers a course leading to an award made by another provider, or spin-out companies or subsidiaries of a provider.
31. Many consultees commented on our proposal that a free speech complaint could relate to more than one respondent. One consultee commented that this was appropriate because decision making on many issues may be shared across a provider, its constituent institutions and its students' union.
32. Some consultees disagreed with the proposal, suggesting that it creates unnecessary complexity in the OfS's processes, and that each complaint should relate to one respondent only. Others suggested that the OfS should only consider a complaint about multiple respondents if it relates to a single event that concerns all those respondents or where those respondents agreed to the matters being joined together.
33. Consultees queried how our proposal about multiple respondents would work in practice: for example, how the OfS would apportion responsibility or liability across the respondents, including where some of the issues may relate to organisations not covered by the free speech complaints scheme. Some consultees suggested that the OfS should coordinate with the multiple respondents, to reduce their duplication of effort and burden in responding to the complaint. Suggestions included the appointment of a 'lead respondent', in consultation with the other respondents, to lead on a shared response to the complaint. However, some consultees suggested that organisations may be reluctant to share confidential information with the OfS if the OfS intended to share that information with other respondents. It was also suggested that our proposal to allow a complaint to relate to multiple respondents, was inconsistent with our proposal to determine a complaint separately against each respondent.

Free speech claims within a free speech complaint

34. We proposed that a free speech complaint must make what we called 'free speech claims' (rule 2 of our proposed rules). It must claim that the complainant has suffered adverse consequences (which need not be financial) because of something that the respondent has done or not done. It 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 framing reflects the definition of a free speech complaint set out in paragraph 2(1) of Schedule 6A to HERA.
35. Some consultees questioned the point that complainants could reference issues wider than free speech complaints, but that the OfS does not propose to review these complaints. We have considered that issue in more detail in relation to Proposal C: Complaints that we will not review.
36. Some consultees suggested that the scheme rules should set out a non-exhaustive list of matters that may constitute free speech claims. They suggested matters that they considered should fall outside the scope of the scheme, for example whistleblowing complaints on health

and safety issues. It was queried whether particular matters would fall within the scope of 'free speech claims', such as a decision by a research ethics committee made in accordance with codes of research conduct. It was also suggested that the scheme rules should clearly distinguish between complaints about academic freedom and complaints about other free speech matters.

37. Many consultees commented on the 'adverse consequences' element of the free speech claims, requesting further information about what may, or may not, constitute an 'adverse consequence'. A few consultees suggested that we set out specific examples of adverse consequences. Suggested examples included: damage to relationships with others; feeling the need to self-censor rather than express views within the law; financial costs; impact on job application or promotion opportunities; reputational damage; stress or other impact on mental health; threats to life or personal safety.
38. Many consultees queried how the OfS would assess 'adverse consequences' and whether we intended to develop a framework setting out the criteria that we would use to do so. It was suggested that we should set out the burden of proof that we would apply in deciding whether a complainant had suffered adverse consequences and that we should provide more information about what sort, and quantum, of evidence would be required. Consultees also requested more information about what we may consider to be minor or trivial adverse consequences.

Other claims within a free speech complaint

39. Under the Act, a free speech complaint may include other claims, in addition to the 'free speech claims' referred to above at paragraph 34 and in rule 2 of our scheme rules. Our draft rules provided for this. In Proposal C, we proposed that we will only review those other claims if they include information that is relevant to the free speech claims in that complaint.
40. Some consultees queried how the OfS would review 'other claims', including how the OfS would 'disentangle' free speech claims from other claims within the complaint. For example, one consultee noted that a free speech complaint may relate to a staff disciplinary process that concerned free speech issues and a range of other issues. Consultees also commented on this issue in the context of how the OfS proposed to review free speech complaints. We have considered the responses on this issue in more detail in relation to Proposal C: Complaints that we will not review and in relation to Proposals F and G, which set out how we review and determine a free speech complaint.

Our response

Overarching comments about the free speech complaints scheme and about free speech matters

41. In the consultation document we noted that we were not seeking views on whether the OfS should introduce a free speech complaints scheme or on alternatives to its introduction by the OfS. This is because the Act will require the OfS to operate a free speech complaints scheme. Instead, we sought views only on our approach to designing and implementing our new free speech complaints scheme. Therefore, in considering responses to the consultation, and in determining our final policy position, we have focused on those issues.

42. A common theme in the responses was the OfS's approach to reviewing complaints and making decisions on complaints. We have summarised these points, and set out our response, in relevant sections throughout this document. The overarching framework underlying our approach is that the OfS is a public body and is required to act in accordance with requirements of public law. In making decisions about whether to uphold a complaint under the free speech complaints scheme, the OfS is required to act reasonably as a matter of public law. The OfS must comply with its general duties set out in section 2 of HERA. These include having regard to, so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be transparent, accountable, proportionate and consistent. They also include the need to promote the importance of freedom of speech within the law in the provision of higher education by English higher education providers, and the need to protect the academic freedom of academic staff at English higher education providers.
43. In this consultation, we were seeking views on the 'mechanics' and practical implementation of the new free speech complaints scheme. Since the consultation process we have consulted on and published guidance to help providers and constituent institutions navigate their new free speech duties.²⁴ Regulatory advice 24 includes examples of steps that may be reasonably practicable steps to securing free speech across a range of areas. The advice specifically engages with the question of securing free speech while preventing harassment, which was a feature of consultation responses described in paragraph 24. Some examples in the guidance also showed when reasonably practicable steps may not have been taken to secure free speech.
44. With regard to the question of the transnational application of the complaints scheme, HERA does not require providers or constituent institutions to take steps to secure freedom of speech in respect of their activities outside England.²⁵

Organisations about which free speech complaints can be made

45. Our new scheme is designed to be simple to use and we acknowledge the importance of potential complainants' and respondents' understanding the scheme. Where relevant, in this document and in the final scheme rules attached at Annex C, we have provided further clarity about the terms used in the scheme rules and about the complaints submission and review processes that underlie those rules.
46. However, we remain of the view that, where the provisions of the Act that are being commenced define specific terms, we should use those same definitions in the scheme rules. We also consider that where the scheme rules set out requirements that are set out in the Act, we should use the same language as the Act. This includes in section A of the rules, which sets out the bodies about which complaints can be made and defines a free speech complaint. This approach is reflected in the final scheme rules. In our view, using different language to that set out in the Act (as commenced), may create confusion or risk divergence from the provisions of the Act that underpin the free speech complaints scheme.

²⁴ See OfS, [Regulatory advice 24: Guidance related to freedom of speech](#).

²⁵ This position was already stated in Regulatory advice 24, paragraph 13.

47. The definition of ‘constituent institution’, in the scheme rules on which we consulted, reflected the definition set out in the Act. We have retained this definition in the final scheme rules.
48. In this consultation, we did not propose to publish a separate and exhaustive list of all the organisations about which a complaint can be made under the free speech complaints scheme. We have not changed our view. This is, in part, because some of the information is already available in other formats. We publish a Register of all the providers that are registered with the OfS.²⁶ Those providers are subject to the free speech complaints scheme.
49. In our proposals, we did not propose to publish a definitive list of ‘constituent institutions’ to which the new free speech duties, and the free speech complaints scheme, apply. Our final decision is that we will not publish such a list. The Act defines ‘constituent institution’ broadly.²⁷ That definition is incorporated into the final scheme rules. Providers are well placed to determine which organisations are their ‘constituent institutions’. Any list that we create on the basis of information that we currently hold may exclude organisations that are constituent institutions. Requiring providers to give us information about their constituent institutions on an ongoing basis, to enable us to maintain a complete list, will create additional burden for those providers.
50. Instead, where we receive a complaint about a putative constituent institution, we will normally need to contact its registered ‘parent’ provider to establish its status and the relevant respondent contact. We will decide on a case-by-case basis whether it is a constituent institution. When we make this decision the independence of the constituent institution’s governing body from the parent institution’s governing body will be key to our determination. We consider that the colleges of the Universities of Cambridge, Durham and Oxford are unambiguously constituent institutions, and in the cases of these entities we will in the first instance deal directly with the contacts we hold, instead of going via the parent institution.²⁸
51. Section A1 of Part A1 of HERA, and Section A4 of Part A1 of HERA, impose the duty to take reasonably practicable steps to secure free speech within the law on the ‘governing bodies’ of providers and of their constituent institutions, respectively. Similarly, paragraph 2(1) of Schedule 6A to HERA defines a free speech complaint against a provider or constituent institution by reference to the action or inaction of the governing body of that provider or constituent institution and the duty of that governing body under Section A1 of Part A1 of HERA. Our wording, in section A of the final scheme rules, reflects that framing in relation to complaints about providers or constituent institutions.
52. The ‘governing body’ of a provider or constituent institution has overarching responsibility for the affairs and activities of that provider or constituent institution. This does not mean that the governing body is directly involved in every activity of, or decision made within, the provider or constituent institution. The governing body may delegate specific functions or decision making powers to committees or individuals. The governing body, and its committees, may

²⁶ See OfS, [The OfS Register](#).

²⁷ “[C]onstituent institution”, in relation to a registered higher education provider, means any constituent college, school, hall or other institution of the provider’ (HERA Part IA section A4(4)).

²⁸ The Minister for Higher and Further Education specifically identified the colleges of Cambridge, Durham and Oxford as constituent institutions in the passage of the Higher Education (Freedom of Speech) Act 2023: see [Hansard Volume 716, Monday 13 June 2022](#).

oversee an executive team that manages the provider or constituent institution on a day-to-day basis. However, the governing body retains overarching responsibility for the affairs and activities of the organisation of which it is the governing body.

53. Our website will include guidance to aid complainants in making their complaint. In that web guidance, we will explain why the scheme rules refer to ‘governing body’ and make clear that this does not restrict complaints to those about decisions that the governing body has itself taken.
54. While complaints can no longer be made directly about students’ unions, it is possible that the activity of a students’ union may feature in a complaint about a provider or constituent institution. With a view to facilitating the discharge of its A1 duty, a provider or constituent institution must have in place a free speech code of practice and take reasonably practicable steps to secure compliance with that code by its students’ unions. In considering the extent to which a complaint of this nature is justified, the degree of independence of the students’ union would be a relevant factor in our assessment of what was ‘reasonably practicable’ in the specific circumstances of that complaint.
55. We proposed that a free speech complaint may relate to more than one organisation. This was because the adverse consequences that a complainant is claiming may relate to the actions or inactions of more than one organisation: for example, a university and a constituent institution of that university. We considered that requiring a complainant to submit separate complaints in those circumstances could create unnecessary burden for them. We also considered that it could create delay and inefficiency in our review process.
56. In our proposed rules we also proposed that, where a free speech complaint is about more than one respondent, we would determine the complaint separately against each respondent.
57. In the final rules of the scheme, we have decided to retain those provisions relating to complaints about multiple respondents. They are designed to minimise the burden for complainants in submitting a complaint, while also ensuring that we determine each complaint separately against each of the respondents. When a complainant submits a complaint about more than one respondent, they will be asked to provide us with information that will enable us to determine their eligibility to bring a complaint against each respondent, and to determine whether each respondent has breached its free speech duty and whether the complainant has suffered adverse consequences as a result of that breach. We will determine the complaint separately against each respondent. Under Proposals F and G, we have explained in more detail how we will review and determine free speech complaints under the scheme.

Free speech claims and other claims in a free speech complaint

58. We have decided to implement rules 2 and 4, which define ‘free speech claims’, in the same form as we consulted on, within the narrower scope of the commenced provisions related to the scheme. This reflects the purpose of the Act and the language of paragraph 2(1) of Schedule 6A to HERA. For the reasons set out in paragraph 46, we consider that to be important.
59. Similarly, rule 6 remains unchanged: a free speech complaint may include ‘other claims’. Again, this reflects the requirements of the Act. We have, however, added further clarity to rule 10 on the extent to which we will review ‘other claims’ where they include information that

is relevant to the free speech claim. We have set out more information about our approach to reviewing and determining a free speech complaint, including the 'other claims' set out in a free speech complaint, under Proposals C, F and G.

60. We have also decided not to include examples of 'free speech claims' or set out a list (indicative or exhaustive) of 'adverse consequences' in the final scheme rules themselves, or to define those terms in more detail in the final scheme rules. We assess that to do so would be premature and unhelpfully restrictive. As the scheme is new, we wish to learn from the complaints we receive, to best achieve the objectives of the scheme. However, we will include further information on our website about how we expect to take decisions about whether it is more likely than not that an individual has suffered adverse consequences in advance of the scheme launch.
61. In due course, we expect to publish information about the complaints that we have received (see Proposal P), which will serve to inform the sector of the nature and type of complaints that fail to be considered under the scheme. It is important that we make those decisions based on the facts and evidence in each complaint, within the overarching framework of the scheme rules and the Act itself.
62. As set out in the executive summary, we have consulted separately on, and published, Regulatory advice 24, which contains guidance to help providers and constituent institutions navigate their free speech duties.
63. We have set out more information about the complaints that we will not review under Proposal C.

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

Summary of Proposal B: Who can complain?²⁹

The Act

The Act 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 our 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 our 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 explains each of the terms: constituent institution, member, member of academic staff, member of staff, registered higher education provider, ~~relevant students' union~~, student, visiting speaker.

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

Summary of responses

Eligibility

64. Most consultees proposed expanding or narrowing this list of categories, while others were content with the list as proposed.
65. Of the responses suggesting that we extend eligibility, a few consultees suggested that a dead person's estate should be eligible to complain. One reason given for this was that the outcome of a complaint might clear the name of the dead person. Another reason put forward was that someone else ought to be able to complain on behalf of a person who died. However, there was also some agreement with our proposed approach in this area.
66. Consultees raised possibilities of extending eligibility to contractors, parliamentarians or government ministers. One consultee commented that it would be inconsistent to include applicants for academic posts, but not applicants for posts in professional services. One consultee proposed universal eligibility.

²⁹ See OfS, [Proposal B: Who can complain?](#).

67. It was suggested that we should narrow eligibility for the scheme. Consultees proposed the exclusion of, for example: persons acting on behalf of the injured party; corporate bodies; persons who have died, including those who have died during the process; persons who were staff or students in the distant past; persons who have applied to become members of academic staff; commercial enterprises or persons hiring space for commercial purposes; former students.

Our response

Eligibility

68. The classes of person who are eligible to make a complaint under the scheme are set out in Schedule 6A of HERA as introduced by the Higher Education (Freedom of Speech) Act 2023.³⁰ This legislation constrains the scheme rules. There is no scope to extend eligibility to cover parliamentarians, ministers, contractors, individuals who have applied for posts other than academic posts, or members of the public, who do not fall under the categories set out in Schedule 6A.
69. Similarly, where Schedule 6A does not restrict eligibility within the categories that it sets out, we do not have scope to exclude particular persons or classes of person falling within those categories. This means that there is no scope to exclude any of the following from eligibility to use the complaints scheme:
- those who were members of staff in the past
 - corporate bodies that fall under one of the categories of eligible person set out in Schedule 6A
 - those who have applied to become members of academic staff.
70. The Act requires that an eligible person can only complain about adverse consequences that they themselves have suffered.³¹ A complainant must submit their complaint themselves.³² However, a complainant may appoint a representative to conduct their complaint on their behalf. (See Question E.)
71. We recognise that families and representatives of a person who has died may wish to raise concerns, including about the circumstances surrounding that person's death. However, we consider that there may be more appropriate mechanisms (for instance, an inquest) through which to raise those concerns. Family members may also raise concerns through our notifications process. We consider that it is important for a complaint to be 'owned' by a complainant, and to set out the complainant's own views. Since this cannot happen after someone's death, we will not accept such complaints made on the deceased's behalf. Where the person died after submitting a complaint to us, we consider that it may be appropriate for us to continue to review the complaint. Noting the interest of consultees in this element of our

³⁰ See HERA Schedule 6A section 2(2).

³¹ See HERA Schedule 6A section 2(1)(a).

³² If the complainant is under 18, a parent or guardian must countersign their complaint.

eligibility criteria, we have made a small amendment more clearly to realise our position. The relevant rule now reads as follows.

Rule 8

If a **complainant** dies after submitting their **free speech complaint**, we will review the **free speech complaint** that they submitted to us before they died. We will not review a **free speech complaint** made by personal representatives of the estate of a person who has died.

72. An individual or body may seek to use (for instance to hire) premises of a registered provider or constituent institution, for their own events or activities (for instance, commercial activities). Where use of the premises is denied, for example, on the basis of an individual's ideas (or a body's policies) a person intending to be a visiting speaker at the event, may be eligible to make a complaint.
73. As a result of the regulations made by the Secretary of State for Education, the provisions enabling students to complain and for complaints against students' unions have not been commenced.³³ We have adjusted our scheme rules accordingly to exclude these categories of complainant and respondent.
74. We may receive complaints from individuals who are both members of staff and students. We will operate on the principle that we will consider their complaint in their non-student capacity only.³⁴ However, the facts of the case will be crucial, and may not allow such a strict division of roles.

Key terms discussed in the response to the consultation on proposed regulatory advice and other matters related to free speech

75. In June 2025 we published our response to the separate 'Consultation on proposed regulatory advice and other matters related to free speech'.³⁵ In so doing we responded to some of the input to the consultation on the complaints scheme. We did this to ensure clarity on key terms. These included the definition of academic staff (paragraphs 533 to 540), member (paragraphs 546 to 551), member of staff (of an organisation) (paragraphs 560 to 562), student (paragraphs 563 to 571), and visiting speaker (paragraphs 580 to 601). The summary of the consultation input and our decisions as a result can be found in the outcome of that consultation (paragraphs 528 to 601). We have chosen not to duplicate that material here, but reproduce the final definitions of those terms, which are included in the scheme rules glossary at annexes B and C.
76. We have decided not to expand our definition of 'academic staff', which remains as consulted upon in section T of the scheme rules.

³³ See The Higher Education (Freedom of Speech) Act 2023 (Commencement No. 4) Regulations 2026.

³⁴ This is congruent with the OIA's approach, which is explicit in limiting OIA consideration of complaints to issues that arise in a student's capacity as a student. See OIA, 'Who can complain?' (Rule 2).

³⁵ See OfS, Consultation on proposed regulatory advice and other matters related to freedom of speech: Analysis of responses.

77. We have decided to define a ‘member’ of a relevant institution as follows. This definition slightly differs from that in Regulatory advice 24, because it reflects the scope of the complaints scheme as commenced by the commencement regulations.³⁶ These have the effect of excluding members who are members solely by virtue of being or having been a student of the institution. This reflects the policy intent in routing student complaints about free speech to the OIA rather than the OfS scheme. The text of the broader definition in Regulatory advice 24 is also retained, as it pertains to those members to whom registered providers owe their A1 duty to secure freedom of speech, rather than more narrowly to those who are eligible to complain to the complaints scheme.

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 any relevant contractual arrangement.

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

78. The definition of ‘member of staff’ (of an organisation) in the final rules is as follows.

Someone who is either:

- a. 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; or
- b. an individual who has entered into or works under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

79. While students are not in scope of the scheme, we have decided to retain a definition of student in the scheme rules. This helps to clarify the term ‘non-student member’, which we do use. We have aligned this definition with that used in Regulatory advice 24, and it appears as follows.

³⁶ See Gov.UK, The Higher Education (Freedom of Speech) Act 2023 (Commencement No. 4) Regulations 2026.

Student: 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.

80. We have decided to define a 'visiting speaker' as follows.

A person who was invited to speak at **a registered higher education provider, constituent institution or students' union**, or who would have been invited but for something that the provider or constituent institution has done. 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.

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

Summary of Proposal C: Complaints that we will not review (section C of the rules)³⁷

The Act states that a free speech complaint may contain claims that are not free speech claims. We are proposing only to review those other claims if they include information that is relevant to the free speech claims.

We also propose that:

- We will only consider free speech complaints that we receive on or after [1 August 2024],³⁸ when the free speech complaints scheme comes into effect.
- We will not review a free speech complaint in relation to matters or events before [1 August 2024] (when the free speech complaints scheme comes into effect). Where those matters or events were ongoing as of [1 August 2024], we propose to review them in relation to the period from [1 August 2024].
- We will not review a free speech complaint about a respondent if it was not a provider, a constituent institution ~~or a relevant students' union~~ when the action or inaction being complained about took place.

We propose that we will not review a free speech complaint if it appears to us that proceedings relating to its free speech claims, to which the complainant is or was a party, are being, or have been, dealt with by a court or tribunal. The Act provides for the inclusion of such a provision in the scheme rules.

Similarly, we propose that we will not review a free speech complaint if it appears to us that a complaint brought by the complainant, and relating to the same subject matter as the free speech claims in the free speech complaint, is being, or has been, dealt with under the student complaints scheme. 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, we propose that we will normally only review a free speech complaint if the complainant has completed that process or, if earlier, once 30 days have elapsed since that process began.

The Act permits the OfS to dismiss free speech complaints, without considering their merits, where they are frivolous or vexatious. We have proposed a rule in the scheme rules that will

³⁷ See OfS, Proposal C: Complaints that we will not review.

³⁸ The text in the blue box reproduces that which was consulted upon, including the original anticipated date of the scheme's launch (1 August 2024). Square brackets have been added to signal that this date has changed while preserving the original text of the proposal.

allow us to do this. That rule also sets out a non-exhaustive list of examples of where we may determine that a complaint is frivolous or vexatious.

Summary of responses

81. Many consultees broadly agreed with some or all of our proposals on this matter, without providing detailed commentary. However, most consultees provided detailed comments on some or all of our proposals about the complaints that we would not review.

Reviewing ‘free speech claims’

82. Many consultees broadly agreed with our proposals that our review would focus on the ‘free speech claims’ within a free speech complaint, and that we would only consider the ‘other claims’ insofar as they provided information that is relevant to the free speech claims. These consultees noted the importance of making this clear to complainants at the outset, to manage their expectations about the scope of our review.
83. Some consultees commented that many complaints may relate to numerous complex and related issues, and asked how the OfS would separate out the different issues to focus on the free speech claims. An example given related to complaints that may contain issues relating to harassment. Some consultees suggested that our proposals may create potential overlap or inconsistencies in approach (reaching different decisions on the same facts) where the OfS is reviewing a free speech complaint at the same time as the provider, or the OIA under the student complaints scheme is considering a complaint about wider issues relating to that free speech complaint, though this commentary was made before the changes to remove complaints from students from the scope of the OfS scheme.
84. Many consultees raised process points, suggesting that the OfS should always afford the respondent an opportunity to provide representations on the scope of the OfS’s review, that is on which elements of the complaint contained ‘free speech claims’. Consultees also asked whether the OfS would use any contextual information provided in free speech complaints (the ‘other claims’), for other regulatory purposes: for example, where that information may give rise to concerns about a provider’s compliance with the OfS’s other regulatory requirements.

Retrospectivity

85. There was some agreement with our proposals that the scheme should not have retrospective effect. That is, that we should not review complaints about events or matters that took place before the scheme is launched.
86. A few consultees sought more clarity in relation to the proposal that the OfS would review complaints about events or matters that were ongoing as of the start of the scheme.
- a. It was queried whether the OfS would review complaints about events or matters that took place before the scheme opened (now 1 September 2026), or about policies or processes that were introduced before the scheme opened, where those events, matters, policies or processes continued to have effect as of the scheme opening. Related questions included, for example, whether the OfS would review a complaint about a formal warning

on a disciplinary matter that was issued to a staff member before the scheme opened but was still on their file as of the opening of the scheme.

- b. It was suggested that events and matters from before the opening of the scheme may provide important context and may be relevant to, for example, the OfS's assessment of the seriousness of the breach of the free speech duty and its recommendations to provide redress to the complainant in the event that the complaint is upheld.

Completing internal review processes

- 87. We proposed that we would normally only review a free speech complaint if the complainant had completed any available internal review process or, if earlier, once 30 days had elapsed since that process began.
- 88. A few consultees agreed with our proposal not to require a complainant to have completed any internal review process before complaining to the OfS. Reasons given included that it would incentivise early resolution of free speech complaints. However, most consultees disagreed with our proposal that complainants could complain to the OfS once 30 days had elapsed after the internal review process had started.
- 89. Most consultees disagreed with our proposal not to require complainants to have first completed any internal review process. Common themes included the following:
 - a. Complaints may be complex, covering many different issues. It was suggested that our proposal may result in dual processes or a 'two-tier' system, where the free speech elements of a complaint are 'fast-tracked' by the respondent because of the complaints scheme, while the other elements of the complaint were considered within the normal, longer timeframes in the respondent's internal review process. This splitting of a complaint may be burdensome for the provider or students' union dealing with it, and may impact the quality of its decision making on the complaints. It may result in providers and students' unions focusing time and resources on free speech complaints, to the detriment of those who are complaining about other things.
 - b. Allowing complainants to complain to the OfS before they have completed internal review processes will result in a complaint being considered under two processes – the provider internal review process, and the OfS's complaints scheme – at the same time. This is inefficient and could result in different bodies reaching different judgements on the same complaint, which is unhelpful and confusing.
 - c. Requiring a complainant to complete the internal review process is desirable because it means that the OfS will then be provided with more information (including the provider's decision on the complaint). It will be more difficult for the OfS be able to reach a judgement on a complaint without knowing the provider's final decision on that complaint.
 - d. Complainants should be encouraged to resolve their complaints with the provider concerned. This may be less stressful for the complainants than engaging with the OfS's complaints scheme.
 - e. Diverging from the OIA's approach (requiring students to have completed internal processes before they can complain to the OIA) may create confusion. However, this

comment was made principally in the context of student complaints before they were placed out of scope of the scheme.

- f. Our proposal may create unnecessary work for the OfS. The OfS may receive, and review, complaints that could have been resolved to the satisfaction of the complainant, had they completed the internal review process.
90. It was suggested that the OfS should confirm that, where an internal review process did not exist, the relevant organisation would not be required to create one. Rather, the complainant would be able to complain directly to the OfS.
91. By contrast, it was also suggested that providers and constituent institutions should be required to have a dedicated resource to which free speech concerns could be submitted. Complainants would be signposted to the relevant internal review process, but the 30-day clock would start running from when they first submitted the issue to the dedicated resource.
92. Most consultees commented on the '30 days' element of our proposal. There was some support for the proposal, with consultees suggesting that it would provide a strong incentive for providers and students' unions to resolve free speech issues quickly. It was suggested that a complainant may be unlikely to complain to the OfS after 30 days, if the internal review process was proceeding effectively and in a timely manner. A few consultees expressed qualified support for the proposal, inviting the OfS to take a more 'collaborative approach' where it received complaints at an early stage in the internal review process. Such an approach, it was suggested, could involve the OfS providing some oversight of the internal process, rather than commencing its own review immediately.
93. However, most of those who commented disagreed with our 30 days proposal. Reasons included:
- a. It will not give the provider sufficient time within which to consider the complaint or to complete its internal review process at all or to an adequate standard. This may be particularly acute where a complaint is very complex or part of a wider investigation, for example where it relates to a disciplinary matter or to the Prevent duty, or where the complainant is also subject to a police investigation. It is also a particular concern for smaller providers, which may have very limited resource to consider complaints.
 - b. Providers may be considering a number of complaints at any one time. It is not reasonable to expect them to consider all of those complaints within 30 days.
 - c. It may create a 'hierarchy' of complaints, where providers focus on trying to resolve complaints about free speech matters, within the 30-day period, to the detriment of those who are complaining about other issues and whose complaints may then take longer to be considered.
 - d. Providers may feel pressured to resolve a complaint quickly, leading to mishandling of the complaint or a faulty judgement that is then vulnerable to successful legal challenge.
 - e. The OfS has not explained why it has suggested 30 days, and does not have any experience of complaints handling to evidence that 30 days is appropriate.

- f. The OfS does not have the power to impose a de facto time limit on providers, for the completion of their internal review processes, or the 30 days rule infringes the institutional autonomy of providers.
 - g. Under the OfS's ongoing condition of registration C2, providers must cooperate with the requirements of the student complaints scheme run by the OIA. The OIA's 'good practice framework' for handling complaints sets a 90-day period for the conclusion of internal processes, and this is reflected in most providers' own processes.³⁹ The proposed 30 days rule cuts across those established processes and may increase the burden on providers and create confusion for students. (While students are no longer in scope of the scheme, this remains a relevant point in terms of providers' consistency of approach between complaints by students and by academics on issues of free speech.)
 - h. A complainant may stall the internal review process, to 'run down the 30 days clock', resulting in the complainant being able to complain to the OfS before the provider has had a genuine opportunity to resolve the complaint.
 - i. The proposal does not reflect the requirements of Schedule 6A of the Act.
 - j. The OfS does not set similar, or indeed any, time limits for its own review of complaints.
94. Consultees suggested alternatives to our 30 days proposal. Most suggested that we include a longer time period, and suggestions included 45, 60 or 90 days, or eight or 12 weeks, in some cases with OfS discretion to review a complaint at an earlier stage in exceptional circumstances. Many referred to the timescales set by other bodies including the OIA, the Financial Ombudsman, the Information Commissioner's Office and Ofcom. It was also proposed that we should not specify a time period, but should instead include a rule stating that we will not normally review a complaint before the internal review processes have been completed, but may do so in some circumstances, clearly set out. It was suggested that such circumstances might include undue delay in the internal review process. It was suggested that the OfS should expedite its review of complaints where the complainant has a potential legal claim, for example in cases of dismissal, so that the OfS's review is completed before the deadline for submitting such a claim.
95. It was queried when we would consider the 30-day period to have started. For example, does it start when the complainant first raises their issue with the provider or students' union concerned informally? Or does it only start once the complainant has submitted a formal complaint, or any another relevant review process has been formally initiated?
96. Consultees also queried how our proposals on completing internal review processes and on retrospectivity would interrelate. It was suggested that a complainant who had completed internal review processes before the start of the scheme, should be able to complain to the OfS after the start of the scheme, presumably where the issues remained ongoing, without having to start those internal processes again. It was also suggested that complainants who were partway through an internal review process when the scheme began operating should be required to complete that process.

