



## Know your free speech rights at English universities

Best Free Speech Practice (“BFSP”) is working to clarify and publicise the legal requirements for protecting free speech at UK universities and other higher education providers (“HEPs”).

### English HEPs must protect free speech: the legal requirements

- Take **all reasonably practicable steps to secure academics’ and students’ lawful free speech and that of visiting speakers**. This is a demanding requirement, and gives no discretion. This extends to securing that the use of its premises is not denied to you on the grounds of your beliefs or views; and that the terms on which those premises are provided are not based on such grounds, and bearing the security costs in most cases.
- **Avoid harassing and discriminating against people**, in contexts including employment and education, on account of their viewpoints that are protected under the Equality Act 2010 (**EA**). Such viewpoints include being gender-critical, and challenging aspects of Critical Race Theory (**CRT**) and decolonisation agendas. HEPs must also take all reasonable steps to prevent their employees from doing so. Harassment for this purpose includes conduct which has the purpose or effect of creating an intimidating, hostile or offensive environment for you.
- **Respect your human rights to free speech and thought** as protected by the Human Rights Act 1998, which include the freedom to offend, shock and disturb.

### This means that your HEP must do the following things in practice

- **Take active and effective action to ensure that it and its participants comply** with these free speech duties and its rules for protecting free speech, and enforce compliance as appropriate.
- **Deal effectively with controversies** – as in social media storms, demands for disciplining or that meetings not be held and the like. Stop attacks on participants for expressing their lawful opinions. Do its best to ensure that meetings are not prevented or rendered unworkable.
- **Institutional neutrality**: If it takes sides with one position, in an area of passionate and polarised debate, it necessarily sets itself against the other position. This gives rise to a very obvious risk of disadvantaging (i.e. discriminating against) or creating a hostile environment for (i.e. harassing) people who hold that other viewpoint, or of creating an atmosphere in which this is more likely. Your HEP must therefore maintain sufficient institutional neutrality in respect of matters of polarised public debate, while of course complying with its wider relevant legal obligations.
- **Not unlawfully enforce controversial agendas; the curriculum**: not unlawfully require or exert pressure for the endorsement of or acquiescence to certain viewpoints, or suppress the expression of lawful dissenting viewpoints. This includes not imposing ideologies or viewpoints (such as aspects of CRT or a “decolonisation” agenda) as part of the curriculum, or compelling the use of pronouns in speech, emails and other communications, to the extent that this would contravene their free speech obligations.
- **Avoid and reduce an oppressive or hostile atmosphere** at your HEP towards those with unpopular but lawful viewpoints.

- Ensure that any **staff or student courses, “tests” or “training”** do not wrongly inhibit or suppress lawful free speech or dissenting viewpoints, for instance by misdescribing what is “protected” under the EA.
- Ensure that any **EDI considerations or information sought in the application process for a job or funding** do not contravene their obligations to protect free speech: there are very limited circumstances in which this can be done lawfully.

### What to do if you have a free speech problem

- **Get a secure record organised:** take screenshots of social media posts, gather relevant documents.
- **Make a timeline** of what has happened, with information on the key events/documents/communications. Take witness details.
- **Immediately point out that your free speech is being suppressed to:** the people who are causing you a problem, and require them to stop; and the staff who are responsible for the relevant area of your HEP or its operations; and your HEP’s senior staff with responsibilities for protecting free speech, pointing out that the HEP has failed to protect your speech or is at risk of doing so, and requiring them to take prompt action to deal with the issue. Your HEP will be concerned about possible legal failures on its watch, so the sooner you do this, the better.
- **Academics: Contact** your local branch of **Academics for Academic Freedom**. **All staff and students: Inform us** briefly at [info@bfsp.uk](mailto:info@bfsp.uk). And contact the **Free Speech Union**, if you are a member.

### HEPs have other, more general, duties in practice, which you can campaign for, including...

- **Not having policies or requirements which unjustifiably prevent or restrict free speech**, or which mis-state laws which may conflict with its free speech obligations, instance by over-interpreting the meaning of “harassment”.
- **Creating appropriate rules and processes to ensure compliance** with its free speech obligations.
- **Ensuring that staff are properly trained** about the requirements to protect free speech.
- **Having appropriate governance**, including a senior, empowered, experienced and non-conflicted **free speech officer** to promote and defend free speech.
- **Avoiding or restructuring any relationship with any organisation** where that relationship requires it to take sides in relation to contested issues, or encourages it to suppress the lawful expression of views which dissent from the agenda being promoted by that organisation. This can apply in respect of organisations such as Stonewall.

**BFSP has produced a lot of detailed information – find it at <https://bfsp.uk/universities-and-free-speech>.**

***Important:*** *This document is a short summary of a complex area of law, and is not legal or other advice.*

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