³⁹ See OIA, Good practice framework.

Complaints that are being or have been dealt with by a court or other tribunal

97. There was some agreement with our proposal not to review complaints if the same subject matter is being or has been dealt with by a court or tribunal, and the complainant is or was a party.
98. There were requests for more information, and suggestions about how this proposal would or should work in practice. Common themes included:
- a. Queries about how the OfS would know if the subject matter of a complaint had been considered by a court or tribunal, with some consultees suggesting that the complainant and the respondent should always be asked specifically about this issue.
 - b. Queries about how the OfS would interpret the phrase 'are being, or have been dealt with' by a court or tribunal. It was suggested that this rule should only apply where there has been some formal commencement of proceedings and that the issue of an 'Early conciliation notice' with the Advisory, Conciliation and Arbitration Service, or of a pre-action letter in other proceedings, should not fall within this rule. Consultees also asked whether a matter would be regarded as 'being dealt with' by a court or tribunal on submission of a claim, or only once the court or tribunal had issued proceedings.
 - c. The OfS should more clearly distinguish between a complaint and the matters that it relates to. More clarity is needed on whether a new complaint about matters that have previously been considered by a court or tribunal would be reviewed by the OfS.
 - d. Excluding a panel established by a Professional, Statutory and Regulatory Body (PSRB) from 'court or tribunal' could mean that the OfS and a PSRB panel are reviewing the same subject matter at the same time, with the potential to reach different judgements and so create confusion.
 - e. The OfS should 'intervene early' in a complaint where a PSRB may become involved, because PSRB disciplinary processes can themselves be impactful on staff and students.
99. Consultees also asked what approach the OfS would take where a matter was also being investigated by the police. It was suggested that the OfS should pause any review of such a complaint, pending the outcome of that investigation.

Complaints that have been considered by the student complaints scheme

100. There was considerable commentary on the interaction between the OfS scheme and the student complaints scheme operated by the OIA. We do not summarise this in detail, since it has largely been rendered moot by the change in scope of the OfS scheme, which will no longer consider complaints from students. In the section on 'our response' we do offer some commentary on the interaction between the new OfS scheme and the existing OIA scheme, in the new context.

Frivolous and vexatious complaints

101. We proposed that we would not review complaints that we consider to be frivolous or vexatious. We also set out a non-exhaustive list to illustrate when we may determine that a free speech complaint is frivolous or vexatious.

102. Some consultees sought clarity on frivolous or vexatious complaints. It was suggested that the OfS maintains a log of frivolous and vexatious complaints, to help identify where a complainant may submit repeated such complaints.
103. Some consultees queried how the OfS would determine whether a complaint is frivolous or vexatious without considering the merits of the complaint. In some cases, consultees suggested that our definition is too broad, and referred us to the definitions used by other organisations, such as the General Medical Council and the Information Commissioner's Office.
104. A few consultees commented on our example: 'You have acted aggressively, or offensively, or abusively, or have made unreasonable demands on us.' Of these, a few wanted more clarity on what might constitute 'unreasonable demands'. They queried whether the example was referring only to instances of such behaviour in relation to the OfS, and suggested that, if so, that needed to be made clear. It was suggested that exhibiting such behaviour towards the respondent should itself be an example of a frivolous or vexatious complaint for the purposes of the OfS scheme. A few suggested that 'acted [...] offensively' was ambiguous and risked undermining free speech, because it may be interpreted to refer to complaints that concerned offensive speech.
105. Some consultees asked us to add examples to our illustrative list, such as a complaint from a person who wanted to speak at a particular provider but was not invited to do so.
106. A few consultees commented that the complainant and the organisation being complained about should be given the opportunity to make representations on whether the complaint is frivolous or vexatious.
107. Consultees also asked whether providers should include the same definition in their own internal complaints processes.

Our response

Reviewing free speech complaints

108. We have decided to adopt rule 9 in the form in which we consulted on it. This means that we will only review free speech complaints.
109. We have also decided to provide some additional clarity in rule 10. Where a free speech complaint contains 'other claims', we will only review those other claims if they include information that is relevant to the free speech claims. We will decide this on a case-by-case basis, depending on the individual facts of the complaint. We have also decided to clarify in the rules that where we do review other claims, we will only determine those claims to the extent necessary for determining whether the free speech claim is justified.
110. In our view, it is appropriate for us to focus on the free speech claims in a complaint. The purpose of the free speech complaints scheme is to review complaints relating to providers' and constituent institutions' duties in respect of freedom of speech and academic freedom, as set out in section 69C of HERA. In our view, the scheme should remain focused on determining free speech claims, rather than determining wider issues that may fall outside the scope of those duties or outside the OfS's regulatory remit. In addition, we are not able to

make recommendations in relation to the 'other claims' under the Act, which we consider to support the view that we should focus our review on free speech claims.

111. However, we recognise that in some cases information relating to another claim may be relevant to the free speech claims. This might include contextual information to help us to understand the free speech claims or to decide on an appropriate recommendation, should we determine the complaint to be justified or partially justified. Where there is a causal connection between the free speech claims and an internal review process, such as a disciplinary or fitness to practice process, the conduct of that process may be relevant to our review of the free speech claims. Where the free speech claims are inextricably linked to other claims we may decide to review those other claims. For example, where the complainant has been disciplined for alleged unlawful harassment but is claiming that this amounted to an infringement of their lawful free speech, we may decide to review matters relating to those harassment claims and to the disciplinary process to help us to determine the free speech claims. These scenarios are non-exhaustive examples of how information relating to another claim may be relevant to the free speech claim.
112. Where 'other claims' are unrelated to the free speech claims, we will not review them. For example, a complainant may complain about oversight of their research, alleging that one supervising academic has poorly administered the overall research programme, and that another supervising academic has restricted elements of the research because of the viewpoint it supports. Depending on the circumstances, we may decide that the element of the complaint relating to administration of the programme is not relevant to our review of the free speech claims in the complaint.
113. Therefore, the relevant rule now reads as follows.

Rule 10

A **free speech complaint** may include claims other than **free speech claims**. However, we will only review those other claims if they include information that is relevant to the **free speech claims**, and we will only determine the other claims to the extent necessary for determining whether the **free speech claim** is justified.

114. Under Proposal F, we will tell the complainant in writing whether, and to what extent, we can review their free speech complaint and explain the reasons for our decision. We may decide to dismiss a complaint, or that we cannot review it in whole or in part, at any stage of our review without determining the extent to which it is justified. This may occur if we conclude that the complaint is not a free speech complaint, the complainant is not an eligible person, or we are unable to review some or all of the complaint under section C or section D of the rules. For example, this may be based on information that comes to our attention during the review process. In response to consultation feedback, we have introduced an opportunity for complainants to request reconsideration of a decision to dismiss a complaint for any reason, or a decision not to review it on eligibility grounds. Any reconsideration will be carried out by a different OfS staff member from the person who made the original decision.
115. We have also decided that it will be our normal procedure to share a copy of the complaint and supporting documents with the respondent, for its comment, once we have determined

that we are able to review the complaint. Given that the content a complainant submits to us will be routinely shared with the respondent, it is incumbent on complainants to consider what material they are comfortable sharing. Complainants should be aware that engaging with the scheme will require candour and transparency. This will be necessary for a complaint to be fairly determined. Complainants should therefore think carefully before making a complaint about whether it is the right route for them. We will be as clear as possible on the complaint form what will be shared with the respondent. (Personal contact details supplied to us for the purposes of facilitating the complaint will naturally not be shared.)

116. With regard to consultees' queries about whether information obtained through free speech complaints may inform regulatory action: in our proposed rules, we noted that the operation of the free speech complaints scheme does not in any way affect the ability of the OfS to investigate or take any form of regulatory or enforcement action in respect of any non-compliance with any of the OfS's conditions of registration or other regulatory requirements. Information provided to us in a free speech complaint may identify areas of concern in relation to any of the OfS's regulatory requirements. We may decide to investigate or take other action in respect of that information. If a provider does not follow the recommendations that the OfS makes as part of a complaint process, we will engage with it as a part of our work on compliance with the conditions of registration. In some cases, this may escalate to regulatory action where appropriate and proportionate. More information about our regulatory approach is set out in our regulatory framework.⁴⁰ The free speech conditions of registration will come into force in April 2027, and we will shortly be consulting on our proposals relating to these.

Retrospectivity

117. We consider that it is appropriate for us to limit our review to complaints about actions or inactions on or after 1 September 2026, when the complaints scheme provisions of the Act will come into force. To do otherwise would introduce an element of retrospectivity. Clear legislative intent is ordinarily expected for a provision to apply retrospectively, and the Act does not contain such.
118. Therefore, we have decided to include a rule on retrospectivity. However, to improve clarity and move the language closer to that of the statute, we have decided to frame that rule by reference to the 'action or inaction' of the respondent that is the subject of the free speech claims in the complaint, rather than by reference to 'matters or events' as we had proposed. Consultees sought clarity over the concept of '**ongoing** matters and events', querying its congruence with our position on retrospectivity. Therefore, as part of moving from the language of 'matters and events' to that of 'actions or inactions', we consider it clearer not to use the term 'ongoing'. This is not to deny that an action triggering a complaint after 1 September may have a history or context that stretches before that date. This context may be relevant to our understanding of the issue, but a complaint's eligibility for review, and its determination, will be carried out only by reference to the period from 1 September onwards.
119. We have decided to include some non-exhaustive examples of how the rule may operate in practice on our website. We did not think it appropriate to include these examples in the rules themselves, because they will only be relevant for the early part of the scheme, and the rules will have effect over a longer period. We reproduce these examples for clarity and

⁴⁰ See OfS, [Regulatory framework for higher education in England](#).

completeness. We consider that this revised framing, and the illustrative examples online, provide greater clarity on the intent and application of the rule.

120. Therefore, the relevant rule now reads as follows.

Rule 11

This scheme is not retrospective. This means that we will not review a **free speech complaint** to the extent that its **free speech claims** concern actions or inactions that took place before 1 September 2026. Where a **free speech claim** has a relationship to actions or inactions from before 1 September 2026, we will review the complaint only in relation to those actions or inactions that took place on or after 1 September 2026. Our website contains illustrative examples of how we may apply this rule in practice.

121. The following non-exhaustive examples are included on our website and illustrate how we may apply rule 11 in practice:

- a. In October 2026, a college disciplines a current member of staff for online posts made in 2014. The October 2026 disciplinary process and its outcome are an action of the college that we can consider under the scheme.
- b. In June 2026, a university's debating society is denied permission to invite a controversial politician to speak at its annual event. The university has a complaints scheme that external parties can use, and the politician uses it to lodge a complaint about the incident. On 22 September 2026 the university dismisses the complaint. This represents the conclusion of a complaints procedure but pertains to an action from before 1 September 2026. Therefore, the politician cannot pursue their issue through the OfS' complaints scheme. However, if a similar incident occurred after 1 September 2026, they may be able to, and were it to occur at a university or college that had no external complaints procedure they could complain straight away (see rule 14 of the scheme rules).
- c. An academic considers that a policy introduced in 2024 has prevented them from exercising their academic freedom in the content and conduct of their teaching. Upon confirming that the policy remains in force after 1 September 2026 and engaging with any internal complaints process concerning it, the academic can complain to our scheme about an action or inaction that they contend represents a breach of the providers 'A1' free speech duty.

Completing internal review processes

122. Paragraph 5(2)(b) of Schedule 6A of HERA states that the scheme 'may' (not 'must') include provision that:

'a free speech complaint is not to be referred under the scheme until the complainant has exhausted any internal procedure for the review of complaints which is provided by the registered higher education provider, constituent institution or students' union about which the complaint is made.'

123. Partly in keeping with our proposals, and in line with Schedule 6A section 5(2) of HERA, we have decided to include a rule in the final scheme rules, to the effect that we will normally only review a complaint if the complainant has completed that process or, if earlier, once 90 days have elapsed since that process began. Internal review processes include processes initiated by the complainant, such as complaints, academic appeals or grievance processes. They also include processes initiated by the provider or constituent institution, such as disciplinary or fitness to practise processes. In our view, it is appropriate for the complainant to be required to engage with such processes before complaining to the OfS, to provide the provider or constituent institution with an opportunity to resolve the free speech issues in the first instance.
124. Where there is no available internal review process, the complainant can complain directly to the OfS. This is made clear in the framing of the rule: 'Where the respondent has a disciplinary, complaints, appeals, grievance or similar internal review process under which the issues in your free speech complaint could be or are being considered...'. Wording to this effect was included in our proposals. We are not requiring providers or constituent institutions to set up separate processes to deal specifically with free speech matters, not least because we note that free speech matters may be connected to a broader set of issues.
125. We also wish to create incentives for any free speech matter to be resolved straightforwardly and efficiently by a provider or constituent institution. Therefore, we proposed that a complainant could complain to the OfS once 30 days had elapsed since the internal review process began, even where the process had not yet concluded. We recognised that it may be challenging for organisations to complete an internal process within that timescale. Our proposed rule did not require an organisation to do so. Our proposals simply opened the door to the OfS complaints scheme after 30 days.
126. If a complainant has 'stalled' an internal review process, it may be helpful for the OfS then to review the matter where it is eligible for review, to resolve matters for both the complainant and the respondent concerned. If a complainant is content with the progress of the internal review, they may be unlikely to complain to the OfS even after the period required by our rules has elapsed. If they do decide to complain to the OfS, they can continue with the internal review process at the same time. Ultimately the OfS may reach a different judgement on the issue than that reached by the respondent concerned, for example because the internal scheme is operating with different criteria from those relevant to the OfS scheme.
127. Under the scheme, if it appears to the OfS that it is more likely than not that the respondent has breached, or is breaching, its free speech duty under the Act, then we may determine that the complaint is justified or partially justified. Where a provider has considered the matter under an internal review process, that may be relevant to our review. However, it is not the focus of our review. We may decide to consider matters afresh. This is different from the OIA's approach under the student complaints scheme, which requires students to have completed internal complaints processes before complaining to the OIA scheme. The OIA's review of a complaint then focuses on whether the provider properly applied its regulations and followed its procedures, whether the procedures were reasonable and whether the provider's decision was reasonable. This difference in approach is due to the different legislative underpinnings of the schemes.

128. We are not persuaded that the inclusion of our rule on internal processes (rule 14) would create a ‘two-tier’ system of complaints, or require complainants or respondents to ‘split’ complaints into free speech and non-free speech elements. The free speech claims in a complaint may be closely connected to the other claims such that any meaningful review must consider them together. However, where the free speech claims are a small, and distinct, part of a much bigger complaint, the complainant may be more focused on those other issues. If they decide to complain to the OfS, they must accept that we will focus on the free speech claims rather than the other issues, even where those other issues make up most of the complaint.
129. However, we have considered the feedback that we have received on this 30 day proposal. The original limit was set partly in consideration of students, who have a more limited time at institutions, but students are no longer in scope of the scheme. We have therefore decided to implement the rule with a 90-day period, which will start from when the relevant internal process began. The 90-day timescale is longer than equivalent timescales operated by ombudsman services in analogous scenarios.⁴¹ The 90-day timescale is also consistent with the OIA’s good practice framework (which was highlighted in by consultees), and this alignment may help ensure consistency between complaints by students (to the OIA) and academics and others (to this scheme).⁴²
130. The framing of the rule (‘we will normally only accept....’) gives us flexibility to accept a complaint that we receive within 90 days of the internal process beginning. Whether we do so will depend on the facts of each individual case. We consider that it would be unhelpfully restrictive to seek to capture all the possible circumstances within the rule itself.
131. We acknowledge that, in the initial months of the scheme’s operation, there may be some complexities in the interaction between this provision and the provision on retrospectivity (set out in rule 11 of the scheme rules). For example, a complainant may wish to complain to the OfS about an action of a provider that is ‘live’ as of 1 September 2026, such as a policy. Those issues may already have been the subject of the provider’s internal review processes, before 1 September 2026. In those circumstances, it is reasonable to expect the complainant to raise the issues with the provider again, after 1 September 2026. This is reasonable for two reasons:
- a. The issue that the complainant wishes to complain about has a new context after 1 September 2026 due to the launch of the complaints scheme. The provider should be given the opportunity to engage with the issue in that new context. It may address the issue to the complainant’s satisfaction, which would prevent the need for a complaint. This would be more efficient for all parties than engaging the scheme without dialogue. Take, for example, a policy that has been in place for four years and that the complainant queried through internal procedures, which concluded three years ago. It would not seem fair to us, or consistent with our position on retrospectivity, for the complainant to be able to bring this issue to the scheme without first engaging with the provider in the new context of the complaints scheme.

⁴¹ The Energy Ombudsman, Communications Ombudsman and Financial Services Ombudsman have equivalent provisions set at six or eight weeks.

⁴² See OIA, Good practice framework: Principles.

- b. Conceptually, the complainant must be complaining about an action or action occurring after 1 September 2026. The circumstances where – as of the 1 September – such an action has already been subject to complete internal procedures must be the exception, and it is incumbent upon the complainant to confirm that the respondent shares their view that this exceptional scenario has been engaged.

132. Therefore, where the complainant considers that an issue about which they intend to complain has already been subject to a concluded or ongoing internal process, they must confirm this understanding with the provider. If the provider decides to consider the matter, the complainant could submit a complaint to the OfS once that process is complete or, if earlier, once 90 days have elapsed. Alternatively, if the provider confirms the complainant's understanding that there are no further internal review processes open to them, the complainant could submit a complaint to the OfS without waiting for the 90 days to elapse (having provided proof of this mutual understanding as part of the complaint).

133. Therefore, the relevant rule now reads as follows.

Rule 14

Where the **respondent** has a disciplinary, complaints, appeals, grievance or similar internal review process (whether initiated by you or by the **respondent**) under which the issues in your **free speech complaint** could be or are being considered, we will normally only accept **a free speech complaint**:

- a. once you have received confirmation from the respondent that you have completed that process or, if earlier;
- b. once 90 days have elapsed since that process began.

134. Under Proposal N: Advertising the scheme, we set out requirements around informing relevant parties about the scheme. Providers and constituent institutions are not required specifically to signpost complainants to the OfS scheme at the end of the 90-day period. We are not persuaded that the 90 day rule cuts across existing processes, or the OIA's good practice framework, in an unhelpful way. Our rule is not requiring providers to complete their processes in 90 days.

135. We consider time limits further under Proposal D.

Complaints considered by other organisations

136. We consider that it is appropriate to include rules to the effect that we will not review a complaint where a complaint dealing with the same subject matter brought by the same complainant is being, or has been, considered by a court or tribunal. This will enable us to focus our activity where it is most likely to be needed. We recognise the importance of providing clear information to complainants about the OfS scheme, so that they can make an informed choice about which route to choose.

137. When a complainant submits a complaint to the OfS, they will be asked to confirm that proceedings relating to the free speech claims in that complaint (to which the complainant is

or was party) have not been, or are not being, dealt with by a court or tribunal. We may ask the complainant or the respondent specifically about this matter as part of our consideration of a complaint. It is likely that the respondent would be the subject of any relevant legal action, and upon being contacted by the OfS about a complaint would – in the interests of an accurate view of the complaint's eligibility – inform of us of conflicting procedures. We may also share information with other organisations to determine whether a complaint has been considered by them or in another forum. We may withhold or redact information where we consider it appropriate. Where we share information, we will do so in accordance with data protection requirements and the requirements of HERA.

Complaints that have been dealt with by a court or other tribunal

138. We have decided to implement the rule as proposed, with one amendment. That amendment makes clear that we will consider that proceedings have begun once the application or claim has been accepted by the court or tribunal. We have made this change because we recognise that a complainant may submit a claim that is not accepted by the court or tribunal because, for example, it is out of time. In those circumstances, the complainant should not be prevented from bringing a complaint to the OfS. This wording also makes clear that pre-action correspondence or an early conciliation process with the Advisory, Conciliation and Arbitration Service would not constitute court proceedings for our purposes, since they do not involve an application or claim being accepted by a court.
139. Where a complainant commences proceedings at a court or tribunal, they may be able to request a stay of those proceedings, and if that request is granted they may then complain to the OfS. This is set out on the face of the rule.
140. We consider that the reference in the rule to 'proceedings relating to the same subject matter as the free speech claims in a complaint' makes it sufficiently clear that we would not consider a new complaint about the same subject matter that had previously been the subject of court or tribunal proceedings relating to a previous complaint.
141. We consider that it is appropriate to exclude panels established by a PSRB where this was not at the complainant's request. Where such panels are requested by the respondent or others, this should not preclude the complainant from bringing a complaint to the OfS. A PSRB may decide to reconsider a matter where, for example, the OfS determines that a complaint is justified.
142. As a result of consultee input, we agree that where a matter is being investigated by the police, we may decide to suspend our review of a complaint pending the outcome of that investigation. These circumstances may also apply to some other authorities, for example the security services. We have therefore made this clear in the final rules, and this is considered in more detail under Proposal I: Suspension and withdrawal.
143. Therefore, the relevant rule now reads as follows.

Rule 13

We will not review a **free speech complaint** if it appears to the OfS that proceedings relating to the same subject matter as the **free speech claims** in that complaint, to which you are or were party, are being, or have been, dealt with by a court or tribunal. ‘Court or tribunal’ does not include a panel established by the **respondent**, in connection with its own internal disciplinary, complaints or appeals processes. Nor does it include a panel established by a **Professional, Statutory and Regulatory Body** where this was not at your request. We will consider that proceedings have begun once the application or claim has been accepted by a court or tribunal, including where that application or claim is seeking permission to bring proceedings. We may decide to review a **free speech complaint** where permission to bring any such proceedings was refused or where any such proceedings have been formally stayed or adjourned.

Complaints that have been considered by the student complaints scheme

144. Much of the commentary on the interaction with the OIA is no longer relevant given that HERA will no longer allow for complaints by students to the OfS free speech complaints. Because of this change in scope, we have decided not to implement the rule pertaining to the student complaints scheme.
145. In fact, we anticipate that we will want to be able to consider complaints that may have parallels in the OIA system. For example, students who are also academics or visiting speakers or staff may wish to complain to us about free speech issues they have encountered in these capacities (not in their student capacity). Under the Higher Education Act 2004, the OIA is only able to consider complaints that arise in a student’s capacity **as a student**.⁴³ We will operate on the principle that we will consider their complaint in their non-student capacity only, though the facts of the case will be crucial and may not allow such a strict division of roles.

Frivolous and vexatious complaints

146. Our proposed rule set out a non-exhaustive list of types of complaints that we may determine to be frivolous or vexatious. We consider that this list gives a sufficient sense of when we may make that determination. We may refine these examples or include further examples in the future, arising from our operation of the scheme and so informed by real cases. In each case we are determining whether a particular complaint is frivolous or vexatious. Where we determine that a complaint is frivolous or vexatious, it does not follow that we will necessarily determine subsequent complaints submitted by the same complainant to be frivolous or vexatious.
147. However, we have decided to amend the example at 15.c, to clarify the intention behind that example. The example now reads as follows.

⁴³ See Gov.UK, Higher Education Act 2004; OIA rule 2 Who can complain? (Rule 2).

Rule 15.c

You have acted aggressively or abusively towards us or have made unreasonable demands on us, in your dealings with us in relation to the **free speech complaint**.

148. This example relates to the complainant's behaviour towards us in relation to our review of their free speech complaint. That was the intention of the original drafting. The intention was not to capture the behaviour of the complainant towards the respondent or the behaviour of the complainant underpinning the circumstances of the complaint. In that spirit we have removed the term 'offensively', to avoid the potential for confusion with the content of the complaint, which may concern the protection of speech considered by some to be offensive. Providers and constituent institutions can decide for themselves whether to include similar wording in their own internal complaints processes. We do not require them to do so.

149. We have also decided to include a further example as follows.

Rule 15.f

You have not responded to us by any deadline that we gave you when we suspended your **free speech complaint**.

150. We have included this example because we recognise that clarity on the circumstances in which we may go on to dismiss a complaint that we have previously suspended may be helpful. This is in response to comments on Question I (Suspension and withdrawal) and we have set out more detail there.

151. Under Question F (reviewing a free speech complaint), we have explained how we will review a complaint, including deciding whether it is one that we can review under the scheme. We indicate that we may share information with the respondent or with other parties, to help us decide whether we can review some or all of the free speech complaint. This could include where we are deciding whether a complaint is frivolous or vexatious. However, we will not do so in every case as a matter of course. We will only do so where we consider it necessary to inform our judgement about whether a complaint is frivolous or vexatious.

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

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

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

Summary of responses

152. Some consultees suggested that dating a time limit relative to the 'last adverse consequences' was too loose or vague. One said that it meant in practice that there would be no limit, because it would always be easy to argue that there were ongoing consequences. Some also said that it would be difficult to judge when the last adverse consequence was, and some noted that an investigation of events in the distant past (with more recent alleged consequences) may be difficult to conduct if the provider has disposed of relevant records, as data protection regulations may have required.
153. It was also suggested that the time limit should instead be dated relative to the last alleged infringement or, alternatively, to the first alleged infringement. Some consultees suggested that the deadline for complaining should be 12 months after the complainant had completed the respondent's internal processes.
154. Consultees also commented on the proposed 12-month time limit. Many considered that this was a reasonable limit. A few considered that we should be able to depart from it, for example to make allowances for situations of ill health, where information came to light at a later date or where the relevant institution had promised actions but had not delivered them.
155. One consultee considered that the 12-month limit was too short. A consultee suggested that it might take complainants time to realise that they had suffered adverse consequences.
156. Some also suggested that the 12-month period should be shortened, for instance to three or six months. A consultee suggested that the time limit should be shortened unless the OfS extends the proposed 30-day time period before it will review a complaint, after the start of any relevant internal process.

Our response

157. We consider that it is appropriate to include a time limit within which complaints must be submitted to the OfS, to support the timely submission of complaints. However, we accept that a time limit relative to the date of the last alleged adverse consequence creates the risk that complaints may be brought many years after the alleged action or inaction being complained about, and that those complaints may be difficult to investigate. We have therefore decided to tie the time limit to the date at which it appears to the OfS that the action or inaction being complained about last occurred.

158. We consider that in a wide range of circumstances, 12 months is a reasonable timeframe. We consider that a significantly longer timeframe is likely to present practical difficulties. Reviewing a sequence of events that took place long ago may present practical difficulties, since evidence may have been destroyed and memories may have faded. Equally, we consider that a significantly shorter timeframe may be unfair to complainants who need more time to compile the evidence and submit a complaint to the OfS. We also consider that a timeframe of 12 months may give potential claimants time in which to seek an informal resolution with any potential respondent.
159. However, we accept consultees' arguments that there may be circumstances in which a complainant may face difficulties in compiling a complaint within the time limit. We have therefore included additional framing giving us discretion to accept a complaint after the 12-month time limit, where the complainant provides 'good reasons' why the complaint could not have been submitted before that time limit elapsed.
160. The relevant rule now reads as follows.

Rule 16

Unless there are good reasons why it was not, a **free speech complaint** must be submitted to the OfS by 12 months after the date on which it appears to the OfS that the action or inaction being complained about last occurred.

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

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

We are proposing that a free speech complaint must be made in writing by submitting a complaint form to us. We propose to make the complaint form available on our website and that complainants will be able to submit the form, together with any supporting evidence, to us online or through the post. We will be able to make adjustments to this process for complainants who have a disability, to enable them to access the scheme.

We propose to ask for personal information in the complaint form, including date of birth if the complainant is under 18 years old. In the latter case, a parent or guardian will be required to sign the complaint form as well. The subject matter of a complaint may include sensitive personal data. We will process personal data, including sensitive personal data, in accordance with relevant data protection legislation. We also propose to ask for information that will help us to determine whether we can review the complaint under the scheme and make a decision on it.

We propose that we will not review anonymous complaints. We will make reasonable attempts to protect the complainant's identity if they ask us to do so, unless we are legally required to reveal their identity. However, we cannot guarantee that we will be able to maintain a complainant's anonymity. We do not have formal powers to protect whistleblowers.

We also propose that a complainant may appoint a representative to conduct their free speech complaint for them. We propose that we will normally then correspond with the representative in relation to the free speech complaint, rather than with the complainant. Under our proposals, a complainant does not need to appoint a representative.

Summary of responses

Complaint submission

161. A few consultees stated that the proposed complaint form should include questions about what steps the complainant has already taken to resolve the complaint. They said that the answer should detail which processes they have used within the institution and whether they have submitted their complaint to any other related schemes.
162. It was suggested that the complaint form include a mandatory field where the complainant must outline which steps (if any) the respondent has already taken to remedy or respond to the complainant's claim.
163. A few consultees commented that the complaint form should allow the complainant to choose whether the OfS communicates directly with the complainant or their representative, or both.
164. Consultees recommended the following additions to our review process:

- a. There should be opportunities to submit a victim statement.
- b. There should be opportunity to request a face-face meeting with the respondent.
- c. The complainant should be allowed or encouraged to specify what outcome would be 'just satisfaction'.

165. A few consultees asked what support would be available to disabled complainants or those who need reasonable adjustments to submit a complaint.

Anonymous complaints and concealing the identity of the complainant

166. Some consultees agreed with our proposal not to review anonymous complaints, suggesting that anonymity would restrict the respondent's ability to investigate and respond to a complaint in a robust, effective and timely manner. It was suggested that our proposal to require a complainant to engage with any relevant internal review process before complaining to the OfS would compromise any anonymity in any event.
167. A few consultees raised concerns about our proposal not to review anonymous complaints. These included that prohibiting anonymous complaints may discourage whistleblowers, or students and staff who are embedded in hostile environments. It was suggested that in the absence of legal protections for whistleblowers, safeguarding measures should be put in place to protect the whistleblower from adverse consequences.
168. It was also suggested that we should accept anonymous complaints because they may include contextual information about a respondent that would be important in our review or investigation of the complaint that the complainant would otherwise not feel comfortable submitting.
169. One consultee requested clearer definition of anonymity: for instance, whether a complaint can be submitted under a pseudonym, or through a representative who has been asked not to disclose the name of the person they are representing.
170. A few consultees agreed that the OfS should make reasonable attempts to conceal the identity of complainants where asked to do so, because some complainants may fear additional adverse consequences or ostracism by the respondent. It was also suggested that the complainant should be informed before their identity is disclosed to the respondent, and given the opportunity to withdraw their complaint. It was also suggested that the duty to conceal the complainant's identity should extend to the respondent once it is made aware.
171. Some consultees said that the identity of the complainant should always be disclosed unless there were compelling reasons for not doing so. Reasons given included that respondents would need to know the complainant's identity to properly respond to them about their complaint.

Representatives and third-party submissions

172. Some consultees asked for clarity around who could be appointed as a representative for the complainant, including whether students' unions, lobby groups, sector bodies, or trade unions could act as representatives. One consultee commented that allowing campaign and lobby groups to act as representatives would politicise the complaints process.

173. Many consultees also commented that the appointment of representatives on behalf of a complainant should not be necessary and should be discouraged by the OfS. Consultees were concerned that allowing representatives would be inefficient and inappropriate given that the complaints process is not a judicial or legal process, would add unnecessary costs and delays to the process, and would incentivise the complainant to use the OfS complaints scheme first, over a respondent's internal processes.
174. Many suggested that legal representatives should be discouraged or even not permitted. A few consultees commented that if respondents are allowed legal representatives, then complainants should also be allowed legal representatives to handle their response. It was suggested that this would create equality between the complainant and the respondent. A consultee also raised a concern that permitting legal representation could result in a 'legal arms race.'
175. It was commented that third-party organisations, societies, groups, or unions should be able to submit a complaint on behalf of an anonymous complainant. A consultee proposed that the organisation acting as a representative for the complainant would hold personal details about the complainant, and would be responsible for checking that complaints are eligible within the complaints scheme rules.
176. A few consultees commented that even if a representative is appointed by the complainant, the complainant should be responsible for submitting the complaint in the first instance and should have some involvement in the review process. It was also suggested that complainants should be able to change their representative at any point in the process.
177. Some consultees asked for more clarity around how a complainant would appoint a representative and what relationship they should have with the complainant. Some consultees requested further guidance around representatives, who is eligible and what their role is, similar to that published by the OIA.
178. Concerns were raised that the representative may not keep the complainant up to date with their case and asked what the OfS would do to ensure that the complainant-representative relationship is not abused.
179. Consultees were also concerned that if a complainant submitted a complaint against a students' union then they would not be able to access the free and impartial advice and support typically provided by the students' union. They asked whether a complainant would be able to receive free and impartial advice elsewhere.

Complaints from children

180. A few consultees commented on the specific case of those under 18 submitting complaints. (These comments were primarily given in anticipation of students using the OfS scheme, which they will no longer be able to do. Nonetheless it is conceivable that under-18s may still wish to use the scheme, for example in the case where they may be visiting speakers.) A few consultees suggested that children under the age of 18 who wish to submit a complaint should need their parent or guardian to countersign their complaint. Others were concerned that such a requirement may act as a barrier to those under 18 being able to make a complaint. It was suggested that we should use the Gillick principle (*Gillick v. West Norfolk*

and Wisbech Area Health Authority, 1985) when determining whether a child is sufficiently capacitated to bring a complaint without a parent or guardian signing their complaint.⁴⁴

Our response

Complaint submission

181. As we proposed, we have decided that a free speech complaint must be made in writing by submitting a complaint form, and any supporting information, to us. Supporting information could include details of how the adverse consequences, that the complainant is claiming, have affected them, and the redress that they are seeking. More details of how to submit a complaint will be made available on our website in time for the launch of the complaints scheme on 1 September 2026. We will be able to make reasonable adjustments to our process for complainants who have a disability or any accessibility requirements to enable them to access the scheme.
182. We require personal information in the complaint form to process a complaint (e.g. contact details). The subject matter of a complaint may also include sensitive personal data. We will process personal data, including sensitive personal data, in accordance with relevant data protection legislation.
183. While we will not share personal information collected in order to process the complaint (e.g. contact email address) our scheme rules make clear that we will share with the respondent the information shared by the complainant that pertains to complaint. This means that complainants should think carefully about any details they do not wish to be shared with the respondent. We will be as clear as possible in our communications and materials about the material we expect to share with the respondent.
184. We will ask for information that will help us to determine whether we can review the complaint under the scheme. This could include asking the complainant to confirm whether they have engaged with any relevant internal review process, and whether court or tribunal proceedings have been initiated in respect of the same issues. Under question C, we explain in more detail the complaints that we are unable to consider under the scheme.

Anonymous complaints and concealing the identity of the complainant

185. As we proposed, we have decided that we will not review anonymous complaints. To pass our eligibility checks the complainant must be able to verify that they are or were a staff member, member or visiting speaker at the university, college, or constituent institution they are complaining about. To verify a complaint's eligibility and to investigate any complaint effectively and efficiently, we may need to collect personal information about the complainant, and potentially hold meetings to discuss the case (though we do not expect this will be routine). Therefore it would not be practical for us to allow anonymous complaints.
186. While we understand that in not accepting anonymous complaints, we may be dissuading whistleblowers from coming forward, we note that we do not have a legal role in relation to whistleblowers. Since the consultation, the Department for Education has indicated that it will

⁴⁴ The original Gillick principle is that the parental right to determine whether or not their minor child below the age of 16 will have medical treatment terminates if and when the child achieves sufficient understanding and intelligence to understand fully what is proposed.

work to make the Office for Students a whistleblowing body for registered higher education providers.⁴⁵ Nonetheless the timescale and details of this proposal are yet to be determined, and we therefore do not consider it appropriate to adjust our approach or proposal at this time. We also note that the complaints scheme does not replace our current notifications system. A notification to the OfS informs us, as the regulator for higher education in England, about concerns or issues you have about your university or college that are relevant to our regulatory remit.⁴⁶

187. We proposed that we will make reasonable attempts to protect the complainant's identity if they ask us to do so, unless we are legally required to reveal their identity. Several consultees asked for further details on how we will protect the complainant's identity. Some argued that concealing the identity of the complainant from the respondent would make it difficult for respondents to confirm the eligibility of the complainant, investigate the case internally, and respond effectively to any claims made against them.
188. Reflecting on these views expressed in the consultation, we think it will be difficult for the respondent fairly to respond to the complaint if it does not know who is making it. For a complaint to be justified there must have been an A1 breach that has caused adverse consequences. It will be hard for respondents to comment on alleged adverse consequences pertaining to someone whose identity they are not aware of. However, we also give weight to consultees who supported the proposal and recognise that there may be some cases where the complainant has legitimate reasons to wish to conceal their identity from the respondent or from relevant other parties.
189. Therefore, we have decided to maintain our position that we will make reasonable attempts to protect the complainant's identity if they ask us to do so, but we have altered the rule to make it clearer that this would be an exceptional case, not the norm. Complainants must make a compelling case that our protecting their identity is necessary. We cite the example of a threat to safety as a potentially compelling reason. We have also removed the wording about revealing a complainant's identity if 'we are legally required to do so'. We considered this wording to be redundant, since we will always act within the law. The relevant rule now reads as follows:

Rule 19

We cannot review anonymous complaints. If you make a compelling case for us to protect your identity from the **respondent** or other persons (for example on grounds of a credible threat to your safety), we will make reasonable attempts to do so. However, we cannot guarantee that we will be able to protect your identity. The OfS does not have formal powers to protect whistleblowers.

Representatives

190. There may be many circumstances in which a complainant wishes to appoint a representative to conduct their complaint. We consider that it is for the complainant to decide whether they

⁴⁵ See Gov.UK, [Students given stronger protections against extremism on campus](#).

⁴⁶ See OfS, [Notifications](#).

need this form of support, and if so whom to appoint as a representative. We consider that permitting complainants to appoint representatives may make the scheme more readily accessible to some complainants.

191. We do not consider that permitting representatives for complainants creates a risk that the scheme will be politicised. Complainants have an interest in ensuring that any representative understands the complainant's complaint, will act in the complainant's best interests and can keep the complainant informed throughout the review process.
192. We have therefore decided that complainants may appoint a representative to conduct their free speech complaint on their behalf. They are not required to do so. A representative will be chosen by the complainant, and we will not conduct a 'fit and proper person' assessment of the representative. If the complainant chooses a representative to handle their complaint on their behalf, we will normally communicate with the representative directly. The complainant can, at any time, inform us that they no longer wish the representative to act for them and we will then deal with the complainant themselves.
193. A representative need not be legally qualified. However, we are not prohibiting legal representation, or any other type of representative, because it is a matter for the complainant to determine who they wish to represent them. We also do not consider that there is a risk of a 'legal arms race'. Respondents may appoint a legal representative. It would be unfair on complainants to prohibit them from doing the same. However, the scheme is designed to be straightforward for complainants to use, so that they do not need professional representation. The most important issue is that the representative understands the free speech complaint, will act in the complainant's best interests and can keep them informed throughout the review process. This is made clear in rule 20, which we are implementing in the same form as we proposed.

Complaints from children

194. While the Act does not now allow students to complain to our scheme, it is nonetheless conceivable that under-18s may be eligible to use the scheme, for example in the case of a young visiting speaker. Thus, while we anticipate it being a less used aspect of our operation, we have still decided to implement our proposal that a parent or guardian will also be required to sign the complaint form of a complainant who is under 18 when they make the complaint. This proposal is implemented through our complaint form.

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

Summary of Proposal F: Reviewing a complaint⁴⁷

We propose that when we first receive a complaint, we will consider whether it is one that is eligible for review under the scheme. This means that we would consider whether:

- a. The complaint is a free speech complaint (section A of the rules and [Proposal A](#)).
- b. The complainant is an eligible person (section B of the rules and [Proposal B](#)).
- c. The free speech complaint is about an organisation that can be complained about under the scheme (section A of the rules and [Proposal A](#)).
- d. We cannot review some or all of the free speech complaint under section C of the scheme rules (see [Proposal C](#) – Complaints we will not review) or section D of those rules (see [Proposal D](#) – Time limits).

We propose that we may share information with the respondent or with others to help us to determine matters of eligibility. We will tell the complainant, and the respondent if relevant, whether and to what extent we are able to review their free speech complaint.

Our proposals give us discretion to determine what activities to undertake to conduct a review. We propose to consider the complaint form and any supporting information that the complainant submits with that form. We may ask the complainant and/or the respondent specific questions or request additional information from them. We may share some or all of the information that the complainant sends to us with the respondent and may seek their representations on that information.

Where we consider it appropriate, we may decide to have one or more face-to-face meetings with the complainant and/or the respondent and/or other persons that we consider may have information or expertise that is relevant to the free speech complaint. We may ask the complainant, the respondent, or those other persons, questions at such a meeting. We may allow the complainant, the respondent and/or those other persons to ask each other questions at such a meeting.

We propose that, where we consider that a free speech complaint concerns academic judgement, we may seek expert academic judgement to inform our review. We propose that we will do this only if we consider it appropriate. We also propose that we may seek expert advice from persons with other forms of expertise, where we consider it appropriate.

⁴⁷ See OfS, [Proposal F: Reviewing a complaint](#).

We are also proposing that we may seek a settlement of the free speech complaint without conducting a full review. This would require the agreement of the complainant and the respondent and would result in the withdrawal of the complaint by the complainant.

We propose that we may decide to dismiss a complaint, during our review, if we decide that the complaint is not one that we can consider after all (that is, that the eligibility requirements referred to above are not in fact met). We may do this where, for example, new information comes to light during our review

Summary of responses

195. A few consultees broadly agreed with some or all of our proposals on this matter, without providing detailed commentary. They commented that the proposals were fair, reasonable and easy to understand.

Communications and information sharing

196. Some consultees suggested that our proposals give us too much discretion on when we will share information with the respondent and seek its comment on information submitted by complainants.
197. Many consultees commented that we should always inform the respondent that a complaint has been made against it. A few commented that information about the complainant should be shared with the respondent to verify the complainant's eligibility, for example whether they had engaged with any internal review process and the status of that process and whether they had previously complained to the OIA about the same issue. Consultees commented that informing the respondent when we receive a complaint would help the respondent understand the issues facing students, staff, members and visiting speakers at the institution.
198. Many consultees suggested that not informing respondents that a complaint has been made against them, and not providing them with an opportunity to comment on the complaint, would be unfair and contrary to due process and natural justice. It was suggested that such a failure would mean that respondents would not have the opportunity to submit relevant evidence that could or would bear on the outcome of the complaint. It was also commented that respondents will have conducted an internal investigation for most, if not all, complaints and therefore should be able to submit this information as evidence.
199. It was raised that the OfS could share information with the respondent only once we have decided that we will review the complaint. It was suggested that this may mitigate burden placed on respondents as they would then have to respond to complaints that the OfS decides not to review, for example complaints that the OfS determines to be frivolous or vexatious.
200. One consultee queried whether we would require respondents to have one dedicated point of contact within the institution.
201. It was commented that respondents should only be required to disclose information where necessary, reasonable and proportionate. It was suggested that, in cases where there is a legal requirement to disclose information, this should be noted in the information request.

Timings

202. A few consultees commented that complaints should be prioritised based on the seriousness of the case. For example, cases where there have been consistent violations, threatening or violent behaviour, or a surge in activities should be prioritised.
203. Consultees commented that if respondents have 30 days to make a judgement on a complaint through internal procedures, then we should also be required to make a decision in 30 days.
204. Some consultees requested that we set out indicative timescales for each stage of our review process. Reasons given included that this would manage expectations and make the OfS's process transparent.
205. It was noted that since the complaints scheme is grounded in the adverse consequences suffered by the complainant, the time that it takes to review a complaint should not unnecessarily contribute to a further loss or adverse consequence.
206. A consultee also commented that where a complainant potentially has a legal claim that may be brought in the employment tribunal, the OfS should where reasonably practicable determine the complaint before the expiry of the three-month limitation period for such claims. It was suggested that a complainant should be able to access such a 'fast track' without needing to follow (or complete) any internal processes.

Review process

207. Some consultees commented on our proposals relating to face-to-face meetings:
- a. Clarity was requested around who the 'other persons' might be.
 - b. Some were not in favour of face-to-face meetings, including where either party is legally represented, suggesting that they may be too similar to a judicial hearing.
 - c. It was commented that those from disadvantaged backgrounds or those with vulnerabilities may be less likely to submit a complaint if the OfS could then require them to appear in person to discuss the case. Others noted that some complainants may not be able to afford travel costs and should be reimbursed or funded to attend meetings in person if required.
 - d. A consultee suggested that face-to-face meetings are likely to result in a more favourable outcome for both parties. A consultee suggested that any face-to-face meeting should be without prejudice and seek to find informal solutions with the OfS acting as a mediator.
208. Some consultees commented that in reviewing a complaint we should consider how other regulatory requirements affect a respondent's decision to act or not to act in a particular way when dealing with a free speech case. For example, concerns were raised about how a respondent will have to weigh its Prevent duty and obligations to protect students from sexual misconduct and harassment when dealing with free speech and academic freedom complaints, and how they will evidence this reasoning to the OfS when we review a complaint.

209. Others sought clarity around where the burden of proof lies in free speech claims. Is it the complainant's responsibility to be able to evidence their claim or is it the respondent's responsibility to evidence that it took reasonably practicable steps to protect free speech and academic freedom?

Complaint reviewers

Complaint handlers

210. A few consultees asked whether a panel or a single case handler will be responsible for investigating and deciding the outcome of a given case.
211. A few consultees requested further information about how we will select case handlers. A consultee also asked for more details on reporting structure, recruitment, training and the timeline for training for case handlers.
212. It was also questioned how we will control for bias and ensure that case handlers are impartial when determining the decision outcome.

Academic judgement and other expert judgement

213. Some consultees broadly agreed with our proposal to seek expert academic judgement or expert advice from other experts, where we consider it appropriate. It was suggested that where expert advice had been relied upon, this should be set out in the Notice of complaint outcome.
214. Some consultees sought further clarity on how we will use expert judgement in the review of complaints. Consultees asked how experts would be selected and whether respondents would contribute to the selection process. They also asked whether expert reviewers would be paid, who would bear the costs, and whether they would be subject to confidentiality.
215. A few consultees suggested that relying on academic experts may impinge on academic freedom to put forward controversial or unpopular ideas, or on institutional autonomy of respondents. It was also suggested that there should be no need for expert academic judgement as the judgement that a respondent breached its duty is not a matter of academic opinion.
216. A few consultees commented that the OIA does not consider complaints to the extent that they involve academic judgement and, therefore, that the OfS should not rule on matters relating to academic judgement.

Legal advice

217. One consultee asked whether we would take into account situations where the respondent sought legal advice before taking or deciding not to take action in a particular case; and if so, how. It was asked whether we intend to take our own legal advice on complaints. One consultee stated that there may be conflicting legal views on a given case and asked how we will deal with such cases.
218. One consultee questioned how we will handle information that is legally privileged and maintain legal privilege in the adjudication of a complaint.

Withdrawal and settlement

219. Several consultees requested that we clarify the differences, if any, between complaints that are withdrawn and complaints that end in settlement.
220. A few consultees asked for more clarity on the settlement process including whether it would also include financial elements of a complaint. A few consultees questioned what ‘terms of settlement’, if any, would be published. A few consultees commented that terms of settlement should not be published.
221. Others suggested that settlements should be full and final and legally binding.
222. A few consultees were concerned that the possibility of settlement could put undue pressure on the respondent to settle rather than risk reputational damage caused by a justified complaint.

Our response

Communications and information sharing

223. We have decided to implement rule 21 in the form in which we consulted. This means that when we first receive a complaint, we will consider whether it is eligible for review under the scheme. We will consider in our review whether:
- a. The complaint is a free speech complaint (section A of the rules).
 - b. The complainant is an eligible person (section B of the rules).
 - c. The free speech complaint is about an organisation that can be complained about under the scheme (section A of the rules).
 - d. We cannot review some or all of the free speech complaints under section C of the scheme rules or section D of those rules.
224. Under the final rules, if a complaint is not eligible for consideration under the scheme (because it does not meet one of the conditions in paragraph 223) the complainant will be notified. If they believe that we have made an error in reaching our eligibility determination, they can (within 28 days) ask for a reconsideration of the decision. If we decide that a complaint is one that we can consider, we will tell the complainant and begin the review stage. We may decide, but are not required, to share information about the complaint with the respondent in order to assist us in reaching our eligibility determination.
225. We recognise that the respondent or others may have information that is relevant to our consideration of the eligibility of a complaint. We have decided that we will normally share the details of the complaint with the respondent once we have decided that it is eligible for review. We consider that relevant information about eligibility may come to light at that stage. Our scheme rules allow for the possibility that we may decide not to review a complaint at any stage of our review if we determine that it is not eligible (see rule 30). We also consider that not sharing all complaints with respondents at the outset, as a matter of course and before we have considered matters of eligibility, may mitigate the burden on respondents with regard to

complaints that are vexatious or frivolous. It may also mitigate burden where complaints or complainants are not eligible.

226. In our proposals, we proposed that we may share some or all of the information in a complaint with the respondent and that we may seek the respondent's response to that information. We recognise that a respondent will be able to provide relevant evidence that would bear on the outcome of a complaint. Therefore, the final rules provide that, once we have decided that a complaint is eligible for review, we will normally share the details of the complaint with the respondent and give the respondent an opportunity to comment on the complaint. We have retained some flexibility because there may be exceptional circumstances where we judge that some or all of the details of a complaint cannot, or need not, be shared with the respondent. For instance, if a complaint is eligible, but the complainant has submitted no relevant evidence, we may decide that the complaint is not justified without informing the respondent.
227. Consultees suggested that the rules should make clear on whom the 'burden of proof' falls, and we assess that this is a sensible suggestion, which we have addressed by adding the second sentence of rule 25. Therefore, the relevant rules will now read as follows:

Rule 25

Where we decide that we can review a **free speech complaint**, we will decide what activities to undertake to conduct that review. We expect **complainants** to demonstrate how their complaint is justified.

Rule 26

We will normally:

- a. Seek the **respondent's** comment on the complaint form and any accompanying documents. We will specify a deadline for receipt of this comment. This will normally be a minimum of 14 days. We may extend the deadline upon a reasonable request of the **respondent** or on our own initiative if we consider it appropriate to do so.
- b. Seek your comment on the **respondent's** comments on the **free speech complaint**. We will specify a deadline for receipt of this comment. This will normally be a minimum of 14 days. We may extend the deadline upon your reasonable request or on our own initiative if we consider it appropriate to do so.

Rule 27

Where we consider it appropriate, we may also ask you and/or the **respondent** to answer specific questions and/or provide additional information as set out in a notice in accordance with section L. For example, we may ask questions or require information about the **respondent's** policies or procedures, or its decision-making processes where these are relevant to the **free speech complaint**.

228. In Proposal L we outline the details of when and how we might request information from both the complainant and the respondent. It will be for respondents to decide on a suitable internal point of contact for communications relating to a complaint.
229. Consultees also asked for greater clarity about when and with whom the OfS may share information received under this scheme. In response, we have made further amendments to section P of the scheme rules on the collection and sharing of data.
230. Therefore, the relevant rule now reads as follows:

Rule 60

We will normally share information provided by one party to a complaint with other parties to the complaint where this is necessary for the fair and effective operation of the complaints scheme. We may, however, withhold or redact information where we consider it appropriate. We may need to share information that we receive under this scheme with other persons who are not parties to the complaint (for example other public bodies and/or any expert we engage to inform our review of the complaint). When sharing information, we will do so in accordance with our statutory powers and duties as set out in **HERA** and other legislation. You can find out more about how we share and use personal information in connection with the **free speech complaints scheme** in our privacy notice.

Timings

231. In accordance with the Act, the scheme must require the OfS to make a decision on each complaint that is referred to the scheme (and not withdrawn) as soon as reasonably practicable. We recognise that it is in the interests of complainants and respondents to have a timeline for the OfS to respond to complaints. We discuss this matter further in Question G.
232. We would normally expect to consider complaints in the order in which we received them. We may depart from this where, for example, we decide to group complaints together (see Question J) or if there are compelling reasons to do so.
233. We recognise that some potential complaints may concern matters that a complainant could bring to an employment tribunal. We do not consider that it is necessary for the OfS to offer a 'fast track' option to our complaints scheme in these circumstances. When deciding to bring a free speech complaint, potential complainants should be conscious of the interaction with other avenues of redress, bearing in mind any time limits for bringing legal proceedings. Rule 13 of our scheme rules explains that we will not review a free speech complaint where the complainant is (or has been) party to legal proceedings on the same subject matter (though we may review if the permission to bring any such proceedings was refused or where any such proceedings have been formally stayed or adjourned). We have also estimated that we expect to complete most complaint reviews within six months. Therefore, in most circumstances it will be appropriate for an individual to choose whether an employment tribunal or our scheme is the best option for them. This decision will be for the individual. Complainants are not locked-in to their decision to use our scheme, as they may withdraw their complaint at any time before we issue a Notice of complaint outcome.

Review process

234. On the issue of whether we can review a complaint, we have made a minor addition to rule 30. This clarifies the nature of the decision we are taking where we decide we cannot review a complaint: i.e. that it is a decision not to review a complaint, which may be different from a decision to dismiss a complaint, though the effect on the complainant would be the same and they have recourse to request a reconsideration in either case.
235. In terms of conducting a review of a free speech complaint, our starting point will usually be to conduct a paper-based review. Where we consider it appropriate, we may decide to have one or more face-to-face meetings with the complainant, the respondent or other persons, for instance persons who we consider may have information or expertise that is relevant to the free speech complaint.
236. In deciding whether to hold a face-to-face meeting we will consider the burden the meeting might place on both parties (and on the OfS's resource), whether the parties have sufficient support in place, and any accessibility requirements of all parties. Specific vulnerabilities and accessibility needs of all parties will be considered when requesting a face-to-face meeting.
237. Other persons, besides the complainant and respondent, who we may wish to meet with, or request information or expert judgement from, may include academic experts in a particular field or specialty, or others involved who can provide contextual evidence to inform our review of a complaint.
238. With regards to the comment about other regulatory duties on respondents: we have published Regulatory advice 24, which sets out with illustrative examples of what the relevant free speech duties involve, and how these interact with (for instance) the Prevent duty.⁴⁸
239. The focus of our review will be on whether the action or inaction complained about constituted a breach of the duty to take reasonably practicable steps to secure freedom of speech within the law. We will determine whether a complaint is justified in light of the evidence in relation to the complaint – i.e. whether we are satisfied having heard from the complainant and the respondent that it is **more likely than not** that the relevant conditions are met. As the initiator of the complaint, the burden of proof will substantially rest on the complainant in demonstrating that their complaint is justified. We discuss this matter further under Question G.

Complaint reviewers

240. How we staff the complaints scheme is an operational matter for our executive team. Under the Act, we are required to reach a decision on complaints as soon as reasonably practicable. We will identify and manage conflicts of interest on the part of staff who are reviewing and making decisions on complaints, in accordance with our published policy.⁴⁹ We will make decisions on complaints in accordance with our published scheme of delegation, which we have recently updated to ensure the complaints scheme can be operated efficiently.⁵⁰ In

⁴⁸ See OfS, [Regulatory advice 24: Guidance related to freedom of speech](#).

⁴⁹ See OfS, [Who we are](#).

⁵⁰ Available at OfS, [Who we are](#).

making decisions, we will have regard to our general duties set out in section 2 of HERA and, as a public body, our decisions must be lawful, rational and fair.

241. Under the final rules, as in our proposals, where we consider that a free speech complaint concerns academic judgement, we may seek expert academic judgement to inform our review: for example, where the free speech complaint concerns matters that relate to curriculum and pedagogy for higher education courses. We will do this only if we consider it appropriate. We may also seek advice from persons with other forms of expertise, where we consider it appropriate. The terms on which we seek any expert advice will depend upon the circumstances of the case.
242. Some consultees argued that we should not review matters that involve academic judgement, since the OIA is not permitted to review complaints related to academic judgement. However, the Act requires us to consider every complaint that is eligible under the scheme. In contrast to the legislation underpinning the student complaints scheme,⁵¹ it does not preclude us from considering matters of academic judgement.
243. We will set out in any Notice of complaint outcome the reasons for our decision. Where we have relied on expert academic or other expert judgement, we will make that clear. We have considered publication matters under Question P.

Legal advice

244. Our scheme is intended to be easy to use. However, complainants and respondents may wish to take legal advice on a complaint. We do not require them to do so. Legal privilege is a complex and evolving area of law, and parties may wish to take legal advice before sharing legal advice with the OfS. We have responded to comments on appointing a legal representative to conduct a free speech complaint on a complainant's behalf, under Question E.

Withdrawal and settlement

245. As noted in the reasoning behind our proposals, we recognise that in some cases a settlement may be an effective and efficient way for the parties to resolve a free speech complaint, reaching a commonly agreeable outcome between them without the administrative burden of participating in the full review process. This efficiency applies to all parties. Parties settling and withdrawing their complaints would mean that the OfS would expend fewer resources in reviewing the complaint, and we would be able to redirect these resources towards reviewing and determining other complaints that have not been withdrawn, increasing our efficiency. While the OfS does not play a role in settlement, given the potential for increased OfS efficiency where parties settle, we have decided to highlight the availability of settlement in the rules.
246. It will be possible for the complainant and the respondent to reach a settlement leading to the withdrawal of a complaint. Including it within the scheme rules as a concept allows us to distinguish the outcome of settlement from that of withdrawal for any other reason, which will lead to more accurate appraisal of the scheme.

⁵¹ See Gov.UK, [Higher Education Act 2004, 12\(2\)](#).

247. Nonetheless we acknowledge that the Act provides that the OfS must review and determine complaints that are not withdrawn. While we will include standard wording in our communication reminding the parties of the potential for settlement, we will not facilitate settlement ourselves. Neither party is obliged to engage in the process or to agree to a settlement, and when we refer to settlement we will also remind the parties of this. We will not provide for a distinct stage of a complaint that facilitates settlement. We will not pause our complaints handling to encourage settlements to be negotiated.
248. The details of any settlement that is negotiated will be determined by the agreement of the complainant and the respondent and we will not play a mediating role in this process. We will document the fact of any settlement that is reached in correspondence to both parties, issued upon the withdrawal of the complaint. This correspondence is not a Notice of complaint outcome. We may also request further information about the settlement from the respondent for our understanding and records. Please refer to our decision on Question G for further discussion.
249. In our final rules, we have made some adjustments to remove any implication that we will play a facilitating role in settlement. We have also amended the reference to Notice of complaint outcome to clarify that the correspondence we issue in the event of settlement is not the same as this. This reflects a closer reading of the Act.
250. The relevant rule now reads as follows.

Rule 37

We will not make a decision about the extent to which a **free speech complaint** is justified where both parties (the **complainant** and **respondent**) have agreed to settle and the **complainant** has consequently withdrawn their complaint. We will not issue a **Notice of complaint outcome** in those circumstances, but we will issue correspondence to the parties to the complaint to confirm that the **free speech complaint** has been resolved through a settlement. We may request more information about the settlement.

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

Summary of Proposal G: Our decision and Notice of complaint outcome (section G of the scheme rules)⁵²

The Act includes a requirement for us to decide on the extent to which a free speech complaint is justified. The Act will also require us to notify the parties of our decision and of our reasons for making it.

We propose that we will make a decision about a complaint as soon as reasonably practicable. This reflects a requirement in the Act. We will decide whether the complaint is justified, partly justified or not justified.

The decision that we reach will depend on our assessment of whether:

- a. the respondent has breached or is breaching the relevant free speech duty; and
- b. the complainant has suffered adverse consequences that are more than minor or trivial as a result of the breach.

We propose that if it appears to us that each of a. and b. above is more likely than not, then we may decide that the complaint is justified. If it appears to us that a. is more likely than not, but b. is not, then we may decide that the complaint is partly justified. Otherwise, we may decide that the free speech complaint is not justified.

We are also proposing that when we have made a decision, we will notify the complainant and the respondent in writing of our decision and of our reasons for reaching it. We propose to do so in a Notice of complaint outcome.

We propose that we will not make a decision about the extent to which a free speech complaint is justified where we have agreed a settlement (see Proposal F above). An agreed settlement would result in the withdrawal of a complaint by the complainant. However, we propose that we would issue a Notice of complaint outcome to confirm the terms of the settlement of the free speech complaint.

We also propose that if a complaint is against more than one respondent then we will determine the complaint separately against each respondent.

⁵² See OfS, [Proposal G: Our decision and Notice of complaint outcome](#).

Summary of responses

Timeline to reach decision

251. Many consultees suggested that the OfS should set itself a specific timeframe for decisions (and not just ‘as soon as reasonably practicable’), in a few cases noting that the OIA provides timeframes for its reviews. It was suggested that the OfS should make quick decisions to avoid creating an ‘atmosphere of fear’ on campus. Consultees also suggested that the OfS has taken a long time to resolve issues in the past, which makes it important to be clear about what timeframe is reasonably practicable in relation to the review of complaints under the new scheme. It was also suggested that it would be reasonable for the OfS to publish its timelines if the OfS is setting timelines for respondents to complete their internal processes. Consultees suggested that published timelines would support transparency and would reduce costs as well as the burden on providers. A few consultees also suggested that the OfS should include timelines for representations.
252. Consultees suggested different timeframes within which they considered the OfS should complete its review of complaints. One suggestion was that OfS decisions should be made within the same timeframe that the OfS is giving respondents to consider a complaint internally, before a complainant can complain to the OfS. (In our original proposals, that was 30 days.) Other suggestions were for 90 days or six months for the review, or 12 months for the entire process. There was also a suggestion that, if a decision has not been reached after four months, the OfS should offer a fast track review process that would guarantee completion in two months depending on whatever information is available then.

Reaching a decision

253. A few consultees commented on the test that the OfS proposed to use to determine whether a complaint is justified or partly justified. There was support from a few consultees for the OfS’s proposal to use a test that referenced the civil standard of ‘more likely than not’.
254. Many consultees requested clarity on the decision process. One expressed concern that decisions are made on the basis of what ‘appears to the OfS’ and stated that decisions should be credible and evidence-based. There was also a comment that more generally the OfS risks making judgements in a ‘highly “perceptive” space’ and that this risks inequity and legal challenge. There were also questions about whether the OfS would consider respondents’ internal processes and how respondents balanced their regulatory duties.
255. There were also questions from consultees about how the criteria for assessing complaints will be communicated to complainants and respondents, and a comment that guidance should be shared about how the OfS will determine the outcome of the complaint.

Definitions of outcomes

256. Some consultees welcomed the proposal to include a ‘partly justified’ category. However, some consultees commented on a need for clarity on the boundaries between ‘justified’ and ‘partly justified’, one consultee suggesting that the way the OfS is using the term differs from the way that the OIA uses the term in its student complaints scheme. A consultee commented that the definition of ‘partly justified’, in terms of trivial adverse consequences, did not take account of the fact that some parts of the complaint may be upheld and others not. There was also a comment that the ‘partly justified’ outcome might be disproportionate, and might leave

the scheme open to abuse, if there are no adverse consequences. It was also suggested that the language of minor or trivial consequences is not user-friendly and may have a negative impact on the complainant.

257. A consultee also suggested the possibility of a fourth type of decision: ‘no outcome’. It was suggested that this would cover the situation where the OfS could not make a decision between ‘justified’, ‘partly justified’ and ‘not justified’.

Review of scheme

258. Some consultees commented that because this area of work is new for the OfS, it should commit to a review of the scheme after 12 months, including engaging with providers and students on their views. A consultee also raised the possibility of defining key performance indicators (KPIs) for the scheme, for instance average time to review complaints.

Our response

Timeline to reach a decision

259. We have decided not to include specific timeframes for our review of complaints in the scheme rules. Complaints will vary in complexity, and demand for the scheme might fluctuate depending on factors that are outside our control. The Act requires the OfS to make a decision on any complaint as soon as reasonably practicable.⁵³ We recognise that it is in the interests of all parties that there is no unnecessary delay. We plan to maintain on our website information about the timing of the review process, including indicative timescales for handling complaints where possible. Those timescales will be informed by our experience of operating the scheme. For this reason the information we will be able to provide on timescales at scheme launch will be very limited.
260. We also recognise the importance of transparency in our operation of the scheme. As set out in Question P, we will publish operational measures capturing the timescales for our review of complaints. In this context we do not consider it appropriate to provide any kind of ‘fast track’ for complaint resolution. We will review and determine complaints as soon as reasonably practicable, we will do this as far as possible in the order the complaints are lodged with us (subject to rules on suspension – see Question I).

Reaching a decision

261. We proposed that our review of a free speech complaint would consider the following two questions:
- a. Whether the respondent has breached or is breaching the relevant free speech duty.
 - b. Whether the complainant has suffered adverse consequences that are more than minor or trivial as a result of the breach.
262. We proposed we would reach a view on these questions on the basis of whether it was ‘more likely than not’ that the tests set out by the questions were met. We noted the support for this standard in the consultation.

⁵³ See HERA Schedule 6A 6(1).

263. In Regulatory advice 24 we set out more about what would or would not constitute a breach of the relevant duty, including in the context of other legal duties and regulatory requirements.⁵⁴
264. Proposed rules 34 to 36 describe outcomes in terms of how the relevant matters ‘appear to the OfS’. The inclusion of the words ‘it appears to the OfS’ reflects the approach we have taken to determining complaints, which the Act gave us the discretion to define. This is consistent with the language of the Act. For instance, HERA sets out that ‘A complaint may be partly justified if, for example, **the OfS considers that** the governing body has breached a duty under section A1 but the complainant did not suffer adverse consequences as a result of the breach’ (our emphasis).⁵⁵ We have therefore decided to retain this wording in the final scheme rules.
265. As a public body, our decisions must be lawful, rational and fair. We will determine whether a complaint is justified in light of the evidence in relation to the complaint: i.e. whether we are satisfied, having heard from the complainant and the respondent, that it is **more likely than not** that the relevant conditions are met. As the initiator of the complaint, the burden of proof will substantially rest on the complainant in demonstrating that their complaint is justified. Ensuring fairness and rationality will be central to our processes. These processes are designed to be consistent with those of other regulators and ombudsman, with which we have consulted in preparing our approach to the new complaints scheme.
266. Rules 34 to 36 as proposed set out, in broad terms, the bases of our decision. Consultees sought further clarity on our decision making, and in the interests of providing that clarity we have changed ‘may’ to ‘will’ in the case of each of the three possible outcomes for a concluded complaint. This reflects that, if the relevant criteria are met (for rules 34 and 35) or not met (for rule 36), then it will always be appropriate for us to make the relevant finding of ‘justified’, ‘partly justified’ or ‘not justified’. The use of ‘may’ implied the application of these factors was discretionary, which is not our intention. This change makes clearer our criteria for making a finding.
267. The specific application of rules 34 to 36 is likely to be depend heavily on particular facts. We have therefore decided not to include a detailed explanation of how this might apply in practice in the final scheme rules. However, the illustrative examples in Regulatory advice 24 set out what the relevant duties may (depending on the circumstances) involve. We intend to use Regulatory advice 24 to guide our decisions on whether a breach of the A1 duty has occurred. As for decision making around assessing adverse consequences and making recommendations, we intend to publish on our website our interim criteria for taking these decisions, although we expect that these will evolve as we learn from actual complaints.

Definitions of outcomes

268. In relation to financial compensation, see Question H.
269. We proposed under rule 34 that we may determine that a free speech complaint is justified if it appears to us that it is more likely than not that at least one breach both occurred and caused the complainant to suffer non-trivial adverse consequences. Under proposed rule 35,

⁵⁴ See OfS, [Regulatory advice 24: Guidance related to freedom of speech](#).

⁵⁵ See HERA Schedule 6A paragraph 7(2).

we may determine that a free speech complaint is partly justified if it appears to us more likely than not that at least one breach occurred, but as a consequence the complainant did not suffer adverse consequences, or the consequences they suffered were only minor or trivial. We proposed under rule 36 that we determine that a complaint is not justified if it appears to us more likely than not that the respondent is not breaching and has not breached its free speech duty. We have decided to change the language of 'may' to 'will' in each of the three outcomes we describe. We made this change to make the rules more definitive about our approach to decision making. As set out under Question C, our review will focus on the free speech claims in a free speech complaint.

270. Consultees commented on the inclusion of the 'partly justified' category. We consider that the principles of free speech and academic freedom are fundamental to the core mission of universities and colleges. A breach of a relevant free speech duty is of concern to us even if it did not result in adverse consequences for the complainant or only resulted in minor or trivial adverse consequences. Where we find such a breach we may make recommendations to the respondent to address the issue.
271. We note the point raised that assessing the consequences someone has experienced to be 'minor or trivial' could well be a negative experience for that person. There is inevitably a subjective element to determining the seriousness of adverse consequences, but to reach a determination that is proportionate and fair to both parties this is a determination we must make. It is not clear to us what term might be more 'user-friendly'. The language of 'trivial' or 'minor' adverse consequences is also intended to make clear that where a breach has occurred, any adverse consequences to the complainant would need to pass a relatively low threshold to trigger a determination that the complaint is justified. Therefore, we have decided not to remove the terms 'trivial' or 'minor' from rule 35. We wish to see what complaints come to the scheme before firmly setting out what is 'minor' or 'trivial' and what is not. To do so at this point would be premature and restrictive. However, we will add material to our website that explains what interim rubrics we will be working to at the scheme's launch, including on the boundary within adverse consequences between those that are minor and trivial and those that are not.
272. Under the Act, the scheme must require the OfS to make a decision as to the extent to which a free speech complaint that is referred under the scheme and not withdrawn is justified. We have therefore decided not to amend the scheme rules to include an additional category of 'no outcome'.

Review of scheme

273. The Act requires the OfS to review the scheme or its operation (or any aspect of either of those matters) if requested to do so by the Secretary of State, and in doing so to comply with any particular requirements imposed by the Secretary of State.⁵⁶ We have decided not to define our own KPIs for the scheme at this first stage. Any KPIs would usefully be informed by our experience of operating the scheme. We have decided that we would normally expect to publish operational measures relating to the operation of the scheme, including timescales for handling complaints (see Question P). Those operational measures may inform any future development of KPIs.

⁵⁶ See HERA Schedule 6A section 12.

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

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

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 also sets out that these recommendations may be:

- to do anything specified in the recommendation (which may include the payment of sums specified in the recommendation), or
- to refrain from doing anything specified in the recommendation.

In our Proposal H, we:

- a. Outline the requirements of the Act concerning recommendations.
- b. Propose that the OfS may make suggestions in any complaint, whether it was found justified or partly justified or otherwise.
- c. Propose that recommendations and suggestions would be provided in the Notice of complaint outcome.
- d. Set out our proposed expectation that the respondent would comply with any recommendation we make in full and within the time limits we set.

Summary of responses

Suggestions

274. A few consultees supported the OfS's proposal to make suggestions on complaints, including complaints that the OfS determined not to be justified. It was suggested that the OfS should make suggestions in every case, to help shape compliance with freedom of speech duties across the sector. However, other consultees were unclear on the differences between 'suggestions' and 'recommendations' and highlighted that HERA makes no provision for the OfS to make suggestions on complaints.

Forming recommendations

275. A few consultees were broadly in agreement with the proposal, for example expressing support for a proportionate, principles-based approach to recommendations that, they considered, would support a constructive relationship between the OfS and the sector. Some consultees sought clarity on whether the OfS would provide additional guidance on how it will develop recommendations and what might be included in recommendations, or suggested that it should produce such guidance. For example, consultees asked whether the OfS would

produce guidance or frameworks on the framing of recommendations, on the difference between 'must' and 'should' recommendations, or on indicative scales of financial compensation that may be recommended. Consultees also queried whether recommendations might include specific measures such as public apologies or respondents' withdrawal of certain statements.

276. A few consultees also asked whether the OfS will engage with respondents or complainants before making recommendations and how the OfS intended to ensure consistency across recommendations and suggestions.
277. Responses also made suggestions about the formulation of recommendations. These suggestions included:
- a. Working collaboratively with respondents and complainants to produce remedial recommendations.
 - b. Using categories of severity to determine the value of financial compensation.
 - c. Seeking relevant external expertise in formulating recommendations, for example in relation to the impact of protected characteristics.
 - d. Not including financial compensation in recommendations, because this could lead to spurious claims and is not appropriate to the subject matter of the scheme.
278. One consultee suggested that the OfS should be able to refer cases to an appropriate body, such as a court, where the complainant desires this and it appears necessary or desirable to resolve the complaint.
279. Consultees expressed a range of views on the appropriate type of recommendation where a complainant has been through a process such as an internal disciplinary process. For example, it was suggested that recommendations needed to go beyond returning the complainant to the position they were in before they raised a complaint, as this could still be a detrimental position for the complainant if opportunity costs are not factored in. Conversely, it was suggested that recommendations should not result in the reversal of previous decisions, such as disciplinary action.
280. Consultees also noted that the proposed rules excluded recommendations on claims in a complaint that are not free speech claims. It was suggested that this exclusion must be clear for complainants.
281. It was suggested that recommendations could build good practice by emphasising preventative or remedial, rather than punitive, measures. Examples given of recommendations that consultees considered would be too prescriptive included a requirement to make specific changes to a policy or reinstate a speaker where it is no longer practicable to do so. It was suggested that both financial compensation and the implementation of recommendations more generally could create a high burden on already strained resources in the sector.

Enforcing recommendations

282. Some consultees requested further clarity on whether recommendations were mandatory, and what would happen where recommendations were not followed. Some considered that recommendations should not be too prescriptive or strictly enforced.
283. A few consultees considered that respondents should be required to comply with recommendations made under the scheme. Reasons given included that higher education providers will only uphold their free speech duties if they are compelled to do so. Comments also included that the OfS should set time limits for its recommendations to be met and should be clear about the expectation of compliance and the consequences for non-compliance with recommendations, including further regulatory interventions. One response raised concerns about the use of the word 'recommendations'. It suggested that this word lacked enforceability and should be replaced by 'conditions'.
284. Many responses specifically opposed the inclusion of the proposed rule that outlined that we expect the respondent to comply with any recommendation the OfS makes in full and within the time limits we set. It was suggested that the proposed rule is in contradiction with the provision in HERA that 'The scheme may not authorise the OfS to require anyone to do or not do anything' and should be removed or changed.⁵⁷ Alternative wording proposed included that respondents should be requested to 'have regard to' recommendations rather than being required to comply, or should have autonomy to choose how to respond to recommendations without penalty.
285. Some responses sought clarity on the enforcement of recommendations. Questions included:
- Whether recommendations are non-negotiable or would be subject to an appeals process.
 - What time limits might be in place for compliance with recommendations.
 - What consequences might arise from non-compliance with recommendations.
 - Whether compliance with recommendations will be monitored consistently across the sector.
286. Some responses sought further clarity on the legal status of recommendations and their interaction with the OfS's wider regulation. These included queries as to the interaction of recommendations with specific areas of regulation, such as on harassment and sexual misconduct, Prevent and the quality of higher education provision. Consultees queried how recommendations might impact on the regulatory standing of a students' union or a provider, including a provider's registration with the OfS.
287. A consultee also suggested that the OfS ensures that its enforcement of a provider's duty to comply is applied consistently across cases and that alternative dispute resolution mechanisms are considered before civil proceedings.

⁵⁷ HERA Schedule 6A Section 7(5).

Our response

Suggestions

288. Having reflected on responses to the consultation highlighting the potential confusion in having both 'recommendations' and 'suggestions', we have decided to drop the proposal to make 'suggestions' in any Notice of complaint outcome. We consider that this decision creates clearer rules that are more closely underpinned by the provisions of HERA.
289. We have therefore decided to include our proposed rules on recommendations and suggestions in the final scheme rules, in the form in which we proposed them, with the exception of the rule specifically concerning suggestions, which we are no longer including. We have also adjusted the title of section H to remove reference to suggestions.

Forming recommendations

290. Under the Act, the scheme must provide that, where the OfS considers a free speech complaint to be justified (wholly or partly), it may make a recommendation to the governing body about which the complaint is made.⁵⁸ 'Recommendation' reflects the terminology of the Act and we have decided to retain this term in the scheme rules.
291. In formulating recommendations, we will have regard to the general duties of the OfS (set out in HERA section 2). In terms of the principles that underscore the formation of recommendations, we gave an indication of those in proposal H paragraph 121 of the original consultation. We plan to design recommendations aiming to put the complainant in the position they would have been in before the circumstances of their complaint occurred, where appropriate and possible. Our recommendations may also relate to broader issues such as a change in the respondent's processes or practices. We have also now included a rule in the final scheme rules to the effect that we would normally expect to seek representations from complainants and respondents before making a final decision on any recommendations (see further Question K). The scheme rules are clear that recommendations will only be made in respect of the free speech claims in a complaint.
292. The explanatory notes to the Higher Education (Freedom of Speech) Act 2023 explain that the complaints scheme allows 'individuals to seek compensation for loss they have suffered as a result of breach of specified duties'. The notes state:
- 'Paragraphs 6 to 8 set out provision regarding the decisions and recommendations that the OfS may make under the complaints scheme, including that the scheme must provide that, where the OfS considers a complaint to be justified (wholly or partly), it may recommend that the higher education provider, constituent institution or students' union should do anything specified (which may include the payment of compensation but could also include, for example, reinstatement of the complainant's job or place on a course) or refrain from doing anything specified'.⁵⁹
- Over time our publication of recommendations in Notice of complaint outcome documents will give an indication of the recommendations that we consider appropriate to make in certain

⁵⁸ HERA Schedule 6A paragraph 7(1).

⁵⁹ See Gov.UK, [Explanatory Notes for Higher Education \(Freedom of Speech\) Act 2023](#).

circumstances. Nonetheless, we also intend to add material to our website before the scheme's launch that outlines the interim rubrics to which complaints handlers will work in assessing adverse consequences and making recommendations.

293. There is no provision in the Act for the OfS to refer the complaint to another complaint-handling body or to the courts.

Enforcing recommendations

294. We have decided to retain the wording, in proposed rule 43, that we expect the respondent to comply with any recommendation we make in full and within the time limits we set. An expectation is not a requirement. In response to consultees who felt we should require respondents to comply with our recommendations, we would highlight that HERA Schedule 6A paragraph 7(5) provides that the scheme may not authorise the OfS to require anyone to do or not do anything.

295. HERA, as amended, states that '[t]he powers of the OfS to make recommendations under the scheme do not affect any of its other powers'.⁶⁰ Therefore, where a recommendation is made under the scheme and is not followed by a respondent, the OfS will take this into account when considering (under our risk-based approach) whether to investigate or take another form of regulatory or enforcement action in respect of any non-compliance with any of the OfS's conditions of registration or other regulatory requirements.

296. There is no provision in the Act for the OfS, following a decision on the extent to which a complaint is justified, to require the complainant to pursue an alternative dispute resolution process before bringing civil proceedings against the respondent.

Publication of recommendations

297. We have considered matters relating to the publication of recommendations in Question P (Publication).

⁶⁰ HERA Schedule 6A section 7(6).

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

Summary of Proposal I: Suspension and withdrawal of a complaint (section I of the scheme rules)

We propose that we may suspend our initial consideration or review of a free speech complaint if the complainant either:

- a. Does not provide us with information as required (see Proposal L), or
- b. Cannot be contacted using the contact details that they have given to us.

We proposed that we may also decide to suspend our initial consideration or review of some of the complaints in a group complaint while we focus on one of the complaints in the group, under Proposal J.

We propose that the complainant may withdraw their complaint at any stage before we issue a Notice of complaint outcome or dismiss the complaint.

Summary of responses

Process, timelines and publication

298. Many consultees expressed broad agreement with our proposals for withdrawal and suspension. However, clarity was requested about various aspects of Proposal I, especially concerning the processes and timeframes for the suspension of a complaint. Responses sought further information including on:

- a. The process for making a decision on a suspension.
- b. The duration of non-communication from a complainant that would lead to the suspension of their complaint. Some consultees advocated setting a clear time limit for the submission of information or lack of communication from a complainant before the suspension of their complaint.
- c. The next steps after a suspension, including the process and timeline for reversing the suspension of a complaint, or subsequent dismissal of a complaint following a period of suspension.
- d. Whether complaints would be suspended in other circumstances not set out in the rules: for example, where a respondent overturns an initial internal decision that led to the complaint, or where a private settlement is reached outside of the scheme, for example through an employment tribunal. It was suggested that complaints should be suspended where the complainant begins litigation after the submission of a complaint, where court proceedings are issued, where a complaint appears to be vexatious or frivolous, or where an alternative complaints scheme is being used.

299. Consultees also suggested that the OfS provides clear timelines for the complaint review process (discussed under Question F) so that complainants would know when they would no longer be able to withdraw a complaint (which we proposed would be once the Notice of complaint outcome has been issued).
300. It was also suggested that the OfS could discourage withdrawals or mitigate against the need for suspensions by charging a fee to submit a complaint, which could be refunded on a successful outcome. This, it was suggested, may disincentivise the submission of frivolous or vexatious complaints.
301. It was also suggested that, if the existence of a complaint has been made public, the withdrawal of such a complaint should also be made public.
302. Concerns were also raised about the wellbeing of the complainant in relation to suspensions and withdrawals. It was suggested that respondents may put pressure on complainants to withdraw and that, where a complaint is withdrawn, safeguarding and Prevent considerations, and other potential consequences for the complainant, should be considered.

Group complaints

303. A few consultees did not agree with the proposal that the OfS may decide to suspend our initial consideration or review of some of the complaints in a group complaint while we focus on one of the complaints in the group. One consultee commented that although more than one complaint on an issue may represent a serious issue, which the OfS would want to address quickly, it would be fairer to address this by prioritising complaints in the group according to a transparent process than by suspending some complaints.

Our response

Process, timelines and publication

304. With respect to consultee commentary about helping complainants understand when they could withdraw their complaint by providing clear timelines, as discussed in Question G, we have decided not to include specific timeframes for our review of complaints in the scheme rules. We will share what information we can about timelines on our website, though this will necessarily be limited at the outset of the scheme. Our rules provide that complainants will be able to withdraw their complaint at any stage before we issue a Notice of complaint outcome, and we consider this to be as clear as is feasible. We do not consider it appropriate to plan to publish details of withdrawn complaints, as this would seem to undermine the concept of withdrawal.
305. Under the Act, we must make a decision as to the extent to which a free speech complaint that is referred under the scheme and not withdrawn is justified. We are required by statute to make a decision 'as soon as reasonably practicable'. Being able to suspend a complaint will be necessary to efficiently review and determine complaints to that statutory standard (i.e. 'as soon as reasonably practicable'). We proposed circumstances in which we may suspend a complaint, being circumstances in which we consider we may be unable to progress our review because the complainant does not comply with an information requirement, can no longer be contacted or because of a parallel ongoing investigation by the police or another body. We will make decisions under this rule, for instance in relation to the time of non-

contact before we suspend, on a case-by-case basis. We consider this an appropriate starting practice given that this is a new scheme and, as we have said elsewhere, we do not wish to be prescriptive in a manner that ends up unhelpfully limiting the parties to the complaint. As a starting point, however, complainants should expect that if they consistently miss, or fail to respond in a timely fashion to, the deadlines we set, then their complaint is likely to be suspended in most circumstances.

306. In relation to comments on a process from suspending to dismissing a complaint, we did not propose a scheme rule concerning dismissal in relation to suspended complaints. However, we recognise that clarity on such matters would be helpful. The Act requires the OfS to make a decision as to the extent to which a free speech complaint that is referred under the scheme and not withdrawn is justified, except where we determine that a complaint is vexatious or frivolous.⁶¹ Therefore, we have decided to include, within the examples of what may be a frivolous or vexatious complaint, where a complainant does not respond to us by any deadline that we gave them when we suspended their complaint. (See Question C.)
307. The Act requires that the free speech complaints scheme may not require complainants to pay any fees in connection with its operation.
308. As a result of consultation input described under Question C, we also consider that where a matter is being investigated by the police or another body, we may decide to suspend our review of a complaint pending the outcome of that investigation. This does not oblige us to suspend the complaint in the case of any parallel investigation by any other 'body'. We are conscious of our statutory duty to determine complaints as soon as reasonably practicable and will not engage this suspension protocol casually. We included the police as the primary example, to reflect the serious circumstances in which we intend to engage this kind of suspension. We have therefore decided to amend the proposed scheme rules, and the relevant rule now reads as follows.

Rule 45

We may suspend our initial consideration or review of a **free speech complaint** if:

- a. you do not comply with an information requirement under Section L; or
- b. you can no longer be contacted through the contact details that you have provided to us;
or
- c. matters relating to the complaint are being investigated by the police or another body.

309. We consider group complaints under Question J, and publication matters under Question P.

⁶¹ HERA Schedule 6A section 6.

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

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

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

Summary of responses

310. Some responses stated broad agreement with the proposal. These responses included positive comments on the practical impact of the proposal in terms of reducing burden on the OfS, and on respondents.
311. A few consultees suggested that there should be clear guidelines relating to suspension of complaints where a lead complaint had been identified. A few consultees asked for clarification on how the lead complainant will be determined. Others queried whether the decision to group complaints would be made by the OfS or by the complainants.
312. Consultees sought further clarity on aspects of the proposal, including on:
- The processes and criteria to be followed in grouping complaints. This included queries about what might be considered the same issue, for example whether this would be all complaints about a single event, or on a single campus.
 - The OfS's approach to communication with a group, including whether complainants would be notified in advance of their allocation to a group and data protection concerns that might arise when sharing information across complaints.
 - Whether the OfS would seek the consent of a complainant to be part of a group complaint and to be lead complaint in a group, or the consent of other complainants in the group to the selection of the lead complaint.
 - Whether the decision on the outcome of a lead complaint will be applied to all complaints in the group.
 - What differences there might be in the OfS's handling of a complaint by a group and a group of individual complaints.
 - How recommendations will be determined and issued in relation to group complaints. This included whether recommendations would vary across a group of complainants, and if so, how the recommendations will be decided.
 - What guidance the OfS will offer concerning group complaints for complainants and respondents.

- h. Whether the OfS would infer a relationship between the volume of complaints and the severity of the issue. Some responses noted that such an inference could incentivise organised or politically motivated campaigns to submit complaints that may be frivolous or vexatious.
313. Consultees also suggested matters that they considered the OfS should consider when deciding to group complaints. Common themes included:
- a. The OfS should do due diligence to ensure that the members of the group are all eligible complainants.
 - b. The OfS should consider how the group was formed and who it represents and should contact the respondent to clarify whether the group complaint is vexatious or malicious.
 - c. The OfS should consider whether a group complaint does or does not extend to individuals in a group, for example in a particular seminar or lecture group, who do not wish to be a part of the complaint.
 - d. The OfS should contact respondents to identify any additional complainants already in internal processes who may also fall under the group complaint.
314. A few consultees commented that the subject of a complaint would be unlikely to have affected all complainants similarly, and that it might not be practicable for all complainants to demonstrate equivalent adverse consequences. It was suggested that this could be due to different circumstances or complainants' protected characteristics.
315. A few consultees also suggested that the OfS's proposed approach to grouping complaints may mean that it overlooked the relevant detail of individual cases in group complaints. It was also suggested that the OfS scheme and respondents' internal review processes may diverge because of groupings by the OfS that were not reflected in respondents' internal review processes.
316. Responses also suggested that providers would struggle to address anonymised group complaints.
317. It was also suggested that the OfS should inform all respondents in the group complaint that a complaint has been submitted against them, even if complaints against those respondents are suspended for the duration of the review of the lead complaint. Similarly, it was suggested that all respondents would need to be kept updated on progress and required to provide further information throughout the OfS's review of the complaint.
318. A few consultees suggested that the scheme should not consider group complaints until it is already operational. The OfS was advised to discuss with the OIA how best to implement group complaints and to reduce the burden that these create, especially for smaller providers.
319. It was also suggested that a higher education provider should be able to group free speech complaints in its internal procedures.

Our response

320. Our approach to managing group complaints will need to adapt to the nature and volume of the complaints that we receive, and we therefore consider that the OfS needs to remain flexible in its approach to group complaints. Therefore we are not planning to issue further guidance or rules on group complaints before the launch of the scheme.
321. Grouping complaints will create efficiencies in the review process, such as in the gathering of information and establishing certain facts of the case. This is likely to reduce the burden on complainants, respondents and the OfS. There may be consequential differences between the facts of individual complaints, even where these concern the same event or issue. We will determine each complaint individually.
322. The scheme will not accept a single complaint submission representing multiple complainants. Each eligible complainant will be required to submit an individual complaint. As part of the submission process, complainants will be given the opportunity to express a preference to be grouped with other complainants.
323. The eligibility of complainants within a group complaint therefore will be subject to the same scrutiny as for individual complainants. The same rigour will be applied to our consideration of complaints forming a group as other complaints, including when we are deciding whether each complaint is one that we can review under the scheme.
324. In the consultation, we proposed that we would choose a representative complaint across a group and suspend others, pending the outcome of the lead complaint. Consultees asked for clarity about what this would look like in practice, including whether grouping complaints, and therefore suspension, would be done with the complainant's consent. We have decided to address all complaints without suspending a complaint, in the interest of progressing all complaints as soon as reasonably practicable and addressing concerns about consent.
325. We have decided not to set out, in the scheme, provisions on how respondents should manage group complaints in their own internal review processes. We consider that to be a matter for individual respondents.
326. The relevant rules relating to group complaints now read as follows.

Rule 47

Where we receive a series of **free speech complaints** from more than one person about the same **respondent** and the same subject matter, we may decide to treat these complaints as a group complaint. Individual **complainants** will also have the opportunity to express a preference to be grouped during the submission of a complaint.

Rule 48

We may decide to consider the **free speech complaints** within a group complaint together where we consider it appropriate to do so, for example where we receive multiple complaints involving the same subject matter or we are requesting the same information from the **respondent** across a number of complaints. We will review and determine each of the complaints in a group complaint separately, considering the specific facts of each complaint.

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

Summary of Proposal K: Representations

We propose that we may seek representations from the complainant and/or the respondent as appropriate, before reaching any final decision about:

- a. Whether we can review a complaint under the rules.
- b. The extent to which a free speech complaint is justified.
- c. Whether to make, and the form and content of, any recommendation or suggestion.

Summary of responses

Seeking representations

327. Most consultees suggested that representations should be sought in all cases. Some consultees also commented that they should be able to submit representations at various points during the review process and prior to publication of a decision outcome. Common themes included:

- a. Making the seeking of representations discretionary would violate due process. The respondent must be given an opportunity to know the substance of the complaint. The starting point should be reversed: the OfS should commit to seeking representations in all cases, at the point of complaint, the point of making recommendations, and the point of publishing any information.
- b. The OfS should commit to seeking representations where the complaint is upheld. Some suggested that where a complaint is not upheld, the respondent should be given an opportunity to make factual corrections.
- c. Seeking representations would be in the interests of natural justice and would ensure a fair and comprehensive assessment of the facts of a case by the OfS.
- d. Seeking representations would give respondents the opportunity to share information about their internal processes, which it was suggested will be important in OfS investigations.
- e. It would be unfair not to allow representations from the respondent when there is a significant risk of reputational damage and a requirement to pay financial compensation.
- f. In the interests of fairness, if one party is able to make representations then the other party should be able to make them too.

328. A few consultees queried how the OfS would consider representations, whether seeking representations would be a 'tick box' exercise, how representations would be dealt with in the

context of group complaints and whether others could make representations on behalf of the complainant.

329. A few consultees requested clarity on timeframes relating to any representations process.

Appeals

330. Many consultees also suggested that in addition to seeking representations, the OfS should include an appeals process in the scheme to allow the parties to appeal against any final decision. It was suggested that the right to make representations should not compromise the right also to make appeals. A few consultees also commented that the alternative process of judicial review would be slow, expensive or a disproportionate financial and administrative burden.

331. Other suggestions included:

- a. It is especially important for there to be an appeal process and a representations process if the respondent's internal process was not followed, or where there are conflicting legal views on whether a respondent has breached its free speech duty.
- b. The OfS should set out clear grounds for appeal and a timeframe for an appeals process.
- c. The determination of an appeal should be undertaken by a person not involved in the original decisions. One suggestion was that the OfS board should review cases.
- d. Both parties should be able to request an independent review of the OfS's decision on a free speech complaint. It was suggested that this should be built into the scheme and could be done through an independent panel of experts working to agreed criteria.

Our response

Seeking representations

332. As stated at paragraph 11, the scheme rules are designed to provide flexibility. As this is a new scheme, there is significant uncertainty about case volumes and the most effective ways of working with complainants and respondents to achieve satisfactory outcomes. A flexible approach allows us to adapt as we gain experience and respond to feedback, rather than committing all parties to processes that may prove inefficient or unfair. However, responses to the consultation on Proposal K indicated that this flexibility came at the expense of clarity. We have therefore revised the rules to be more explicit about when opportunities for representation and reconsideration will normally be provided.

333. As stated under Question F, we have decided that our normal practice will be to share the complaint form, and other details of the complaint, with the respondent for its comment once we have decided that the complaint is eligible for review. The sections of the complaint form that contain the personal details of the complainant and their optional representative, will not be shared.

334. In our proposals, we included a rule to the effect that we would seek representations at particular decision points set out in that rule, if we considered it to be appropriate. In our final rules we have split this rule in two (Rules 49 and 50). This makes it clearer that our approach

to eligibility, or whether a complaint can be referred to the scheme (rule 49), primarily involves the complainant and allows for them to request reconsideration of a negative decision if they believe we have made an error. If, within 28 days of communicating our negative decision to the complainant, we receive such a request for reconsideration, a different case handler will review the original decision and either confirm or overturn it. This reconsideration process also applies where we dismiss a complaint for any reason.

335. Our approach to justifiability and recommendations (rule 50) will offer both parties the opportunity to provide representations, in all but the most unusual cases. This will, for example, provide the parties with an opportunity to identify where they consider that the recommendations may be impracticable or insufficient. Our approach to publication in the case of the specific complaint will also be communicated to both parties at the same point we set out our view on how far the complaint is justified and what recommendations we deem appropriate. Our publication approach will therefore be subject to representations from both parties at this point. If we are seeking to recover costs from the respondent, per section O of the scheme rules, we will also provide the respondent with an opportunity to provide representations at this point.
336. In the interests of the clarity consultees sought, we have also specified that we will set a deadline for these representations, which will be at least 14 days and can be extended upon a reasonable request, or on the OfS's initiative.
337. The form of any representations that we consider appropriate may vary according to the nature of the complaint; therefore, we have decided not to prescribe the form of any representations in our scheme rules. We will of course give careful consideration to any representations from complainants and from respondents.
338. We have set out our approach to group complaints under Question J. As we have noted there, we will determine individual complaints in a group complaint separately and will seek representations for each individual complaint in accordance with our rules.
339. Our rules (see Question E) permit appointed representatives to conduct a complaint on behalf of the complainant, including making representations. If a complainant wishes to seek external advice or input on any representations then that is a matter for them.
340. Therefore, the relevant rule now reads as follows.

Rule 49

When we have decided that a complaint is not one that we can review in full or in part, we will offer the **complainant** an opportunity to request a reconsideration of our decision, on the basis that they believe we have made an error. Reconsideration can also be requested in any circumstance where we have dismissed a complaint. This request must be made within 28 days of our decision being issued.

Rule 50

When we are deciding

- a. the extent to which a **free speech complaint** is justified;
- b. whether to make, and the form and content of, any recommendations about a **free speech complaint**,
- c. ; whether or what to publish in relation to the **free speech complaint**; or,
- d. whether to require the **respondent** to pay any costs in relation to making the decision, and the calculation of those costs

we will normally seek representations from you and from the **respondent** before making a final decision in the case of 50.a, 50.b and 50.c. In the case of 50.d we will normally seek representations from the respondent before making a final decision. We will specify a deadline for the receipt of these representations. This will normally be a minimum of 14 days for both **complainant** and **respondent**. We may extend this deadline upon the reasonable request of either **complainant** or **respondent**, or on our own initiative.

341. An additional reference to reconsideration has also been added to section F and the relevant rule now reads as follows.

Rule 24

Where we decide that we cannot review some or all of a **free speech complaint**, you will have the opportunity to request a reconsideration of our decision (see rule 49) if you believe we have made an error.

Appeals

342. We have decided not to include in the scheme rules additional provision for appeals. We are aware that some schemes provide for appeals in the case of significant errors in the final judgement, or where new information comes to light. We consider that the ability for the complainant to request reconsideration of our decision on eligibility and whether the complaint can be referred to the scheme provides an opportunity to identify and correct any errors that may have occurred during this part of the complaint process. We consider that the representations period on our provisional decision – which it will be our normal practice to offer to both parties – provides an opportunity to correct any errors on this part of the complaint process. If new information comes to light after the conclusion of a complaint, our scheme rules do not rule out submitting a new complaint on the basis of this information. However, we will impose a high bar for demonstrating that this new information justifies returning to an incident already considered under the scheme.

343. The Act also requires us to reach a decision as soon as reasonably practicable. Our policy intent has been to provide for the swift resolution of complaints. We anticipate that a complaint to our scheme will likely be made after a considerable amount of formal and informal dialogue and process between the complainant and the respondent, which will already have taken a considerable length of time. Including provision to further elongate this process does not seem to us consonant with the objectives of the scheme as set out in the Act.

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

Summary of Proposal L: Information requirements

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

Summary of responses

Information requirements for the respondent

- 344. There was some agreement with our proposals on information requirements, with one consultee commenting that comprehensive information gathering should underpin our decisions.
- 345. We proposed that we would issue a notice to the complainant, respondent or both when requesting information about a free speech complaint. It was questioned why a notice is necessary and whether other methods could be used to request the information.
- 346. Some consultees commented on the scope of information requests suggesting variously that we should only seek information from respondents that is 'relevant and necessary' to our review of the complaint, or that our requests should be reasonable and proportionate.
- 347. A few consultees commented that a respondent should be able to make representations in response to a request, for example to challenge the information required.
- 348. Consultees also emphasised the importance of maintaining a constructive tone of communication in any information request.

Information requirements for the complainant

- 349. Some consultees commented that information requested from the complainant should be reasonable and appropriate. It was suggested that, when determining what is both reasonable and appropriate, we should bear in mind that complainants may not have additional support (legal or otherwise). It was suggested that information requests should avoid legal jargon and overly complex language.
- 350. A few consultees were concerned that information requests may be framed in legalistic language and urged us to consider the language we use when communicating with complainants who may be neurodivergent, affected by a disability or under 18. It was also suggested that some complainants may be limited by digital poverty and unable to effectively communicate via digital means.

Timeframes

351. Many consultees commented that there should be clear timeframes attached to any information requests made to the complainant and respondent. Some suggested that a timeframe of 30 days would be reasonable and in line with the OIA's processes. A few suggested that 28 days would allow respondents a reasonable period to respond given the potential complexities of the information requested. More generally, a few consultees suggested that timeframes be balanced against the burden of the request.
352. Some consultees commented that, given the time that may be needed to locate, collate, and report information requested, multiple information requests may place significant burden on both complainant and respondent and may cause significant delays to the OfS determining the outcome of a complaint.

Non-compliance

353. In our proposals we noted that HERA requires respondents to comply with the requirements of the scheme. Consultees noted that HERA does not stipulate what will happen if a complainant does not comply with information requests. A few requested further clarity on our approach to dismissal of a complaint where the complainant has not given us necessary or sufficient information to decide on the outcome of their complaint.

Information sharing and data protection

354. A few consultees requested further details on how we will protect potentially personal or sensitive data shared with us. These consultees were particularly concerned with how we will securely store and process confidential or commercially sensitive information related to a provider. Information was requested on how we will comply with the Equality Act when making information requests.

Our response

Information requirements for the complainant and the respondent

355. We consider that timely gathering of information about a free speech complaint is necessary for a timely and fair decision on that complaint. In the first instance we do not expect to issue formal information notices, but merely to request the information through ordinary dialogue. If this approach does not elicit the information that we need in a timely fashion, we consider that a notice, setting out the time for the response, manner and form of the information required, is a suitable medium for requesting information. We will only require information that enables us to make a determination about the free speech complaint.
356. We have therefore decided to implement the rules in section L, in the form in which we proposed them. In that section, and in rules 27 to 29, we set out examples of when we may require information and why we consider this to be appropriate for the purposes of the scheme.
357. It is for the complainant or respondent to seek external advice, including legal advice as appropriate, in relation to provision of information to the OfS.

358. We will be able to make reasonable adjustments to our process for complainants or respondents who have a disability or any accessibility requirements to enable them to access the scheme.

Timeframes

359. All requests for information from the respondent or complainant will be made in writing and will detail the specific information needed and the date by which the respondent or complainant should comply. The date by which the respondent or complainant must respond will be determined on a case-by-case basis depending on the level of burden of the request.

Non-compliance

360. In rule 52, we note that the complainant and respondent must provide us with the requested information as specified in our notice referred to in rule 51, at the time and in the manner and form specified in that notice. If the complainant does not submit the requested information specified in the notice at the time and in the manner and form specified, then we may suspend the complaint (see rule 45 and Question I).

361. The Act requires respondents to comply with the requirements of the scheme⁶². Therefore respondents must comply with any information requests. If a respondent does not comply, the Act allows us to enforce the requirement in civil proceedings for an injunction (See Proposal M).

Information sharing and data protection

362. All information received will be processed in accordance with the relevant data protection legislation and any other relevant requirements.

⁶² HERA, Schedule 6A paragraph 11.

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

Summary of Proposal M: Respondent's duty to comply⁶³

Under the Act, a respondent to a free speech complaint must comply with any requirements that the scheme imposes on it. The Act also states that, if a respondent fails to comply with a requirement imposed by the scheme and does not satisfy us that it is unable to comply, we may enforce the requirement in civil proceedings for an injunction. We propose 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 we send to the respondent under the proposed information requirements in the scheme (see [Proposal L](#)).

Summary of responses

Enforceability

363. A few consultees sought more clarity on why the OfS needed powers to compel compliance beyond those already available to it under ongoing condition of registration F3, which covers the provision of information to the OfS.
364. It was also suggested that the legal sanction on respondents should also apply to the complainant.
365. A few consultees referred in their response to a requirement to comply with recommendations.

Our response

366. Our ability to require information via F3 notices only applies to registered providers, not to constituent institutions. The rules reflect HERA, which imposes a duty on providers and constituent institutions.⁶⁴ This requirement is different from the ability to make recommendations, with which we expect but cannot compel compliance (see section H on recommendations). Therefore we have decided to implement rules 53 and 54 in the scheme in the form in which we proposed them.

⁶³ See OfS, [Proposal M: A respondent's duty to comply](#).

⁶⁴ HERA Schedule 6A paragraph 11.

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

Summary of Proposal N: Advertising the scheme⁶⁵

We are proposing that from 1 September 2026, 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.

We have proposed a short paragraph, describing the scheme, that should be included in those materials. This is set out in section N in the scheme rules.

We are also proposing that providers, constituent institutions ~~and relevant students' unions~~ should bring the scheme to the attention of members, staff ~~and students~~ at least once a year.

Summary of responses

Burden and timing

- 367. A few consultees commented that the proposals on how the scheme should be advertised were overly prescriptive and may infringe on institutional autonomy.
- 368. A few consultees believed that the OfS should set minimum requirements regarding how providers advertise the scheme.
- 369. Some consultees gave alternative suggestions for advertising the scheme, for example a bespoke free speech webpage, digital platforms external to application materials, and complaints and grievance policies.
- 370. There were some comments on timing. Many consultees commented that respondents would need time to prepare for the scheme after the decisions on this consultation had been published, and therefore it would be unrealistic to expect respondents to comply with the requirements on advertising if the scheme's launch followed very soon after the publication of the rules.

⁶⁵ See OfS, [Proposal N: Advertising the scheme](#).

Communication and content

371. Some consultees agreed with our proposals, suggesting that the inclusion of advertisement text in the rules was useful.
372. A few consultees commented that it was important that the outcomes of this consultation, setting out the final requirements for advertising the scheme, should be published in a timely way, and in good time before the launch of the scheme. Some consultees suggested that the OfS should communicate that it would not take enforcement action in respect of the requirements to advertise the scheme for an initial period from the start of the scheme.
373. Consultees made suggestions on the content of the proposed advertisement text, and more widely on how respondents communicate on free speech issues. These included:
- a. Respondents should be required to have a dedicated free speech complaints webpage. It was suggested variously that this could be in addition to, or instead of, the requirement to bring the scheme to the attention of staff and students annually.
 - b. Respondents will be well placed to judge how to reach the widest and most suitable audience and so should have discretion to decide how and where to advertise the scheme. On a related topic, a consultee asked how the scheme would be advertised to future visiting speakers.
 - c. The proposed text is not contextual to the community to which it is addressed and could cause confusion and accessibility issues, and so respondents should be able to adjust the text to reflect their own context.
 - d. The notice should be addressed to relevant potential complainants within higher education but not further education.
 - e. The notice should clarify whether complainants should first have engaged with the relevant processes of the respondent and should clarify the difference between the scheme and the OIA's scheme.
 - f. The notice should be included in a Completion of procedures letter, like those issued by a respondent in accordance with the requirements of the OIA's scheme.
 - g. Advertising the free speech complaints scheme alone could overshadow existing internal work to secure freedom of speech.
 - h. Respondents should engage in extensive, proactive communication to raise awareness of the scheme and the OfS itself. Suggestions included workshops, and informational campaigns.
374. Consultees asked how the OfS itself would promote freedom of speech and whether the OfS would hold training or information sessions to provide guidance.

Monitoring, enforcement and evaluation

375. There were a few comments relating to the OfS's monitoring of the advertisement of the scheme. Consultees asked how the OfS would monitor and enforce compliance with the

proposals for advertising under this section of the scheme rules. They also asked how the OfS would monitor the effectiveness of the requirement.

Our response

Burden and timing

376. We recognise that providers will be well placed to judge how best to word any advertisement to maximise its accessibility to a suitable audience. We also recognise that providers and constituent institutions will wish to inform students, staff, visiting speakers and others of their own initiatives and processes relating to freedom of speech alongside any advertisement. They may also wish to include information about their own internal processes alongside any advertisement.
377. We also recognise that advertising the scheme widely and promptly in a range of materials, and bringing it annually to the attention of potential complainants, may impose burden on organisations, particularly on large providers that carry out a wide range of activities. We accept that these burdens should not go beyond what is reasonably practicable.
378. Nevertheless, we consider that freedom of speech is of central importance to a high quality education. In responding to the consultation, providers stated that freedom of speech is central to their function and that it should be reflected across their policies and processes. We agree. It was also suggested that this may include documentation relating to internal review processes. We agree that those taking part in internal review processes should be aware of the scheme.
379. Therefore, while we have retained the provisions setting out where a respondent should advertise the scheme, we have decided not to set specific requirements on providers relating to the format in which they advertise the scheme (for instance, whether it is displayed on a separate webpage), or the manner in which they might bring the advertisement to the attention of students, staff, and members.
380. We have also amended the rules as proposed to require the scheme to be advertised from 1 September 2026, **or as soon as reasonably practicable before 1 January 2027**. We are doing this in recognition of consultees who highlighted the need to digest the scheme rules before making updates to their websites and in recognition that the scheme rules will be published in the summer period.
381. We recognise that it is important for the scheme to be advertised to visiting speakers (or invited visiting speakers). We consider that a suitable reference to the scheme in the provider's, or constituent institution's, code of practice, and in any process for managing external speakers (as stated in rule 55) is likely to meet that need.
382. The rules of the scheme set out the eligibility requirements for making a complaint. The scheme rules also make provision for us to dismiss frivolous or vexatious complaints. The rules will be available on our website. Therefore, we do not consider that the risk of ineligible or spurious complaints outweighs the importance of advertising the scheme to eligible complainants.

383. We consider that it may also be helpful to remind complainants that the scheme is free to use. Therefore, we have decided to amend the suggested text slightly to reflect this point, which derives from a specification in the Act.

384. Therefore, the relevant rules now read as follows.

Rule 55

A **registered higher education provider** or **constituent institution** should:

- a. As soon as reasonably practicable after 1 September 2026 and, in any event, no later than 1 January 2027, include information advertising the **free speech complaints** scheme in a prominent place in the following documents or information sources:
 - i. staff induction materials.
 - ii. free speech code of practice and any process or procedure for managing speaking events, for internal or external speakers.
 - iii. any internal disciplinary, complaints, appeals, grievance or similar internal review process.
 - iv. in the case of a **registered higher education provider** or **constituent institution**, application materials for applicants to become a **member of academic staff** of that registered higher **education provider** or **constituent institution**.
- b. at least once a year, bring this scheme to the attention of non-**student members** or **members of staff** of that **registered higher education provider** or **constituent institution** (as the case may be).

Rule 56

The following is suggested text for a **registered higher education provider** and **constituent institution** to include in the documents or information sources referred to in rule 55a above:

‘The Office for Students (OfS) operates a free speech complaints scheme. Under that scheme, the OfS can review complaints about free speech from non-**student members**, staff, applicants for academic posts and (actual or invited) visiting speakers. The scheme is free to use. Information about the complaints that the OfS can review is available on its website.

Communication and content

385. We have considered interactions with the OIA’s scheme under Question C.

386. With regards to advertisement of the scheme within further education, we note that the Act imposes free speech duties on all OfS registered providers, including further education colleges that are registered with the OfS. We also note that all staff at those providers are eligible to complain under the scheme. Therefore, we have decided not to limit the

expectation to advertise the scheme, and to bring it to the attention of staff annually, to higher education provision within those providers.

387. We accept that it will be important for eligible complainants to understand the rules relating to relevant internal processes. These will be readily accessible on the website to which the template advertisement links. This website will also include full information relating to eligibility. Therefore, we have decided not to include explicit reference to internal processes in the template advertisement in the scheme rules. We have also decided not to include a full statement of the precise eligibility conditions in this template.

Monitoring, enforcement and evaluation

388. With regards to monitoring and enforcement: we expect advertisements for the scheme to appear on (without necessarily being limited to) publicly facing websites. Information about advertisements may reach us from a range of sources, including complaints. Following a complaint against a provider, constituent institution or students' union, we may recommend that the organisation advertises the scheme more prominently or in additional places.
389. With regards to evaluation: from 1 September the OfS will have oversight of the inflow of complaints. It will also gather information from the review of complaints themselves. Over time, we expect that this will put us in a position to form a view of the effectiveness of the advertisement of the scheme.

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

Note on interpretation

390. To understand our proposals on cost recovery and articulate our response, it is necessary to refer to the Consultation on proposed regulatory advice and other matters relating to freedom of speech, and our response to that consultation.⁶⁶ 'Proposal C' (paragraphs 57 to 64) of this consultation represents the further consultation on cost recovery heralded in proposal O of the earlier consultation on the new free speech complaints scheme.
391. We summarised, but did not respond to, consultees' response to proposal C under Question 7 at paragraphs 612 to 651 of the consultation response document.⁶⁷ In what follows we respond to consultees' points about both proposal O from this consultation, and proposal C from the consultation on regulatory advice. In making our decisions on Proposal O in the complaints scheme consultation and Proposal C in the regulatory advice consultation, we have had regard to the comments received through both consultations.

Summary of Proposal O: Charges, costs and fees⁶⁸

Proposal O outlines our approach to charges, costs and fees. We set out that we will not charge complainants for the use of the complaints scheme. We also outline that the Act allows the OfS to recover from the respondent costs incurred in reaching a decision that a complaint is justified or partly justified when we consider that it is appropriate to do so.

Summary of Proposal C: Cost Recovery (from Consultation on proposed regulatory advice)⁶⁹

We propose to apply the policy position set out in our published guidance on the recovery of costs (set out in Regulatory advice 19, paragraphs 46 to 53), to our recovery of costs in the circumstances set out [below]

This guidance addresses what the OfS will include in the calculation of costs, refers to the processes for recovering costs in schedule 7 of HERA, and sets out considerations in deciding whether cost recovery is appropriate and what amount of cost recovery is appropriate.

⁶⁶ See OfS, [Consultation on proposed regulatory advice and other matters relating to freedom of speech; Consultation on proposed regulatory advice and other matters related to freedom of speech: Analysis of responses and decisions](#).

⁶⁷ See OfS, [Consultation on proposed regulatory advice and other matters related to freedom of speech: Analysis of responses and decisions - Office for Students](#).

⁶⁸ See OfS, [Proposal O: Charges, costs and fees](#).

⁶⁹ See OfS, [Consultation on proposed regulatory advice and other matters relating to freedom of speech](#).

[The circumstances referred to above are that the Act has amended section 73 of HERA to empower the OfS to recover, from a registered provider, a constituent institution ~~or a relevant students' union~~, the OfS's costs in relation to making a decision that a complaint under the OfS free speech complaints against that body is justified or partly justified.]

Summary of responses

392. In Proposal O, we outlined our intention to consult further on our approach to the recovery of costs. Consultees welcomed this.
393. Some consultees agreed that we should not charge complainants to use the free speech complaints scheme. A few consultees also agreed that we should be able to recover our costs incurred through the scheme, in part because this would (they said) encourage compliance with the free speech duties.
394. Many consultees suggested we should not be able to recover our costs, and most commented on how we should calculate our costs if we do so.
395. Consultees' responses to proposal C are summarised in the consultation response document for the regulatory advice consultation, under Question 7 at paragraphs 612 to 651.⁷⁰

Our response

396. With regard to comments on proposal O, we did not consult on whether we should have the ability to recover our costs. This is because the Act amends section 73 of HERA to empower the OfS to recover, from a registered provider or a constituent institution, the OfS's costs in relation to making a decision that a complaint under the OfS free speech complaints scheme against that body is justified or partly justified. Similarly, under Schedule 6A paragraph 9 of HERA, we may not charge any fee to the complainant for reviewing their complaint. Therefore, we did not propose to do so, and will not do so under the final scheme rules.
397. To summarise proposal C, we proposed to apply the policy position set out in our published guidance on the recovery of costs (set out in Regulatory advice 19, paragraphs 46 to 53), to our recovery of costs in relation to the free speech complaints scheme. That guidance addresses what the OfS will include in the calculation of costs, refers to the processes for recovering costs in schedule 7 of HERA, and sets out considerations in deciding whether and to what amount cost recovery is appropriate.
398. Many consultees invoked the registration fees that providers already pay to the OfS, suggesting these should be sufficient. We acknowledge the feeling behind this point, especially at a time when sector finances are stretched, but it does not reflect our existing practice, which already includes cost recovery in some scenarios (including the imposition of sanctions). Solely using registration fee income would also not seem a fair approach, given the proposal targets cost recovery where complaints have been found justified or partly justified. Not having a mechanism to recover costs in specific cases may also create the wrong incentives. Part of the reason to have a mechanism for cost recovery is to ensure

⁷⁰ See OfS, Consultation on proposed regulatory advice and other matters related to freedom of speech: Analysis of responses and decisions.

proportionality in how providers interact with the complaints scheme and thereby occupy OfS resources.

399. Consultees emphasised providing transparency in the calculation of any costs sought. As stated in schedule 7 paragraph 2(3) of HERA (and restated in Regulatory advice 19), a provider may require the OfS to provide a detailed breakdown of the amount of costs that we are seeking to recover. If a provider has any queries about that breakdown, it will be able to discuss those with the OfS.
400. Several respondents to proposal C raised concerns relating to the financial vulnerability of providers and suggested that costs recovered should be proportionate to the finances of the provider. Regulatory advice 19 states ‘the amount that we seek to recover will be appropriate to the circumstances of the breach and to the provider’s circumstances.’ Regulatory advice 19 also says ‘We will consider whether cost recovery is appropriate in circumstances where the provider is in financial difficulty.’ This flexibility also helps address consultees’ concerns about cost recovery having a disproportionate impact on smaller providers.
401. With respect to unintended consequences and incentives, several consultees suggested that including a mechanism for cost recovery creates an incentive for the OfS to find complaints wholly or partially justified in order to pursue costs. There is no evidence or suggestion that the OfS has acted in this manner with respect to its existing cost recovery mechanisms. As a public organisation we must act fairly and rationally.
402. Some respondents wanted more clarity on what appeals and representations were available on cost recovery. In response to this and other consultee commentary on clarity, we have been clear that we will normally offer representations on ‘Whether to require the respondent to pay any costs in relation to making the decision, and the calculation of those costs’ (see rule 50). Under schedule 7 of the Act a provider will also have a right of appeal to the first-tier tribunal against both a decision to recover costs and the amount of those costs.
403. Consultee commentary expressing concern about recovering costs from students’ unions is no longer relevant as this part of the Act has not been commenced. Similarly, while there were concerns about seeking to recover costs where the free speech duties were not well understood, this point was more acute in the former scenario where the duties and the complaints scheme were coming into force at the same time. In the event the duties have been in place for more than a year before the complaints scheme has launched.
404. We have therefore decided to include the rules consulted upon in the final scheme rules, with the addition of a clarification confirming that we will take decisions in accordance with our published guidance on cost recovery, which is contained in Regulatory advice 19 (and which has been updated and republished alongside this document). The relevant rule now reads as follows.

Rule 58

Where we have made a decision that a **free speech complaint** is justified or partly justified, we may, by notice, require the **respondent** to pay our costs in relation to making the decision up to the date of notification. Where we do so, we will act in accordance with our published guidance on cost recovery contained within Regulatory advice 19.

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

Summary of Proposal P: Publication of information

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.

[...]

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

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

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

Summary of responses

405. Some consultees agreed that publication in some form was useful to inform the sector's understanding of the scheme. However, most did not agree with the OfS's proposed approach. A common reason given for disagreeing with the proposed approach was that publishing information that names the respondent may cause significant reputational damage for the respondent.
406. Many commented specifically that we should not publish information about complaints that we found to be not justified, as the respondent institution in question might still suffer reputational damage. It was also suggested that the starting position should be that we would not normally publish complaint outcomes unless we are legally compelled to do so.
407. Many suggested that publication should be limited to anonymised case studies to inform best practice (similar to the approach of the OIA). Some supported the publication of anonymised statistics, for example on the number of complaints received, complaint outcomes (number found to be justified, partly justified and not justified) or key themes in complaints. Some

cautioned against excessive generality in statistical breakdowns, fearing that this could give a distortive impression without context.

408. There was broad agreement that the public identification of individuals (both complainants and within respondents) should be treated very sensitively. Consultees suggested that a risk of being identified could chill free speech activity from the perspectives both of potential complainants (who may fear retaliation after identification) and of individuals within institutions (who may become more risk-averse with respect to free speech matters).
409. Consultees suggested that if individuals (complainants or those within respondents) were going to be named publicly, this should be made clear to them in advance of the publication. They also suggested that the possibility of being identified publicly should be clearly flagged as a risk that complainants were undertaking in making the complaint at all. Some consultees considered that there should be balance in identification, and that if individual respondents were identified publicly then complainants should be identified publicly too.
410. Some consultees questioned the interaction of the scheme's publication proposals with data protection legislation like the GDPR.
411. Some consultees suggested various matters on which they thought we should publish information. These included:
- information on whether a complaint was judged eligible
 - statistical data relating to eligibility
 - whether the OfS sought academic advice in relation to a case and why.
412. Some consultees also suggested various matters on which they thought we should not publish. These included:
- complaints that have not yet been resolved
 - complaints that have reached a settlement
 - complaints that have been withdrawn.

Our response

413. We maintain our view that it is appropriate to align the complaints scheme's approach to publication with that set out in Regulatory advice 21. However, we recognise a number of issues raised by consultees that bear clarification in the context of the complaints scheme. These are:
- whether the respondent institution (i.e. the registered provider or constituent institution being complained about) should be identified or anonymised in publications
 - whether the publication of complaints found not justified is appropriate
 - the possible identification of individuals through publication.

414. With respect to identification or anonymisation of the respondent institution, we maintain that it will ordinarily be appropriate to identify respondent institutions in our publications. We consider that, in most cases, it is in the public interest for the OfS to be transparent about its decisions, including decisions under the free speech complaints scheme. Our thinking is guided by what HERA section 67A(5) provides that we must consider when publishing, notably the interests of the public, of current and potential students, and of providers.⁷¹ We consider that publication (and identification in publication) will support compliance with, and the understanding of, the duty to take reasonably practicable steps to secure freedom of speech within the law. We would normally expect to publish recommendations we have made, including the provider to which they pertain. Not identifying the provider to which these recommendations pertain would undermine its transparency and intelligibility. We will, however, make an assessment against the factors in HERA section 67A in each specific case.
415. In the context of this approach, we assess that it will ordinarily be worthwhile to publish complaints found ‘not justified’, and to identify the respondent in doing so. This sends a positive signal about the respondent’s compliance with the A1 duty, and if it has been identified in the press in the course of the complaint the publication will be important in ‘clearing its name’. It will also aid understanding of the scheme, in terms of identifying the kind of complaint that may be less likely to be found justified and therefore less productive to address to the scheme. Clarity on this point will be particularly helpful in ensuring that the scheme is efficient for all parties. Our publication plans will ordinarily be subject to representations by both parties however, and we will take a case-by-case approach, considering these representations carefully, including where respondents contend that it would not be appropriate to identify them in publishing a ‘not justified’ complaint.
416. Our normal practice will be to seek representations from a provider or constituent institution before making a final decision to publish information (as well as from complainants). HERA section 67A(5) provides that, in taking publication decisions, we must consider ‘the need for excluding from publication, so far as practicable, any information that relates to the affairs of a particular body or individual, where publication of that information would or might, in the opinion of the OfS, seriously and prejudicially affect the interests of that body or individual.’ This will factor in our thinking as we consider parties’ representations on our proposed publication approach, but it is particularly relevant to the issue of identifying individuals.
417. Our proposed amendments to Regulatory advice 21 set out that in connection with a provider or constituent institution, we would normally expect to publish information concerning ‘the conduct, but not the identity, of an individual where this is relevant to the reasons for finding a free speech complaint to be partly justified or justified’. We agree with the consultees to the consultation who stressed the risks of identifying individuals. It is our view (as stated in the paragraph 169 of the consultation) that ‘the public interest in publishing a complainant’s name is likely to be outweighed by other factors.’ Having considered the consultation responses, we consider it worth clarifying that this logic also applies in the case of individuals associated with the respondent. In case of both the complainant and the respondent, though, it may be possible to infer individuals’ identities

⁷¹ Though students cannot complain to the scheme, identifying providers through scheme outcome publications will provide greater transparency for students about their institutions, as well as giving a signal to prospective students about freedom of speech at those institutions.

from published material (particularly where the issue an institution has also received press coverage). For this reason the relevant rule now reads as follows.

Rule 63

In publishing information about a **free speech complaint**, we would not normally expect to publish the name of any individual. However, it may be possible to infer individuals' identities from the information that we publish.

418. In the interests of greater precision in conveying our approach to publication, we will alter the reference in our proposed amendments to Regulatory advice 21 to publishing 'The Notice of complaint outcome issued under the OfS free speech complaints scheme'. We will refer instead to 'The **public** Notice of complaint outcome...' This change reflects the fact that our publication will often be more limited than the notice circulated among the parties. Our publication decision will normally be subject to representations from the parties, and that may lead to certain aspects of the Notice of complaint outcome being withheld.
419. We may also decide that the value in the public Notice pertains more to the discussion of the alleged A1 duty breach, and that the details of the alleged adverse consequences may be more sensitive, more likely to identify individuals, and of less public interest, and therefore ultimately less appropriate for publication. While it may generally be the case that the details of the alleged A1 breach are of broader interest, there may also be value in highlighting adverse consequences, to highlight the impact of a given breach and better contextualise the recommendations we make. We will make these judgements on a case-by-case basis considering the publication factors in Regulatory advice 21.
420. We had suggested through our proposed amendments to Regulatory advice 21 that as well as normally publishing the recommendations we make in the case of justified and partially justified complaints, we would also normally publish information about a respondent's compliance with these recommendations. While compliance with recommendations will be of great interest, we consider that it may be inappropriate **normally** to publish the details of compliance with the scheme's recommendations (as the proposed wording in the table implied would be our practice). This is because we are mindful of consultees' emphasis on the burden of interacting with the scheme, and of our statutory duty to take decisions as soon as reasonably practicable.
421. We consider that publishing the recommendations themselves and identifying the provider to which they pertain is sufficient in achieving the aims of the scheme and indeed efficient for the parties involved. Compliance with those recommendations may more appropriately be considered in the context of assessing compliance with our regulatory conditions.
422. We acknowledge the comparison with the OIA's approach to publication. The OIA does identify providers in its annual statements, which includes statistical information on complaints volumes by provider, and may also do so in its public interest cases.⁷² The OIA includes a selection of anonymised case studies in its annual report. We assess that it is appropriate to adopt a different approach, given the more bespoke nature of our scheme and the different

⁷² See OIA, [Annual statements](#) and [Publication of case summaries and public interest cases](#).

legislative underpinnings. Ombuds, such as the Financial Ombudsman Service, do identify respondent institutions in final complaint outcomes as a matter of course.⁷³

423. For the sake of clarity, it is worth noting that HERA sections 67B(3) and 67B(3A) provide that complaints should be subject to the same procedure as currently applied to investigations in certain circumstances related to publication. Where an investigation is announced identifying a provider, if that investigation terminates without finding, or concludes without any OfS action, we must publish a notice stating this. This provision was included in case we decide to announce that a provider is a subject of a complaint before we have concluded that complaint. We do not intend to make such an announcement: our publication will happen after a complaints process has concluded with a determination. This approach is reflected in the addition to row 4 of Regulatory advice 21's Table 1 that we proposed in the original consultation, and are making (reproduced in Table 3 below).

424. In the context of the changes to the scheme's scope since consultation and changes to other aspects of the scheme due to consultation responses to other proposals, minor amendments are required to the original proposal to remove:

- references to students' unions
- references to publishing settlement outcomes.

425. We have therefore decided to make the amendments to Regulatory advice 21 that we set out in our proposals, with some alterations reflecting the points covered in paragraphs 413 to 424. These changes are highlighted in Table 3, with red text representing changes to Regulatory advice 21 proposed in the 2023 consultation, yellow highlighted text representing additions to that text, and struck-through text representing deletions. We have also decided to omit from the revised Regulatory advice 21 the proposed row 16, which covered statistical information about free speech complaints. This is to align with the OfS's current approach to committing to statistical publications, in which context Regulatory advice 21 is not the normal avenue. We are still committing to publish these statistics and have made this clear on our website. As indicated under Question G we are additionally committing to report on timescales for the OfS's handling of complaints, which we have decided to do in the interests of transparency and noting the requirement in the Act that we reach decisions as soon as reasonably practicable. For completeness the statistics that we intend to publish are:

- information about the number and type of free speech complaints received by the OfS and the outcome of those complaints, including where we have determined that a complaint is not one that we can consider under the free speech complaints scheme
- the identity of the providers and constituent institutions about which free speech complaints have been made
- timescales for the OfS's handling of complaints.

⁷³ See Financial Ombudsman service, [Ombudsman decisions](#).

426. This means that, in the updated Regulatory advice 21 that we are publishing alongside this consultation response, we set out the information that we would normally expect to publish and the information that we would not normally expect to publish in relation to the free speech complaints scheme.

Table 3: Changes to Regulatory advice 21's Table 1

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

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

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

Summary of responses

427. A few consultees stated that they found the proposals to be broadly clear and reasonable. Many of the comments requested clarification on matters that we have discussed elsewhere in this document, or in other documents. For instance, there were a few responses asking for clarity on the OfS's approach to complaints in a further education context. At the time this issue was raised it was principally in expectation of students' complaints. To the extent that it is still relevant we have discussed this matter in this document under Question T. Similarly, one response asked for clarity on what the legislative free speech duties required. When writing Regulatory advice 24 we took account of the relevant responses to this consultation, and we consider that Regulatory advice 24 provides the relevant guidance as to how providers and constituent institutions can meet their A1 duties.

Scope of role

428. A consultee requested clarification on whether the scheme would hold individual members of staff to account.

Interaction with other regulators

429. A consultee requested clarification on whether the OfS had consulted other regulators on best practice in regard to a complaints scheme.

Proposals

430. A consultee requested clarity on whether academic freedom extends to professional services staff.

431. A consultee commented on the proposed rule relating to amendments, which states that the rules may be amended from time to time. They requested clarification on how often this would be and the timeframe in which it would occur.

Accessibility

432. A consultee requested a plain language version of the rules, including links. Consultees also commented that the rules are written in an overly legalistic way and that supporting signposting may be helpful, especially for complainants who may be distressed.

Students' unions

433. Consultees sought clarity on a number of issues related to students' unions that will no longer be relevant given that the scheme no longer allows for complaints about students' unions.

Our response

Scope of role

434. The complaints scheme allows eligible persons to bring complaints against the governing bodies of registered providers or of their constituent institutions, not against individual members of staff.

Interaction with other regulators

435. In the course of developing and consulting on our complaints scheme we have consulted with other regulators and ombudsmen, including the OIA and the Charity Commission. We have drawn on their experience as appropriate, while noting that there are some significant differences between the legislative underpinning of the free speech complaints scheme and (for instance) that underpinning the student complaints scheme.

Proposals

436. The Act defines academic freedom in relation to academic staff at a registered higher education provider or constituent institution.⁷⁴ We have defined a member of academic staff as 'a member of staff who is employed, or otherwise engaged, for the purpose of teaching or conducting research' (see Section T in the scheme rules). We also define a member of staff (see Section T in the scheme rules). Whether a member of professional services staff counts as a member of academic staff depends on whether they meet this definition.

437. We do not have any plans to amend the rules at this time. However, it is incumbent upon us to keep our approach under review, particularly as this is a new scheme. We may in the future consider codifying robust practices into specific scheme rules (for example, commitments to certain timelines).

Accessibility

438. With regards to suggestions that we should issue a plain language version of the scheme rules, we have aimed to be as clear as possible in the published scheme rules while being specific enough to reflect the intended meaning. We also consider that normally, where we set out requirements of the Act, we should use the same language as the Act. In our view, using different language from that set out in the Act may create confusion about the provisions of the Act that underpin the complaints scheme. Where possible we have explained and defined terminology. We have also published web guidance on the scheme for additional clarity.

Students' unions

439. While complaints can no longer be made directly about students' unions, it is possible that the activity of a students' union may feature in a complaint about a provider or constituent institution. In discharging its A1 duty, a provider or constituent institution must have in place a freedom of speech code of practice and take reasonably practicable steps to secure compliance with that code by its students' unions. In considering the extent to which a complaint of this nature is justified, the degree of independence of the students' union would

⁷⁴ HERA part A1 section A1(6) and section A4(2).

be a relevant factor in our assessment of what was 'reasonably practicable' in the specific circumstances of that complaint.

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

Summary of responses

Consultation formatting and accessibility

440. One consultee found the consultation to be clear and logical. However, another commented that the survey could have been more user-friendly. Suggestions were made by consultees for the improvement of the survey. For example, one consultee recommended that we include an open text area for general comments and views to be expressed in addition to comments on specific proposals. Another consultee asked us to consider alternative, more accessible forms of giving feedback on consultations.
441. Others commented that the proposed rules are overly legalistic and recommended that we supply a plain language version of the rules.

Key performance indicators and evaluation of the scheme

442. A few consultees requested that we carry out a review or evaluate the complaints scheme after 12 months. One consultee said we should publish KPIs or demonstrate value for money specifically.

Engagement with the sector

443. A few consultees noted that in delivering the consultation we should engage with the higher education sector and explore opportunities to collect, recognise and share best practice.
444. A few consultees noted that we should provide more in depth training or hold workshops with providers and students' unions to help them to get up to speed with the new legislation.
445. A few suggested that we create a panel made up of representatives from the sector or experts to oversee the complaints scheme and review any recommendations that accompany our decisions.

Timing

446. Some consultees commented that the objectives of the scheme could be delivered more effectively and efficiently if there was a longer period between the publication of the complaints scheme consultation analysis and decision and the start of the scheme. This included the suggestion that a longer period would allow the sector time to better understand its new duties and what policy changes it may need to make internally.

Further guidance

447. A few consultees commented that the objectives of the consultation could have been delivered more effectively and efficiently if we provided mock cases of complaints and worked through how our proposed rules will be applied to the case. Some consultees requested that

we provide such examples in further guidance documents when publishing the final decision document.

Our response

448. Some of the comments made in 2023-24 – notably that there should be more time between consultation and implementation, and that guidance should be published before the scheme’s launch – have been addressed by the change in implementation schedule that saw Regulatory advice 24 published in June 2025 and the scheme coming into force in September 2026.
449. Any comments provided on how the consultation could be made more accessible, or delivered more effectively and efficiently, will be considered in our design of future consultations.
450. Our rules are intended to be easy to read for a range of audiences. However, as noted in our response to Question A, we remain of the view that, where the Act defines specific terms, we should use those same definitions in the scheme rules. This is to ensure clarity and to prevent confusion where different terms could have been used to refer to the same subject.
451. We understand the value and need for engagement with the higher education sector. We held webinars with the sector while the consultation response period was still ongoing, and we have remained in dialogue with sector bodies as the implementation timetable has evolved. We look forward to continuing engagement with the sector, including after we have begun operating the scheme.
452. We do not have plans to create a panel drawn from higher education providers to review our work. As higher education providers may be among the respondents to complaints, this risks creating actual or perceived conflicts of interest that may undermine complainants’ and respondents’ perception of our impartiality.
453. We will ensure transparency in the operation of the scheme, including through the publication of information on complaints, outcomes and emerging themes, so that lessons can be identified and acted upon. The Act allows the Secretary of State to request that the OfS:
- conduct a review of the scheme or its operation (or any aspect of either of those matters)
 - report the results of the review to the Secretary of State.

If the Secretary of State submits such a request, the Act requires the OfS to comply with the request within such time as may be specified by the Secretary of State; and, in conducting the review, the OfS must comply with any particular requirements imposed by the Secretary of State.⁷⁵ As we note in our publication plans at question P above, we would normally expect to publish information about operational measures including timescales for our handling of complaints.

⁷⁵ See HERA Schedule 6A section 12.

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

Summary of responses

Equality impact assessment

454. Many consultees commented that we should, or even that we are required to, undertake an equality impact assessment to assess how individuals with protected characteristics may be disproportionately impacted by the scheme rules. Some of these consultees also suggested that the assessment should be made publicly available, with one asking for it to be published before the scheme was due to launch on 1 August 2024.

Conflict with existing duties

455. Many consultees expressed concern about potential conflicts between the new duties on providers, constituent institutions and students' unions in the Act and their existing legal duties (e.g., the Equality Act 2010, including the Public Sector Equality Duty and employer responsibilities to protect against workplace harassment, and the Prevent duty).

456. Some consultees commented specifically that the new free speech duties could be in tension with a provider's Prevent duty, which requires providers to mitigate the risk of individuals supporting terrorism. For example, some suggested that limiting the speech of individuals who are at risk of inciting violence or supporting terrorism may be in violation of a provider's free speech duty.

457. Regarding the Equality Act 2010, some consultees were concerned that many of the complaints they receive may ask them to weigh the rights of those seeking to exercise free speech and the rights of those seeking protection from harassment and discrimination on the basis of their protected characteristics. One consultee commented that current debates around trans rights and the Middle East represent the kinds of difficult cases providers will have to adjudicate.

458. Some consultees requested further guidance on how providers and constituent institutions should weigh their duties to protect students, staff, visiting speakers, and members from harassment, and their duty to protect freedom of speech that may deeply offend some or that may cause them significant distress.

459. A few consultees commented that we should ensure that any decisions that come out of the consultation on our new approach to regulating harassment and sexual misconduct in English higher education should not conflict with a provider's or a students' union's duties to protect and secure free speech.

460. It was requested that we run workshops and provide support to providers and students' unions on how they should balance the different pieces of regulation.

Impact on specific groups

461. A few consultees commented that the complaints process could exacerbate existing mental health struggles on the part of a complainant, and that when we interact with the complainant we should consider any reasonable adjustments that may positively support their mental health and wellbeing while undergoing the process.
462. A few consultees also noted that those with physical impairments may struggle to attend in person meetings and that reasonable adjustments should be made.
463. One commented that there should be a non-written alternative to submitting a complaint for those who have accessibility or learning difficulties.
464. A few consultees expressed concern over what they described as the politicisation in the media of complaints that relate to topics such as gender identity and antisemitism, and how the politicisation of these complaints may negatively impact the complainant.
465. One consultee suggested that when evaluating the severity of the adverse effects of a breach on a complainant, we should consider how such effects may have been exacerbated as a result of the complainant's protected characteristics.
466. One consultee also suggested that the time limit for submitting a complaint is not long enough, especially when considering that maternity leave is 12 months at most providers, which means a free speech incident could occur and investigation be postponed because one or more individuals involved was on maternity leave. It was suggested that, once the maternity leave expires, the incident might no longer be eligible for review under the scheme rules.

Staff bias and impartiality

467. A few consultees commented that there should be proper training for complaints handlers around impartiality to protect against bias.

Our response

Equality impact assessment

468. Many consultees asked us to produce an equality impact assessment as a part of the publication of our analysis and decision. We have had due regard to the aims set out in the Public Sector Equality Duty and other matters, in developing the policy proposals on which we consulted and in making all the decisions set out in this document. The matters to which we have had regard in making our decisions are set out in Annex D.

Conflict with existing duties

469. Nothing in the scheme rules protects speech that amounts to illegal harassment, victimisation, incitement of violence or stirring up religious or racial hatred. Since this consultation we have published our response to the consultation on general ongoing condition of registration E6: Harassment and sexual misconduct.⁷⁶ This document, the E6

⁷⁶ See OfS, [Consultation on a new approach to regulating harassment and sexual misconduct in English higher education: Analysis of consultation responses and decisions](#).

condition itself (which substantially came into force in August 2025),⁷⁷ and Regulatory advice 24, all speak to the interaction of the duties to secure free speech and to prevent harassment. They include illustrative examples and conceptual discussion that underscore our position that, while 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.

470. The new complaints scheme provides individuals belonging to marginalised and minority groups with a new resource to protect the lawful expression of their views. This is important because academic freedom and freedom of speech may in the long run especially protect individuals in those groups. For instance, research conducted on the OfS's behalf by YouGov and published in June 2025 showed that academics from non-white minority ethnic backgrounds felt less free than white colleagues to discuss challenging and controversial topics in their teaching.⁷⁸
471. Our proposals were intended to ensure that individuals in English higher education both feel free and are in fact free to express their views within the law. We were not consulting on whether we should implement a free speech complaints scheme. We are required to do this under the Act. Rather, we were consulting on how we should do this.
472. Under existing legal and regulatory requirements, providers must comply with any relevant free speech duties and equality law duties, including the Public Sector Equality Duty where it applies. The matters on which we were consulting do not change this requirement.

Impact on specific groups

473. We will be able to make reasonable adjustments to our process for complainants and respondents who have any accessibility requirements to enable them to access the scheme. We have set out under Question F that we will review a complaint taking into account the effect of any alleged adverse consequences on the complainant.
474. In terms of consultee input about complainants with particular circumstances, such as those who may have been on maternity leave, our time limits rule (rule 16) accounts for this. As under Question D, we acknowledge that there may be circumstances in which a complainant may face difficulties in compiling a complaint within the time limit, and the wording of the rule gives discretion to accept a complaint after the 12-month time period has elapsed, where the OfS considers that to be appropriate in the individual circumstances.
475. In terms of consultees' points about mental health, we accept that a formal process of complaint consideration such as ours, which involves judgements about sensitive topics like adverse consequences, may be challenging across a number of dimensions, including that of mental wellbeing. We will be conscious of this in our operation of the scheme and communication with the parties, but complainants should consider this before making a complaint. It is of course possible for a complainant to withdraw a complaint at any time before we issue a Notice of complaint outcome. We hope, though, that the existence of a route of redress for these issues (which the scheme will provide) will be positive for

⁷⁷ See [Condition E6: Harassment and sexual misconduct](#).

⁷⁸ See YouGov, [Freedom of speech in higher education: Survey outcomes](#), published by the OfS, June 2025.

complainant wellbeing, in providing a route for consideration and resolution of issues complainants may previously have felt were not sufficiently recognised.

476. Some consultees expressed concerns that OfS staff should be trained to make impartial and evidence-based decisions when judging the outcome of a complaint. A comprehensive package of training will be provided to all complaint handlers. We will identify and manage conflicts of interest of staff who are reviewing and making decisions on complaints, in accordance with our published policy.⁷⁹ We will make decisions on complaints in accordance with our published scheme of delegation.⁸⁰ In making decisions, we will have regard to our general duties set out in section 2 of HERA and, as a public body, our decisions must be lawful, rational and fair.

⁷⁹ See OfS, Managing conflicts of interest policy, available at [Who we are](#).

⁸⁰ See OfS, Scheme of delegation, available at [Who we are](#).

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?

Summary of responses

Further education colleges

477. A few consultees highlighted what they said were unintended consequences for further education colleges. One consultee stated that 37 per cent of providers currently registered with the OfS are further education colleges, and that there are more such colleges on the OfS register than universities.
478. A few consultees stated concern over regulatory burden on these institutions because they are also subject to regulation by the Department for Education. A few consultees questioned whether the OfS has the legal remit to regulate them. Consultees also commented that higher education is typically a small part of the offer in further education contexts, in terms of the number of both students and staff, but that the regulatory burden related to higher education is relatively high.
479. A few consultees also raised concerns about the impact of this regulation on students' unions at further education colleges. Some consultees said that some students' unions are voluntary and small, and may lack legal status. Commenting that the staff of these students' unions were often under 18, they also raised concerns about safeguarding and mental health.

Students' unions

480. A few consultees raised concerns about unintended consequences for students' unions, in anticipation of complaints being made directly about students' unions, as originally legislated for. Given the change in the scheme's scope so as not to allow complaints about students' unions, these comments have been overtaken by events, and we do not describe them in detail or respond to them here. They included concerns about their capacity to handle complex complaints alongside their other functions and duties. A few consultees expressed concern that students' unions may run fewer events because of relative lack of funding and resources.

Other concerns

481. One consultee commented that the complaints procedure must not become so burdensome that those who are not well represented or well-funded feel unable to avail themselves of it.
482. A few consultees raised concerns that the scheme would have a disproportionate effect on smaller providers, who might lack the legal resources and administrative capacity to handle complex complaints.

Our response

Further education colleges

483. We note that the Act imposes free speech duties on all registered higher education providers, including registered further education colleges that offer higher education provision. The Act also requires the OfS to operate a scheme that can review complaints from eligible complainants against the governing body of any registered higher education provider, or constituent institution of such a provider. The OfS has no discretion to vary this requirement.

484. We also note that the relevant duty in the Act is for a registered higher education provider, or constituent institution of such a provider, to take the steps that are reasonably practicable for it to take to secure freedom of speech within the law. We have set out in guidance that whether a step is reasonably practicable for an organisation to take may vary from one organisation to another, and that factors that may be relevant to reasonable practicability include the impact on essential functions and the resources necessary for these.⁸¹

Students' unions

485. As covered under question Q, while complaints can no longer be made directly about students' unions, it is possible that the activity of a students' union may feature in a complaint about a provider or constituent institution. In discharging its A1 duty, a provider or constituent institution must have in place a free speech code of practice and take reasonably practicable steps to secure compliance with that code by its students' unions. In considering the extent to which a complaint of this nature is justified, the degree of independence of the students' union would be a relevant factor in our assessment of what was reasonably practicable in the specific circumstances of that complaint.

Other concerns

486. The scheme will be free to use and simple to operate for all eligible complainants, without the need for a representative.

487. We consider that it is reasonable to require that all complaints be made in English.

488. Where possible we have explained and defined terminology and plan to provide guidance on the section of our website that hosts the gateway to the complaints scheme. We also understand that continued engagement with stakeholders will be helpful and we look forward to continuing this engagement as the scheme launches and matures.

489. In relation to other issues at providers, the OfS's approach to general monitoring is designed to identify where further investigation is necessary to identify whether risk has increased in any particular area for an individual provider. The OfS makes use of wider strategic intelligence relating to the sector and individual providers, where appropriate. We consider that this intelligence and information may include information gathered in the process of handling a complaint.

⁸¹ See OfS, [Regulatory advice 24: Guidance related to freedom of speech](#).

Annex A: List of consultation questions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Annex B: Free speech complaints scheme rules – Marked-up copy

This annex sets out the rules of the free speech complaints scheme in the form in which they are being implemented.

We have shown the amendments that we have made to the version of the rules that were set out in our proposals, in red text (where we have made additions) and struck-through text (where we have made deletions). Rule numbering reflects the numbering used in the final scheme rules, to ensure consistency across this document. Where entire rules have been deleted, these are numbered x.

The rules in this document are as they were at the date of publication and will not reflect any subsequent changes over time. Please refer to the scheme rules published on our website for the most up-to-date version.⁸²

The Office for Students free speech complaints scheme

These rules implement the requirements of Schedule 6A to the Higher Education and Research Act 2017 (HERA).

Effective from ~~1 August 2024~~ 1 September 2026

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

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

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

‘Registered higher education providers’ are the universities and colleges that are registered with the OfS.⁸³

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

Section A: What is a free speech complaint?

1. The OfS reviews **free speech complaints** about the **governing bodies** of **registered higher education providers** or of **constituent institutions** of those providers, ~~and about relevant students’ unions~~. In these rules, we refer to the body that is being complained about as a **respondent**.
2. A **free speech complaint** is a complaint made by an **eligible person** that:

⁸² See OfS, [Free speech complaints scheme rules](#).

⁸³ See OfS, [Register](#).

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

Section B: Who can complain?

7. You can make a **free speech complaint** about a **governing body of a registered higher education provider**, or of a **constituent institution**, if you are an **eligible person** as follows:
- a. a person who is or was a ~~student, member~~ or **member of staff** of the **registered higher education provider** or **constituent institution** (as the case may be);
 - b. a person who has applied to become a **member of academic staff** of the registered higher education provider or constituent institution (as the case may be); or
 - c. a person who was, or was at any time invited to be, a **visiting speaker** at the **registered higher education provider** or **constituent institution**.
- ~~x. You can make a free speech complaint about a **relevant students' union** if you are an eligible person as follows:~~
- ~~a. A person who is or was:~~
 - ~~i. A **member** or **member of staff** of the **relevant students' union**;~~
 - ~~ii. A **student** of a **registered higher education provider** to which the **relevant students' union** relates; or~~
 - ~~iii. A **member** or **member of staff** of a **registered higher education provider** to which the **relevant students' union** relates or of any of its **constituent institutions**; or~~
 - ~~b. A person who was, or was at any time invited to be, a **visiting speaker** at the **relevant students' union**.~~
8. **If a complainant dies after submitting their** ~~unless the~~ **free speech complaint, we will review the free speech complaint that they** ~~was submitted to us before that person~~ **they** died. We

will not review a **free speech complaint** made by personal representatives of the estate of a person who has died.

Section C: Complaints that we will not review

9. We will not review a complaint unless it is a **free speech complaint**.
10. A **free speech complaint** may include claims other than **free speech claims**. However, we will only review those other claims if they include information that is relevant to the **free speech claims**, and we will only determine the other claims to the extent necessary for determining whether the **free speech claim** is justified.
11. This scheme is not retrospective. This means that we will not review a **free speech complaint** to the extent that **its free speech claims concern actions or inactions that took place** ~~it concerns matters or events before 1 August 2024~~ **1 September 2026**. Where ~~these matters or events were ongoing as of~~ **a free speech claim has a relationship to actions or inactions from before 1 August 2024 1 September 2026**, we will review ~~them~~ **the complaint only in relation to those actions or inactions that took place on or after the period from 1 August 2024 1 September 2026.**⁸⁴
12. We will not review a **free speech complaint** about a **respondent** if it was not a **registered higher education provider or constituent institution** ~~or a relevant students' union~~ when the action or inaction being complained about took place.
13. We will not review a **free speech complaint** if it appears to the OfS that proceedings relating to the same subject matter as the **free speech claims** in that complaint, to which you are or were party, are being, or have been, dealt with by a court or tribunal. 'Court or tribunal' does not include a panel established by the **respondent**, in connection with its own internal disciplinary, complaints or appeals processes. Nor does it include a panel established by a **Professional, Statutory and Regulatory Body** where this was not at your request. We will consider that proceedings have begun once the application or claim has been ~~submitted~~ **accepted by a court or tribunal**, including where that application or claim is seeking permission to bring proceedings. We may decide to review a **free speech complaint** where permission to bring any such proceedings was refused or where any such proceedings have been formally stayed or adjourned.
- ~~x. We will not review a free speech complaint if it appears to the OfS that a complaint brought by you and relating to the same subject matter as the free speech claims in that complaint, is being, or has been, dealt with under the student complaints scheme.~~
14. ~~This rule applies~~ **Where the respondent has a disciplinary, complaints, appeals, grievance or similar internal review process (whether initiated by you or by the respondent) under which the free speech claims issues in your free speech complaint could be or are being considered, in those circumstances, we will normally only accept a free speech complaint:**
 - a. once **you have received confirmation from the respondent that** you have completed that process or, if earlier;

⁸⁴ See OfS, Free speech complaints.

- b. once ~~30 days~~ **90 days** have elapsed since that process began.
15. We will dismiss a **free speech complaint** at any time if, in our judgement, it is frivolous or vexatious. The following non-exhaustive list illustrates when we may determine that a **free speech complaint** is frivolous or vexatious:
- a. The **free speech complaint** provides no new information to that set out in a **free speech complaint** previously submitted by you and considered under this scheme.
 - b. You continually change the substance of a **free speech complaint**.
 - c. You have acted aggressively, ~~or offensively~~, or abusively, **towards us** or have made unreasonable demands on us, **in your dealings with us in relation to the free speech complaint**.
 - d. Your **free speech complaint** does not clearly identify issues or matters that are the subject of the complaint.
 - e. You have not complied with our information requirements (Section L) on several occasions.
 - f. **You have not responded to us by any deadline that we gave you when we suspended your free speech complaint.**
 - g. Your **free speech complaint** concerns matters which in the OfS's judgement are trivial.

Section D: Time limits

16. **Unless there are good reasons why it was not**, a **free speech complaint** must be submitted to the OfS by 12 months after the date on which it appears to the OfS that the ~~adverse consequences that are alleged in the free speech claims in the complaint~~ **action or inaction being complained about** last occurred.

Section E: Submitting a free speech complaint to us

17. A **free speech complaint** must be made in writing, by submitting a complaint form to us. You will also be able to submit any documents that are relevant to your complaint. The complaint form is available on our website. The complaint form and any supporting documents may be submitted online or by post. Instructions on how to do this are on our website. If you have a disability, we can adjust this process to enable you to access this scheme. Guidance on how to request adjustments is set out on our website.⁸⁵
18. When you submit a **free speech complaint** to us, we will ask you for personal information including your name and contact details.
19. We cannot review anonymous complaints. If you ~~ask us to~~ **make a compelling case for us** to protect your identity from the **respondent** or other persons **(for example on grounds of a credible threat to your safety)**, we will make reasonable attempts to do so, ~~unless we are legally required to reveal your identity~~. However, we cannot guarantee that we will be able to

⁸⁵ See OfS, How to complain.

~~maintain your anonymity~~ **protect your identity**. The OfS does not have formal powers to protect whistleblowers.

20. You may appoint a representative to correspond with us about your **free speech complaint** on your behalf. We will then normally correspond with your representative, rather than directly with you. This means that you should make sure that your representative understands your **free speech complaint**, will act in your best interests and can keep you informed throughout our review process. Where you have appointed a representative, 'you' will refer to your representative where the context requires. If you tell us that you no longer wish your representative to act for you, we will tell your representative and will then correspond directly with you. You are not required to appoint a representative.

Section F: Reviewing a free speech complaint

21. When we receive a complaint, we will decide whether we can review it in whole or in part. This means that we will consider whether:
- it is a **free speech complaint** under Section A;
 - you are an **eligible person**;
 - it is about a **registered higher education provider**, or a **constituent institution**; ~~or a relevant students' union~~ and
 - we cannot review some or all of the complaint under Section C (Complaints that we will not review) or Section D (Time limits) above.
22. We may share information with the **respondent** and/or with other parties, to help us decide whether we can review some or all of the **free speech complaint**.
23. We will tell you in writing whether, and to what extent, we can review your **free speech complaint**. We will also say why we have reached this decision. Where we consider it appropriate, we will also tell the **respondent**.
24. **Where we decide that we cannot review some or all of a free speech complaint, you will have the opportunity to request a reconsideration of our decision (see rule 49) if you believe we have made an error.**
25. Where we decide that we can review a **free speech complaint**, we will decide what activities to undertake to conduct that review. **We expect complainants to demonstrate how their complaint is justified.**

~~We will look at the information that you send us. We may ask you specific questions about a free speech complaint or require additional information from you. We will do this where we consider it to be appropriate.~~

~~We may share some or all of the information that you send us with the respondent. We may seek the respondent's representations on that information. We may ask the respondent specific questions about a free speech complaint or require additional information from the respondent. For example, we may ask questions or require information about the respondent's policies or procedures, or its decision-making processes where these are~~

~~relevant to the **free speech complaint**. We may do one or more of these things where we consider it to be appropriate.~~

26. We will normally:
- Seek the **respondent's** comment on the complaint form and any accompanying documents. We will specify a deadline for receipt of this comment. This will normally be a minimum of 14 days. We may extend the deadline upon a reasonable request of the **respondent** or on our own initiative if we consider it appropriate to do so.
 - Seek your comment on the **respondent's** comments on the **free speech complaint**. We will specify a deadline for receipt of this comment. This will normally be a minimum of 14 days. We may extend the deadline upon your reasonable request or on our own initiative if we consider it appropriate to do so.
27. Where we consider it appropriate, we may also ask you and/or the **respondent** to answer specific questions and/or provide additional information as set out in a notice in accordance with Section L. For example, we may ask questions or require information about the **respondent's** policies or procedures, or its decision-making processes where these are relevant to the **free speech complaint**.
28. Our starting point will usually be to conduct a paper-based review of a **free speech complaint**. However, where we consider it to be appropriate, we may have one or more face-to-face meetings with you and/or the **respondent** and/or other persons that we consider may have information or expertise that is relevant to your **free speech complaint**. We may ask you, the **respondent**, or those other persons, questions at such a meeting. We may allow you, the **respondent** and/or those other persons to ask each other questions at such a meeting.
29. Where we consider that a **free speech complaint** concerns academic judgement, we may seek expert academic judgement to inform our review. We will do this only if we consider it appropriate. We may seek expert advice from persons with other forms of expertise, where we consider it appropriate.
- ~~x. We may seek to resolve the **free speech complaint** without conducting a full review or deciding the extent to which your complaint is justified. This is called settlement. Any proposed settlement will be subject to your agreement and the agreement of the **respondent**. An agreed settlement would result in the withdrawal of your **free speech complaint**.~~
30. We may decide to dismiss, ~~or that we cannot review~~, your **free speech complaint**, in whole or in part, at any point during our review and without making a decision about the extent to which it is justified. We may do this if we decide, during that review process, that your complaint is not a **free speech complaint**, you are not an **eligible person** or we cannot review some or all of your complaint under Section C or Section D above. For example, we may do this on the basis of information that comes to our attention during our review.

Section G: Our decision and Notice of Complaint Outcome

31. When we have reviewed a **free speech complaint** and consider that we have all the information and evidence that we need to make a decision about the extent to which it is

justified, we will make a decision. We will do this as soon as reasonably practicable after we have received a **free speech complaint**.

32. We will issue a **Notice of Complaint Outcome** in writing to you and to the **respondent** setting out our decision. Where you have appointed a representative, we will issue the **Notice of Complaint Outcome** to both of you.
33. The **Notice of Complaint Outcome** will state whether the **free speech complaint** is justified, partly justified or not justified, and the reasons for this. ~~See rule 37 below in relation to the issue of a **Notice of Complaint Outcome** following settlement.~~
34. If it appears to the OfS that:
 - a. It is more likely than not that the **respondent** has breached, or is breaching, its **free speech duty**; and
 - b. It is more likely than not that you have suffered adverse consequences, that are more than minor or trivial, as a result of the breach referred to in 34.a,then we ~~may~~ **will** determine that your **free speech complaint** is justified.
35. If it appears to the OfS that:
 - a. It is more likely than not that the **respondent** has breached, or is breaching, its **free speech duty**; and
 - b. It is more likely than not that:
 - i. you have not suffered adverse consequences or
 - ii. you have suffered only minor or trivial adverse consequences as a result of the breach referred to in 34.a,then we ~~may~~ **will** determine that your **free speech complaint** is partly justified.
36. If it appears to the OfS that it is more likely than not that the **respondent** is not breaching and has not breached its **free speech duty**, we ~~may~~ **will** conclude that your complaint is not justified.
37. We will not make a decision about the extent to which a **free speech complaint** is justified, where **both parties (the complainant and respondent) have agreed to settle and the complainant has consequently withdrawn their complaint** ~~we have agreed a settlement with you and the respondent in respect of that complaint. However,~~ We will **not** still issue a **Notice of Complaint Outcome** in those circumstances, **but we will issue correspondence to the parties to the complaint** to confirm that the **free speech complaint** has been resolved through a settlement. ~~and We may request more information about the terms of that settlement.~~
38. We will not make a decision about the extent to which a **free speech complaint** is justified, where that complaint has already been withdrawn or dismissed, under these rules.
39. If a **free speech complaint** is against more than one **respondent**, then we will determine the complaint separately against each **respondent**.

Section H: Recommendations and suggestions

40. If we decide that your **free speech complaint** is justified or partly justified, we may make a recommendation to the **respondent**. The recommendation will be set out in the **Notice of complaint outcome**.
41. A recommendation may be a recommendation that the **respondent**:
- a. does anything that is specified in the recommendation, which may include the payment of sums specified in the recommendation; or
 - b. refrains from doing anything specified in the recommendation.
42. We will not make a recommendation arising from claims included in your **free speech complaint** that are not **free speech claims**.
43. We expect the **respondent** to comply with any recommendation we make in full and within the time limits we set, and to report to us when it has done so.
- ~~x. We may also make suggestions in any **Notice of Complaint Outcome**. Those suggestions may suggest that the **respondent** considers doing or not doing something.~~
44. The operation of this scheme does not in any way affect the ability of the OfS to investigate and/or take any form of regulatory or enforcement action in respect of any non-compliance with any of the OfS's conditions of registration or other regulatory requirements.

Section I: Suspension and withdrawal

45. We may suspend our initial consideration or review of a **free speech complaint** if:
- a. you do not comply with an information requirement under Section L; or
 - b. you can no longer be contacted through the contact details that you have provided to us;
or
 - c. matters relating to the complaint are being investigated by the police or another body.
- ~~x. We may also decide to suspend our initial consideration or review of a **free speech complaint** where it is part of a group complaint, in the circumstances set out in rule 52 below.~~
46. You may withdraw your **free speech complaint** at any stage before we issue a **Notice of Complaint Outcome** or dismiss the complaint.

Section J: Group complaints

47. Where we receive a series of **free speech complaints** from more than one person about the same **respondent** and the same subject matter, we may decide to treat these complaints as a group complaint. **Individual complainants will also have the opportunity to express a preference to be grouped during the submission of a complaint.** ~~The complaints may have been submitted individually, including where a **complainant** has no knowledge of the other complaint(s) in the group, or together in a group.~~

48. We may decide to consider the **free speech complaints** within a group complaint together where we consider it appropriate to do so, for example where we receive multiple complaints involving the same subject matter or we are requesting the same information from the **respondent** across a number of complaints. ~~Alternatively, we may decide to review one of the free speech complaints in a group complaint, the lead complaint, in the first instance, and to suspend our review of the other free speech complaints within the group complaint, pending the outcome of our review of the lead complaint.~~ We will review and determine each of the complaints in a group complaint separately, considering the specific facts of each complaint.

Section K: Reconsiderations and rRepresentations

49. When we have decided that a complaint is not one that we can review in full or in part, we will offer the **complainant** an opportunity to request a reconsideration of our decision, on the basis that they believe we have made an error. Reconsideration can also be requested in any circumstance where we have dismissed a complaint. This request must be made within 28 days of our decision being issued.
50. When we are deciding:
- ~~a. Whether a complaint is one that we can review under these rules~~
 - a. the extent to which a **free speech complaint** is justified; or
 - b. whether to make, and the form and content of, any, recommendations or suggestions about a **free speech complaint**;
 - c. whether or what to publish in relation to the **free speech complaint**; or,
 - d. **whether** to require the **respondent** to pay any costs in relation to making the decision, and the calculation of those costs

we will **normally** seek representations from you and/or from the **respondent** before making a final decision in the case of 50.a, 50.b and 50.c. In the case of 50.d we will normally seek representations from the **respondent** before making a final decision, ~~if we consider it is appropriate to do so, and in the manner we consider appropriate.~~ We will specify a deadline for the receipt of these representations. This will normally be a minimum of 14 days for both **complainant** and **respondent**. We may extend this deadline upon the reasonable request of either **complainant** or **respondent**, or on our own initiative.

Section L: Information requirement

51. We may require you and/or the **respondent** to provide us with information about a **free speech complaint**. For example, we may require this to help us to determine the extent to which we can review the complaint, or the extent to which it is justified. A requirement to provide information will be set out in writing in a notice.
52. You and the **respondent** must provide us with such information as we specify in the notice referred to in rule 51 at the time and in the manner and form specified in that notice.

Section M: Respondent's duty to comply

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

Section N: Advertising the scheme

55. A **registered higher education provider**, ~~or constituent institution~~ and ~~relevant students' union~~ should:
- a. ~~From 1 August 2024~~ **As soon as reasonably after 1 September 2026 and, in any event, no later than 1 January 2027, include information advertising the free speech complaints scheme** ~~include the text in rule 60~~ in a prominent place in the following documents or information sources:
- ~~staff and student~~ induction materials.
 - free speech code of practice and any process or procedure for managing speaking events, for internal or external speakers.
 - any disciplinary, complaints, appeals, grievance or similar internal review process.
 - in the case of a **registered higher education provider** or **constituent institution**, application materials for applicants to become a **member of academic staff** of that **registered higher education provider** or **constituent institution**.
- b. at least once a year, bring this scheme to the attention of ~~the following persons~~:
- ~~In the case of a registered higher education provider or constituent institution:~~
~~students,~~ **non-student** members ~~or~~ **and** members of staff of that registered higher education provider or constituent institution (as the case may be).
 - ~~In the case of a relevant students' union:~~
 - ~~Members or members of staff of the relevant students' union;~~
 - ~~Students of a registered higher education provider to which the relevant students' union relates; or~~
 - ~~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.~~
56. The **following is suggested text for that** ~~a registered higher education provider, and constituent institution~~ and ~~relevant students' union~~ should ~~to~~ include in the documents or information sources referred to in rule 55.a above is:

'The Office for Students (OfS) operates a free speech complaints scheme. Under that scheme, the OfS can review complaints about free speech from **non-student members**, ~~students~~, staff, applicants for academic posts and (actual or invited) visiting speakers. **The scheme is free to use.** Information about the complaints that the OfS can review is available on its website [www.officeforstudents.org.uk/for-providers/freedom-of-speech/free-speech-complaints/what-the-scheme-covers/].'

Section O: Charges, costs and fees

57. We will not charge any fee to you for reviewing your **free speech complaint**.
58. Where we have made a decision that a **free speech complaint** is justified or partly justified, we may, by notice, require the **respondent** to pay our costs in relation to making the decision up to the date of notification. **Where we do so, we will act in accordance with our published guidance on cost recovery contained within Regulatory advice 19.**

Section P: Collecting and sharing data

59. Through the operation of this scheme, we will collect and process personal data. This may include sensitive personal data. The privacy notice published on our website sets out why and how we will do this.
60. ~~We may share information that we receive under this scheme with other parties. We will do so in accordance with the requirements set out in HERA.~~ **We will normally share information provided by one party to a complaint with other parties to the complaint where this is necessary for the fair and effective operation of the complaints scheme. We may, however, withhold or redact information where we consider it appropriate. We may need to share information that we receive under this scheme with other persons who are not parties to the complaint (for example, other public bodies and/or any expert we engage to inform our review of the complaint). When sharing information, we will do so in accordance with our statutory powers and duties as set out in HERA and other legislation. You can find out more about how we share and use personal information in connection with the free speech complaints scheme in our privacy notice.⁸⁶**

Section Q: Publication of information

61. We would normally expect to publish information about the **free speech complaints** that we receive, in accordance with our published guidance on publication matters ('Regulatory advice 21: Publication of information').⁸⁷
62. The information that we would normally expect to publish in relation to this scheme is set out in Table 1 in 'Regulatory advice 21: Publication of information'.
63. In publishing information about a **free speech complaint**, we would not normally expect to publish the name of **any individual the complainant**. However, it may be possible to infer ~~your~~ **individuals'** identities from the information that we publish.
64. In making publication decisions, we will consider the factors set out in 'Regulatory advice 21: Publication of information'.

⁸⁶ See OfS, Privacy notice.

⁸⁷ See OfS, Regulatory advice 21: Publication of information - Office for Students.

Section R: Amendments to the rules

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

Section S: Law

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

Section T: Glossary

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

Constituent institution is defined at Part A1 Section A4 of **HERA**: ‘Any constituent college, school, hall or other institution of a **registered higher education provider**.’

Eligible person:

- a. In relation to a complaint about a **governing body** of a **registered higher education provider**, or of a **constituent institution**, a person referred to in rule 87.
- b. In relation to a complaint about a **relevant students’ union**, a person referred to in rule 9.

Free speech claims: the claims described in rule 2.

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

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

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

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

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

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

HERA: the Higher Education and Research Act 2017.

Member:

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

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

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 any relevant contractual arrangement.

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

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

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

Member of staff (of an organisation): **Someone who is either:**

- a. 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; **or**
- b. an individual who has entered into or works under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

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

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

Registered higher education provider and **governing body** in relation to such a provider: **these terms** have the same meanings as in Part 1 of **HERA** (see section 85 of that Act). The OfS publishes a Register of **registered higher education providers** on its website.⁸⁸

~~**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.~~

⁸⁸ See OfS, [Register](#).

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

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

Student: 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.

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

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

Visiting speaker: a person who was invited to speak at a **registered higher education provider**, **constituent institution** or ~~relevant students' union~~, ~~or who would have been invited but for something that the provider or constituent institution has done~~. 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. ~~It does not include a person who wanted or requested an invitation to speak but was not invited.~~

Annex C: Free speech complaints scheme rules – Clean copy

This annex sets out the rules of the free speech complaints scheme in the form in which they are being implemented, without markup.

The Office for Students free speech complaints scheme

These rules implement the requirements of Schedule 6A to the Higher Education and Research Act 2017 (HERA).

Effective from 1 September 2026

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

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

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

‘Registered higher education providers’ are the universities and colleges that are registered with the OfS.⁸⁹

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

Section A: What is a free speech complaint?

1. The OfS reviews **free speech complaints** about the **governing bodies** of **registered higher education providers** or of **constituent institutions** of those providers. In these rules, we refer to the body that is being complained about as a **respondent**.
2. A **free speech complaint** is a complaint made by an **eligible person** that:
 - a. claims that the person making the complaint has suffered adverse consequences (which need not be financial) as a result of action or inaction of a **respondent**; and
 - b. claims that, or gives rise to a question as to whether, the action or inaction was a breach of the **respondent’s free speech duty**.

⁸⁹ See OfS, [Register](#).

3. The **free speech duty** for **governing bodies of registered higher education providers** and their **constituent institutions** is set out in section A1 (Duty to take steps to secure freedom of speech) of Part A1 of **HERA**.
4. In these rules, we refer to the claims described in rule 2 as **free speech claims**.
5. A **free speech complaint** may be about more than one **respondent**. References in these rules to a '**respondent**' are to each **respondent** unless the context requires otherwise.
6. A **free speech complaint** may include claims other than **free speech claims**.

Section B: Who can complain?

7. You can make a **free speech complaint** about a **governing body of a registered higher education provider**, or of a **constituent institution**, if you are an **eligible person** as follows:
 - a. a person who is or was a **member** or **member of staff** of the **registered higher education provider** or **constituent institution** (as the case may be);
 - b. a person who has applied to become a **member of academic staff** of the registered higher education provider or constituent institution (as the case may be); or
 - c. a person who was, or was at any time invited to be, a **visiting speaker** at the **registered higher education provider** or **constituent institution**.
8. If a **complainant** dies after submitting their **free speech complaint**, we will review the **free speech complaint** that they submitted to us before they died. We will not review a **free speech complaint** made by personal representatives of the estate of a person who has died.

Section C: Complaints that we will not review

9. We will not review a complaint unless it is a **free speech complaint**.
10. A **free speech complaint** may include claims other than **free speech claims**. However, we will only review those other claims if they include information that is relevant to the **free speech claims**, and we will only determine the other claims to the extent necessary for determining whether the **free speech claim** is justified.
11. This scheme is not retrospective. This means that we will not review a **free speech complaint** to the extent that its **free speech claims** concern actions or inactions that took place before 1 September 2026. Where a free speech claim has a relationship to actions or inactions from before 1 September 2026, we will review the complaint only in relation to those actions or inactions that took place on or after 1 September 2026. Our website contains illustrative examples of how we may apply this rule in practice.⁹⁰

⁹⁰ See OfS, [What the free speech complaints scheme covers](#).

12. We will not review a **free speech complaint** about a **respondent** if it was not a **registered higher education provider** or **constituent institution** when the action or inaction being complained about took place.
13. We will not review a **free speech complaint** if it appears to the OfS that proceedings relating to the same subject matter as the **free speech claims** in that complaint, to which you are or were party, are being, or have been, dealt with by a court or tribunal. 'Court or tribunal' does not include a panel established by the **respondent**, in connection with its own internal disciplinary, complaints or appeals processes. Nor does it include a panel established by a **Professional, Statutory and Regulatory Body** where this was not at your request. We will consider that proceedings have begun once the application or claim has been accepted by a court or tribunal, including where that application or claim is seeking permission to bring proceedings. We may decide to review a **free speech complaint** where permission to bring any such proceedings was refused or where any such proceedings have been formally stayed or adjourned.
14. Where the **respondent** has a disciplinary, complaints, appeals, grievance or similar internal review process (whether initiated by you or by the **respondent**) under which the issues in your **free speech complaint** could be or are being considered, we will normally only accept a **free speech complaint**:
 - a. once you have received confirmation from the **respondent** that you have completed that process or, if earlier;
 - b. once 90 days have elapsed since that process began.
15. We will dismiss a **free speech complaint** at any time if, in our judgement, it is frivolous or vexatious. The following non-exhaustive list illustrates when we may determine that a **free speech complaint** is frivolous or vexatious:
 - a. The **free speech complaint** provides no new information to that set out in a **free speech complaint** previously submitted by you and considered under this scheme.
 - b. You continually change the substance of a **free speech complaint**.
 - c. You have acted aggressively or abusively towards us or have made unreasonable demands on us, in your dealings with us in relation to the **free speech complaint**.
 - d. Your **free speech complaint** does not clearly identify issues or matters that are the subject of the complaint.
 - e. You have not complied with our information requirements (Section L) on several occasions.
 - f. You have not responded to us by any deadline that we gave you when we suspended your **free speech complaint**.
 - g. Your **free speech complaint** concerns matters which in the OfS's judgement are trivial.

Section D: Time limits

16. Unless there are good reasons why it was not, a **free speech complaint** must be submitted to the OfS by 12 months after the date on which it appears to the OfS that the action or inaction being complained about last occurred.

Section E: Submitting a free speech complaint to us

17. A **free speech complaint** must be made in writing, by submitting a complaint form to us. You will also be able to submit any documents that are relevant to your complaint. The complaint form is available on our website. The complaint form and any supporting documents may be submitted online or by post. Instructions on how to do this are on our website. If you have a disability, we can adjust this process to enable you to access this scheme. Guidance on how to request adjustments is set out on our website.⁹¹
18. When you submit a **free speech complaint** to us, we will ask you for personal information including your name and contact details.
19. We cannot review anonymous complaints. If you make a compelling case for us to protect your identity from the **respondent** or other persons (for example on grounds of a credible threat to your safety), we will make reasonable attempts to do so. However, we cannot guarantee that we will be able to protect your identity. The OfS does not have formal powers to protect whistleblowers.
20. You may appoint a representative to correspond with us about your **free speech complaint** on your behalf. We will then normally correspond with your representative, rather than directly with you. This means that you should make sure that your representative understands your **free speech complaint**, will act in your best interests and can keep you informed throughout our review process. Where you have appointed a representative, 'you' will refer to your representative where the context requires. If you tell us that you no longer wish your representative to act for you, we will tell your representative and will then correspond directly with you. You are not required to appoint a representative.

Section F: Reviewing a free speech complaint

21. When we receive a complaint, we will decide whether we can review it in whole or in part. This means that we will consider whether:
 - a. it is a **free speech complaint** under Section A;
 - b. you are an **eligible person**;
 - c. it is about a **registered higher education provider** or **constituent institution**; and
 - d. we cannot review some or all of the complaint under Section C (Complaints that we will not review) or Section D (Time limits) above.

⁹¹ See OfS, How to complain.

22. We may share information with the **respondent** and/or with other parties, to help us decide whether we can review some or all of the **free speech complaint**.
23. We will tell you in writing whether, and to what extent, we can review your **free speech complaint**. We will also say why we have reached this decision. Where we consider it appropriate, we will also tell the **respondent**.
24. Where we decide that we cannot review some or all of a **free speech complaint**, you will have the opportunity to request a reconsideration of our decision (see rule 49) if you believe we have made an error.
25. Where we decide that we can review a **free speech complaint**, we will decide what activities to undertake to conduct that review. We expect **complainants** to demonstrate how their complaint is justified.
26. We will normally:
 - a. Seek the **respondent's** comment on the complaint form and any accompanying documents. We will specify a deadline for receipt of this comment. This will normally be a minimum of 14 days. We may extend the deadline upon a reasonable request of the **respondent** or on our own initiative if we consider it appropriate to do so.
 - b. Seek your comment on the **respondent's** comments on the **free speech complaint**. We will specify a deadline for receipt of this comment. This will normally be a minimum of 14 days. We may extend the deadline upon your reasonable request or on our own initiative if we consider it appropriate to do so.
27. Where we consider it appropriate, we may also ask you and/or the **respondent** to answer specific questions and/or provide additional information as set out in a notice in accordance with Section L. For example, we may ask questions or require information about the **respondent's** policies or procedures, or its decision-making processes where these are relevant to the **free speech complaint**.
28. Our starting point will usually be to conduct a paper-based review of a **free speech complaint**. However, where we consider it to be appropriate, we may have one or more face-to-face meetings with you and/or the **respondent** and/or other persons that we consider may have information or expertise that is relevant to your **free speech complaint**. We may ask you, the **respondent**, or those other persons, questions at such a meeting. We may allow you, the **respondent** and/or those other persons to ask each other questions at such a meeting.
29. Where we consider that a **free speech complaint** concerns academic judgement, we may seek expert academic judgement to inform our review. We will do this only if we consider it appropriate. We may seek expert advice from persons with other forms of expertise, where we consider it appropriate.
30. We may decide to dismiss, or that we cannot review, your **free speech complaint**, in whole or in part, at any point during our review and without making a decision about the extent to which it is justified. We may do this if we decide, during that review process, that your complaint is not a **free speech complaint**, you are not an **eligible person** or we cannot

review some or all of your complaint under [Section C](#) or [Section D](#) above. For example, we may do this on the basis of information that comes to our attention during our review.

Section G: Our decision and Notice of complaint outcome

31. When we have reviewed a **free speech complaint** and consider that we have all the information and evidence that we need to make a decision about the extent to which it is justified, we will make a decision. We will do this as soon as reasonably practicable after we have received a **free speech complaint**.
32. We will issue a **Notice of complaint outcome** in writing to you and to the **respondent** setting out our decision. Where you have appointed a representative, we will issue the **Notice of complaint outcome** to both of you.
33. The **Notice of complaint outcome** will state whether the **free speech complaint** is justified, partly justified or not justified, and the reasons for this.
34. If it appears to the OfS that:
 - a. It is more likely than not that the **respondent** has breached, or is breaching, its **free speech duty**; and
 - b. It is more likely than not that you have suffered adverse consequences, that are more than minor or trivial, as a result of the breach referred to in 34.a,then we will determine that your **free speech complaint** is justified.
35. If it appears to the OfS that:
 - a. It is more likely than not that the **respondent** has breached, or is breaching, its **free speech duty**; and
 - b. It is more likely than not that:
 - i. you have not suffered adverse consequences or
 - ii. you have suffered only minor or trivial adverse consequences as a result of the breach referred to in 34.a,then we will determine that your **free speech complaint** is partly justified.
36. If it appears to the OfS that it is more likely than not that the **respondent** is not breaching and has not breached its **free speech duty**, we will conclude that your complaint is not justified.
37. We will not make a decision about the extent to which a **free speech complaint** is justified where both parties (the **complainant** and **respondent**) have agreed to settle and the **complainant** has consequently withdrawn their complaint. We will not issue a **Notice of complaint outcome** in those circumstances, but we will issue correspondence to the parties to the complaint to confirm that the **free speech complaint** has been resolved through a settlement. We may request more information about the settlement.

38. We will not make a decision about the extent to which a **free speech complaint** is justified, where that complaint has already been withdrawn or dismissed, under these rules.
39. If a **free speech complaint** is against more than one **respondent**, then we will determine the complaint separately against each **respondent**.

Section H: Recommendations

40. If we decide that your **free speech complaint** is justified or partly justified, we may make a recommendation to the **respondent**. The recommendation will be set out in the **Notice of complaint outcome**.
41. A recommendation may be a recommendation that the **respondent**:
- a. does anything that is specified in the recommendation, which may include the payment of sums specified in the recommendation; or
 - b. refrains from doing anything specified in the recommendation.
42. We will not make a recommendation arising from claims included in your **free speech complaint** that are not **free speech claims**.
43. We expect the **respondent** to comply with any recommendation we make in full and within the time limits we set, and to report to us when it has done so.
44. The operation of this scheme does not in any way affect the ability of the OfS to investigate and/or take any form of regulatory or enforcement action in respect of any non-compliance with any of the OfS's conditions of registration or other regulatory requirements.

Section I: Suspension and withdrawal

45. We may suspend our initial consideration or review of a **free speech complaint** if:
- a. you do not comply with an information requirement under [Section L](#); or
 - b. you can no longer be contacted through the contact details that you have provided to us; or
 - c. matters relating to the complaint are being investigated by the police or another body.
46. You may withdraw your **free speech complaint** at any stage before we issue a **Notice of complaint outcome** or dismiss the complaint.

Section J: Group complaints

47. Where we receive a series of **free speech complaints** from more than one person about the same **respondent** and the same subject matter, we may decide to treat these complaints as a group complaint. Individual **complainants** will also have the opportunity to express a preference to be grouped during the submission of a complaint.

48. We may decide to consider the **free speech complaints** within a group complaint together where we consider it appropriate to do so, for example where we receive multiple complaints involving the same subject matter or we are requesting the same information from the **respondent** across a number of complaints. We will review and determine each of the complaints in a group complaint separately, considering the specific facts of each complaint.

Section K: Reconsiderations and representations

49. When we have decided that a complaint is not one that we can review in full or in part, we will offer the **complainant** an opportunity to request a reconsideration of our decision, on the basis that they believe we have made an error. Reconsideration can also be requested in any circumstance where we have dismissed a complaint. This request must be made within 28 days of our decision being issued.
50. When we are deciding:
- a. the extent to which a **free speech complaint** is justified;
 - b. whether to make, and the form and content of, any recommendations about a **free speech complaint**;
 - c. whether or what to publish in relation to the **free speech complaint**; or,
 - d. whether to require the **respondent** to pay any costs in relation to making the decision, and the calculation of those costs

we will normally seek representations from you and from the **respondent** before making a final decision in the case of 50.a, 50.b and 50.c. In the case of 50.d we will normally seek representations from the **respondent** before making a final decision. We will specify a deadline for the receipt of these representations. This will normally be a minimum of 14 days for both **complainant** and **respondent**. We may extend this deadline upon the reasonable request of either **complainant** or **respondent**, or on our own initiative.

Section L: Information requirement

51. We may require you and/or the **respondent** to provide us with information about a **free speech complaint**. For example, we may require this to help us to determine the extent to which we can review the complaint, or the extent to which it is justified. A requirement to provide information will be set out in writing in a notice.
52. You and the **respondent** must provide us with such information as we specify in the notice referred to in rule 51 at the time and in the manner and form specified in that notice.

Section M: Respondent's duty to comply

53. The **respondent** to a **free speech complaint** must comply with any requirements that are imposed on it by, or under, these rules.

54. If a **respondent** fails to comply with a requirement imposed by or under these rules and does not satisfy us that it is unable to comply, we may enforce the requirement in civil proceedings for an injunction. This is in accordance with paragraph 11 of Schedule 6A to **HERA**.

Section N: Advertising the scheme

55. A **registered higher education provider** or **constituent institution** should:
- a. As soon as reasonably practicable after 1 September 2026 and, in any event, no later than 1 January 2027, include information advertising the **free speech complaints** scheme in a prominent place in the following documents or information sources:
 - i. staff induction materials.
 - ii. free speech code of practice and any process or procedure for managing speaking events, for internal or external speakers.
 - iii. any disciplinary, complaints, appeals, grievance or similar internal review process.
 - iv. in the case of a **registered higher education provider** or **constituent institution**, application materials for applicants to become a **member of academic staff** of that **registered higher education provider** or **constituent institution**.
 - b. at least once a year, bring this scheme to the attention of non-**student members** and **members of staff** of that **registered higher education provider** or **constituent institution** (as the case may be).
56. The following is suggested text for a **registered higher education provider** and **constituent institution** to include in the documents or information sources referred to in rule 55.a above:
- ‘The Office for Students (OfS) operates a free speech complaints scheme. Under that scheme, the OfS can review complaints about free speech from non-**student members**, staff, applicants for academic posts and (actual or invited) visiting speakers. The scheme is free to use. Information about the complaints that the OfS can review is available on its website [\[www.officeforstudents.org.uk/for-providers/freedom-of-speech/free-speech-complaints/\]](http://www.officeforstudents.org.uk/for-providers/freedom-of-speech/free-speech-complaints/).’

Section O: Charges, costs and fees

57. We will not charge any fee to you for reviewing your **free speech complaint**.
58. Where we have made a decision that a **free speech complaint** is justified or partly justified, we may, by notice, require the **respondent** to pay our costs in relation to making the decision up to the date of notification. Where we do so, we will act in accordance with our published guidance on cost recovery contained within Regulatory advice 19.

Section P: Collecting and sharing data

59. Through the operation of this scheme, we will collect and process personal data. This may include sensitive personal data. The privacy notice published on our website sets out why and how we will do this.

60. We will normally share information provided by one party to a complaint with other parties to the complaint where this is necessary for the fair and effective operation of the complaints scheme. We may, however, withhold or redact information where we consider it appropriate. We may need to share information that we receive under this scheme with other persons who are not parties to the complaint (for example, other public bodies, and/or any expert we engage to inform our review of the complaint). When sharing information, we will do so in accordance with our statutory powers and duties as set out in **HERA** and other legislation. You can find out more about how we share and use personal information in connection with the **free speech complaints scheme** in our [privacy notice](#).⁹²

Section Q: Publication of information

61. We would normally expect to publish information about the **free speech complaints** that we receive, in accordance with our published guidance on publication matters ('Regulatory advice 21: Publication of information').⁹³
62. The information that we would normally expect to publish in relation to this scheme is set out in Table 1 in 'Regulatory advice 21: Publication of information'.
63. In publishing information about a **free speech complaint**, we would not normally expect to publish the name of any individual. However, it may be possible to infer individuals' identities from the information that we publish.
64. In making publication decisions, we will consider the factors set out in 'Regulatory advice 21: Publication of information'.

Section R: Amendments to the rules

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

Section S: Law

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

Section T: Glossary

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

Constituent institution is defined at Part A1 Section A4 of **HERA**: 'Any constituent college, school, hall or other institution of a **registered higher education provider**.'

Eligible person: a person referred to in rule 7.

Free speech claims: the claims described in rule 2.

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

⁹² See OfS, [Privacy notice](#).

⁹³ See OfS, [Regulatory advice 21: Publication of information](#).

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

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

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

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

HERA: the Higher Education and Research Act 2017.

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 any relevant contractual arrangement.

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

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

Member of staff (of an organisation): Someone who is either:

- a. 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; or
- b. an individual who has entered into or works under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

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

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

Registered higher education provider and **governing body** in relation to such a provider: these terms have the same meanings as in Part 1 of **HERA** (see section 85 of that Act). The OfS publishes a Register of **registered higher education providers** on its website.⁹⁴

Respondent: a **registered higher education provider** or **constituent institution** that is the subject of a **free speech complaint**.

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

Visiting speaker: a person who was invited to speak at a **registered higher education provider**, **constituent institution** or **students' union**, or who would have been invited but for something that the provider or constituent institution has done. 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.

⁹⁴ See OfS, [Register](#).

Annex D: Matters to which we had regard in making our final decisions

In making our final decisions, we have had regard to the matters set out in this annex.

The OfS's general duties

1. The OfS's general duties are set out in section 2 of the Higher Education and Research Act 2017 (HERA). In performing our functions, we are required to have regard to:
 - a. The need to protect the institutional autonomy of English higher education providers.
 - aa. The need to promote the importance of freedom of speech within the law in the provision of higher education by English higher education providers.
 - ab. The need to protect the academic freedom of academic staff at English higher education providers.
 - b. The need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers.
 - c. The need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers.
 - d. The need to promote value for money in the provision of higher education by English higher education providers.
 - e. The need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers.
 - f. The need to use the OfS's resources in an efficient, effective and economic way.
 - g. So far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be:
 - i. Transparent, accountable, proportionate and consistent.
 - ii. Targeted only at cases in which action is needed.
2. We have carefully considered each of our general duties. We consider that our decisions on the free speech complaints scheme are particularly relevant to the duties relating to institutional autonomy (a), freedom of speech (aa), academic freedom (ab), quality, choice and opportunities for students (b), equality of opportunity (e), efficient use of resources (f) and best regulatory practice (g).

Institutional autonomy, freedom of speech and academic freedom

3. In reaching our decisions, we have attached significant weight on our duty to have regard to the need to protect institutional autonomy, promote the importance of freedom of speech within the law and protect academic freedom.
4. We consider that the free speech complaints scheme, operated in the manner in which we have decided to operate it, will create an environment of accountability where providers and constituent institutions know that decisions they make restricting speech may be subject to independent review.
5. We have carefully considered the need to avoid unnecessary interference with the autonomy of providers and constituent institutions. The scheme does not replace providers' own procedures and does not transfer responsibility for securing freedom of speech from providers to the OfS. Providers and constituent institutions remain responsible for managing their own affairs, making decisions about their operations and handling complaints in the first instance. When we deem a complaint to be justified, or partly justified, we may make recommendations that we expect providers or constituent providers to comply with, but it is for the provider or constituent institution to implement them as it sees fit.
6. Our final decisions seek to strike an appropriate balance between protecting freedom of speech and academic freedom, while respecting institutional autonomy. For example, institutions retain flexibility in how they communicate information about the scheme and how they design and operate their internal processes, provided they comply with their statutory duties.
7. A complainant may bring a complaint to the free speech complaints scheme if 90 days have elapsed since the start of an internal review process. We consider this approach to be in the interest of students, encouraging prompt resolution, while also allowing institutions sufficient time autonomously to assess complaints. Where an institution fails to resolve a complaint in a reasonable timeframe however, complainants are still able to raise their complaint with the OfS.

Quality, choice and opportunities for students

8. We have had regard to the need to promote quality, and greater choice and opportunities for students. We consider that freedom of speech within the law and academic freedom are fundamental features of high quality higher education. Students benefit from being able to engage with a wide range of lawful views, ideas and perspectives, including those that may be controversial or unpopular.
9. By providing a mechanism that offers independent consideration of concerns about freedom of speech and academic freedom that staff and others may have, the complaints scheme supports an environment in which open debate and intellectual challenge can flourish. We therefore consider that the scheme contributes to the quality of higher education and to students' opportunities to learn, discuss and test ideas.
10. We have decided that we would normally expect to publish information about the free speech complaints that we receive. This may help to inform students and aid their choices about where to study. It may also create an incentive for providers to ensure that their students are not deprived of opportunities to hear, discuss and learn from a wide variety of viewpoints.

Equality of opportunity

11. We have had regard to the need to promote equality of opportunity in connection with access to and participation in higher education. We consider that students and staff should be able to participate fully in higher education regardless of their protected characteristics, beliefs or viewpoints. The complaints scheme supports this objective by supporting a culture in which protected beliefs can be expressed through lawful speech and by providing a route for redress where lawful speech is not protected.
12. In developing the scheme, we have sought to ensure that it is accessible, fair and capable of addressing concerns raised by individuals from a broad range of backgrounds and perspectives. We make a commitment in the scheme rules to adjust any of our processes to enable anyone with a disability to use it. We have also built in opportunities for complainants to request extended timescales should they be needed. We therefore consider that our decisions support equality of opportunity in higher education.

Efficient, effective and economic use of resources

13. We have had regard to the need to use the OfS's resources in an efficient, effective and economic way. In designing the scheme, we have sought to ensure that resources are focused on complaints that are within the scope of the scheme and may dismiss those that are frivolous or vexatious. We may also consider related complaints together as a group where this improves efficiency and consistency.
14. We also say that we will not utilise resources in making a decision on the extent to which a complaint is justified where a settlement has been reached.

Best regulatory practice

15. We have had regard to the principles of best regulatory practice, namely that regulatory activity should be transparent, accountable, proportionate, consistent and targeted only where action is needed.
16. The scheme is supported by published rules and processes that explain how complaints will be handled and how decisions will be reached. We will communicate decisions and set out our reasons clearly to complainants and respondents, and we normally expect to publish information about complaint outcomes and statistical information about the complaints we receive, ensuring accountability and transparency. Publishing outcomes will develop sector wide knowledge and understanding of the free speech duties and will provide assurances that the OfS is regulating free speech effectively.
17. The legislation is clear that the scheme must provide that every free speech complaint is capable of being referred under the scheme. We have therefore designed the scheme to focus on issues that engage the relevant free speech duties and to avoid unnecessary intervention beyond what is required to fulfil our statutory responsibilities. This is set out in section C of the scheme rules. We therefore consider that our approach is proportionate, consistent and appropriately targeted.

Competition and value for money

18. We have also considered our duties relating to competition and value for money and, while we have considered the potential impact of our decisions on these duties, we do not consider

that our final decisions give rise to any significant concerns in relation to competition or securing value for money for students.

19. We do also recognise that the ability of students and staff to engage in lawful free speech and open academic debate is a fundamental element of a high quality higher education experience. To that extent, securing freedom of speech and academic freedom supports value for money for students.

Public Sector Equality Duty

20. In reaching our final decisions on the free speech complaints scheme, the OfS has had due regard to the aims of the Public Sector Equality Duty under section 149 of the Equality Act 2010. This duty states that the OfS must, in the exercise of its functions, have due regard to the need to:
 - a. Eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010.
 - b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 - c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
21. The relevant protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
22. Question S asked consultees for comments about the potential impact of our proposals on individuals on the basis of their protected characteristics. The responses highlighted a number of equality-related considerations relevant to the Public Sector Equality Duty.
23. Consultees raised concerns about how the free speech complaints scheme will interact with other legal duties and protections. Regulatory advice 24 provides a number of examples of the interaction between free speech duties and obligation under the Equality Act 2010. Regulatory advice 24 also recognises that it will not be reasonably practicable for a provider to take a step that is unlawful. This includes circumstances where taking a particular step would place a provider in breach of its duty under section 6 of the Human Rights Act 1998 to act compatibly with Convention rights (for example, Article 8).⁹⁵
24. The OfS has also considered the potential impact of the free speech complaints scheme rules on individuals who share protected characteristics throughout the development of the scheme rules and in reaching the final decisions set out in this consultation response. This included considering where the rules could create barriers to accessing the scheme, and ensuring adjustments can be requested to enable access by people with a disability. Paragraph 30 sets out how we have considered accessibility.

⁹⁵ See Gov.UK, [Human Rights Act 1998](#) Article 8.

Elimination of discrimination, harassment and victimisation

25. In designing the scheme, we have sought to ensure that individuals are able to raise concerns about alleged breaches of free speech duties through a fair and accessible process, regardless of whether they share a protected characteristic.
26. We recognise that concerns about freedom of speech may arise in circumstances involving strongly held religious, philosophical or other lawful beliefs, as well as debate on matters relating to protected characteristics. The scheme does not require the OfS to endorse any particular viewpoint. Rather, it provides a mechanism through which eligible free speech complaints can be reviewed independently, impartially and consistently, and all OfS staff working on the scheme will receive adequate training to ensure that it can be operated in this way.

Advancing equality of opportunity

27. We have considered that individuals with protected characteristics working or participating in higher education may feel unable to express lawful views, participate in debate, undertake research or speak at events.
28. The OfS commissioned YouGov to conduct a survey of research and teaching staff in higher education in England, focusing on perceptions of free speech within higher education, and whether academics felt free to express challenging or controversial ideas and theories in their teaching, research, and other contexts.⁹⁶ The survey found that academics from non-white ethnic minority backgrounds are more likely than white academics to say they do not feel free in their teaching.
29. In having regard to this, we have designed a free speech complaints scheme that may help to advance equality of opportunity by supporting an environment in which individuals from a range of backgrounds, beliefs and perspectives can raise concerns relating to free speech or academic freedom and participate in higher education on an equal basis. The scheme is impartial and viewpoint neutral, and we outline our expectation that providers should advertise the scheme in a prominent place to ensure a wide exposure to those individuals who may wish to use it.
30. In developing the scheme, we have also considered accessibility and removed barriers to ensure that the scheme can be accessed and used by all eligible complainants. For example:
 - a. We have amended our scheme rules (rule 16) relating to time limits to clarify that we will **normally** expect a complaint to be submitted within 12 months. This will allow for OfS discretion if the complainant provides a good reason why the 12-month time limit should be extended. This may be due to a protected characteristic such as pregnancy and maternity.
 - b. We commit, in rule 17, to adjust any part of the complaint process if a complainant has a disability.

⁹⁶ See OfS, [Freedom of speech in higher education: survey outcomes](#).

- c. We allow, in rule 20, for complainants to appoint a representative to act on their behalf should they wish to do so.
 - d. We say, in rule 19, that the OfS may take steps to protect a complainant's identity where there is a compelling case for doing so. We may consider protected characteristics as part of this assessment.
31. We consider that these measures may assist individuals who might otherwise face barriers to accessing the scheme, advancing equality of opportunity.

Fostering good relations

32. We recognise that issues relating to freedom of speech can involve disagreement on matters that engage protected characteristics and can generate strongly opposing viewpoints. By providing an independent mechanism for reviewing complaints that allege breaches of free speech duties, the scheme may help to increase confidence that such concerns will be considered fairly and consistently.
33. As we said in the consultation document, under existing legal and regulatory requirements, providers must comply with any relevant free speech duties and equality law duties, including the public sector equality duty where it applies. The complaints scheme may support the lawful expression of views that others may find offensive. Some groups who share protected characteristics may consider that they will be negatively affected by the lawful expression of views that they find offensive. However, the complaints scheme may support those groups to put forward their counter views (within the law), and that may be a positive effect. Moreover, we consider that open, tolerant discussion of controversial matters may be more likely to promote good relations between such groups than censorship or silencing. Censorship or silencing risks concealing tensions without going any way to resolving them. Moreover, one of the relevant protected characteristics is 'religion or philosophical belief'. The complaints scheme may offer a route for addressing, and may also disincentivize, unlawful discrimination, harassment and victimisation directed at persons who share this characteristic.
34. Section N in the scheme rules sets out the expectation that registered higher education providers and constituent institutions should take the steps necessary to advertise the free speech complaints scheme. We see this as an active step in promoting the importance of free speech, supporting constructive engagement and fostering good relationships between individuals and groups holding different views.

The Regulators' Code

35. The OfS has had regard to the Regulators' Code in developing the free speech complaints scheme and in responding to consultation feedback.⁹⁷ In particular, we have sought to ensure that the scheme is transparent, accountable, proportionate, consistent and targeted, and that it supports providers to understand and comply with their obligations.
36. The code encourages regulators to carry out their activities in a way that supports those they regulate to comply and grow. We have made our decisions in a way that will help providers

⁹⁷ See Gov.UK, [Regulators' code](#).

and constituent institutions to comply. We have, for example, already demonstrated regard through the published consultation. We have also decided that we will normally expect to publish the outcome of a free speech complaint and the reasons for our decision. We consider that publication in this way will share good practice, support learning and encourage future compliance.

37. We also support compliance through the production of clear guidance in the form of Regulatory advice 24, and following the consultation we have sought to make the scheme rules clearer and more accessible. Examples of these changes can be found in the table in the executive summary.
38. The Regulators' Code emphasises that regulatory action should be proportionate to the issue being addressed. In designing the scheme, we have sought to minimise unnecessary regulatory burden by clearly defining the scope of the scheme and complaints that may be considered. For example, we have clearly set out the eligibility criteria for the scheme and what would constitute a free speech claim, and rule 10 limits the extent to which we may consider other claims related to the free speech claim. We retain the ability to dismiss frivolous, vexatious or out-of-scope complaints, and we have set out our position with regards to time limits and retrospectivity. This helps to ensure that the scheme remains focused on matters within its statutory remit. Where complaints indicate potential breaches of ongoing registration conditions, the OfS will consider any regulatory action in line with its risk-based and proportionate approach to regulation.
39. The code states that regulators should focus their resources on issues that present the greatest need for intervention. The scheme has been designed so that reviews focus specifically on alleged breaches of the statutory free speech duties rather than wider disputes between parties. For example, Complainants are expected to demonstrate how their complaint is justified (rule 25), and the OfS can refuse to review claims that are already before courts or tribunals. The OfS also retains the ability to group complaints where appropriate. We set these out in the scheme rules to encourage consistency in our approach.
40. We have considered the need for transparency and accountability. We have already set out our decision normally to publish the outcomes of, and statistical information about, free speech complaints, and our plan to seek representations from both parties to a complaint before we do so. We have also introduced a reconsideration process where a complainant believes a decision on their eligibility contains an error. We have already set out the rules of the scheme, but we will also publish information on how we intend to review complaints, and how information will be handled, stored and shared.

Guidance issued by the Secretary of State

41. We have a duty to have regard to statutory guidance issued by the Secretary of State under section 2(3) of HERA. In developing the free speech complaints scheme rules, we have had regard to the guidance issued to the OfS on strategic priorities (published March 2022), and guidance on freedom of speech commencement (published June 2025).⁹⁸ The rules are designed to focus on alleged breaches of the A1 duty established by the Higher Education

⁹⁸ See OfS, [Guidance from government](#).

(Freedom of Speech) Act 2023, provide fair procedures for the review of complaints, and support awareness and effective operation of the new statutory regime.

Deregulation Act 2015

42. The OfS has also had regard to the duty in section 108 of the Deregulation Act 2015, and the statutory guidance on the growth duty issued by the Secretary of State in May 2024.⁹⁹ This act requires regulators, when exercising applicable regulatory functions, to have regard to the desirability of promoting economic growth. In doing so, regulators must consider the importance of ensuring that regulatory action is taken only where needed and that any action taken is proportionate.
43. There is strong evidence that academic freedom contributes positively both to quantity and quality of innovation and to economic growth. This is hardly surprising. Innovation drives economic growth and itself arises most vigorously in an atmosphere of unconstrained intellectual exploration.¹⁰⁰ For instance, one recent study of 157 countries over 116 years suggests that a one standard deviation increase in academic freedom increases the average number of patent applications 2 to 5 years later.¹⁰¹ Another study, of up to 127 countries over 55 years, shows that there is a positive relationship between academic freedom and productivity growth in countries with high quality legal systems.¹⁰²
44. In developing the Free Speech Complaints Scheme, we have been mindful of the important contribution that higher education providers make to economic growth through teaching, research, innovation, knowledge exchange and the development of a highly skilled workforce. Freedom of speech, and in particular academic freedom, play a fundamental role in this.
45. In designing the scheme, we have also sought to ensure that our regulatory approach is targeted and proportionate. The scheme focuses specifically on alleged breaches of the statutory free speech duties, includes eligibility requirements, and enables the OfS to dismiss complaints that fall outside its scope or are frivolous or vexatious. We consider that these features help to ensure that we exercise this function only where it is needed and in a manner that is proportionate and consistent with t

⁹⁹ See Gov.UK, [Deregulation Act 2015](#) section 108, [Statutory guidance: Growth duty](#).

¹⁰⁰ Aghion, P., Dewatripont, M. and Stein, J.C. (2008), Academic freedom, private-sector focus, and the process of innovation. The RAND Journal of Economics, 39: 617-635. <https://doi.org/10.1111/j.1756-2171.2008.00031.x>.

¹⁰¹ Audretsch DB, Fisch C, Franzoni C, Momtaz PP, Vismara S (2024) Academic freedom and innovation. PLoS ONE 19(6): e0304560. <https://doi.org/10.1371/journal.pone.0304560>.

¹⁰² Berggren, N., & Bjørnskov, C. (2022). Academic freedom, institutions and productivity. Southern Economic Journal, 88(4), 1313-1342. <https://doi.org/10.1002/soej.12561>.



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