



Free speech protection at English universities:

Sources of the requirements in practice

This document sets out the sources of the requirements in practice, derived from BFSP’s draft statement of 5.7.24

<i>Highlighted in</i>	<i>Sources</i>
Red	All – HERA, s.43 Education Act, Equality Act; Human Rights Act (in respect of negative obligations, ie not to take actions)
Orange	HERA (incl OfS Guidance) and s.43; regulatory
Yellow	HERA (incl OfS Guidance) only; regulatory
Green	Regulatorily required (eg conditions of regn, OfS Guidance) or good practice

Note: Given the close similarity between the wording of the obligations to protect free speech in HERA and in S.43, the draft OfS Guidance, which BFSP considers for the most part accurately reflects what HERA requires in practice, should be taken as very relevant in interpreting the obligations under S.43 prior to 1 August 2024.

[Part 3] Requirements and implications in practice

The primary obligations under HERA to secure free speech and academic freedom, and the duty to promote free speech, involve an HEP taking the following steps, which will all enhance free speech protection and are all “*reasonably practicable*”¹. HEPs’ current and future conditions of registration will also require these steps to the extent that the above is correct². The need to avoid discrimination against and harassment of people with protected viewpoints under the Equality Act, and qualify for the Section 109(4) Defence, also involve an HEP taking many of these steps (see the detailed discussion at Appendix 2). Each HEP will need to conduct a thorough audit of its policies, practices and requirements, and identify the changes that are required to ensure its compliance with the revised legal and regulatory regime, and make those changes, before the changes to HERA come into effect.

Key general obligation(s)

- **Not to discriminate or harass in connection with viewpoints:** A key general obligation, which underlies many of the other obligations in practice below, is not to discriminate against or harass Participants or visiting speakers in connection with their viewpoints.

This is required in order to avoid compliance failures (in respect of “protected viewpoints”) under the Equality Act. HEPs also need to take all reasonable steps to prevent their employees doing this in order to qualify for the Section 109(4) Defence. This will make a very substantial difference to securing free speech, and must in principle be reasonably practicable, so is in principle also required under the obligations in HERA, subject, of course, to the detailed circumstances of each case.

The OfS Guidance contains an obligation on HEPs not to treat a student unfavourably, or less favourably than it treats or would treat another student, on the grounds of that student's opinions or ideas in various specified contexts³.

¹ The majority of the detailed requirements are set out or evidenced in the OS Guidance.

² Not least under the requirement, due in effect on 1 September 2025, for a condition that the governing body of the HEP complies with its primary obligations under HERA described above.

³ Paragraph 112.

Rules, governance and training

- **Not having policies, practices or requirements which unjustifiably prevent or restrict lawful free speech**, or which mis-state or exaggerate legal obligations on them which may conflict with their obligations to secure free speech⁴.
- **Taking a positive approach** in relation to the creation, promotion and enforcement of policies, practices and requirements relating to securing lawful free speech. Working to ensure that its staff do likewise.
- **Having an appropriate free speech code of practice** containing the HEP's values relating to freedom of speech together with an explanation of how those values uphold freedom of speech⁵, and specified procedural and other information regarding the holding of meetings and events (of which more later); and providing specified information to Participants about relevant free speech requirements as well as its own obligations in relation to free speech. It should also have a clear and simple **statement** about the code, which should summarise its contents and make clear how to access it.

The OfS Guidance contains detailed information about publication, including that: the code must be easily accessible online; and the statement must be communicated to staff

⁴ Specifically, the OfS Guidance says, at paragraph 64: "The terms of any code, contract or policy should not be so broad that they suppress the lawful expression of a particular viewpoint or of a wide range of legally expressible content"; at paragraph 65: "Policies and other statements should not discourage lawful speech by misrepresenting a provider's legal duties. This may include oversimplification – for instance, by omitting the importance of freedom of speech"; and, at paragraph 62: "If any code, contract or policy that regulates speech, or has the effect of regulating speech, identifies a category of restricted speech (such as 'harmful speech'), then:

- a. such a category should be defined in a way which is not capable of restricting freedom of speech within the law, or academic freedom; and
- b. that definition should explain that the interpretation of that category includes an objective element (so that it does not depend only on the perception of the alleged victim)."

See also Examples 10 to 13, which illustrate these requirements well.

Paragraphs 66 and 67 say: "Policies that regulate protests and demonstrations, posting or distributing written material (such as flyers), or recruitment activities, should not restrict these activities because they express or support a particular legally expressible viewpoint" and "Any other regulation of these activities should not be unnecessarily onerous". These are well illustrated by Examples 14 to 16.

⁵ OfS Guidance, paragraph 76; it goes on to state (at paragraph 77) that HEPs should consider including: a statement about the overarching value of freedom of speech within the law for the HEP; a statement about how those values uphold freedom of speech within the law at the HEP; a statement emphasising the very high level of protection for the lawful expression of a viewpoint and for speech in an academic context; and a statement that freedom of speech within the law may include speech that is offensive.

and students at least annually and contained in in any prospectus, staff and student handbooks, and included prominently in any other document stating or explaining any policy that may affect free speech or academic freedom, along with a statement that nothing in that other document should be read as undermining or conflicting with the free speech code of practice and that in case of any conflict the free speech code of practice will take precedence^{6,7}. Information on the OfS' free speech complaints scheme must also be published in various specified ways⁸.

- **Creating rules to ensure compliance** with the free speech obligations⁹, including by prohibiting material actions by Participants against people in respect of their viewpoints, such as harassment and severe personal attacks, online pile-ons¹⁰ and making inappropriate complaints and allegations. These restrictions will themselves need to be written in a way that is compliant with the free speech rights of Participants¹¹ – see BFSP's statement *Requirements for staff and student behaviour: English HEPs' free speech compliance* obligations for a detailed discussion of this complex area. HEPs will need to have appropriate disciplinary processes in order to secure compliance with those rules and appropriate and effective processes for remedying activity which is contrary to free speech related requirements.
- **Having appropriate governance arrangements**, including:

- ensuring that it has taken all actions required to comply with its conditions of registration as described above;

⁶ This includes all policies relating to: admission, appointment, reappointment and promotion, disciplinary matters, employment contracts (that may include conditions on speech), equality or equity, diversity and inclusion, including the Public Sector Equality Duty, harassment and bullying, IT, including acceptable use policies and surveillance of social media use, the Prevent duty, principles of curricular design, research ethics, speaker events and staff and student codes of conduct.

⁷ In paragraphs 74 and 75 of the OfS Guidance.

⁸ In paragraphs 96 to 98 of the OfS Guidance.

⁹ This is a clear requirement in order to qualify for the Section 109(4) Defence, and will be likely to become a clear obligation under HERA as jurisprudence develops: see Appendix 2 for more on this. This requirement underlies paragraphs 75 to 86 of the OfS' Guidance.

¹⁰ OfS Guidance, paragraph 50, states that these may take the form of organised petitions or open letters, an accumulation of spontaneous or organised social media posts, or long-running focused media campaigns.

¹¹ To the extent that these rules, or enforcement of them, themselves restrict the rights of Participants to express their views about other Participants or visiting speakers, they will need to be 'proportionate' in order to comply with the HRA and HERA. See the discussion of proportionality under "Human Rights Act" in Part 2. See also BFSP's statement *Requirements for staff and student behaviour: English HEPs' free speech compliance* obligations for a detailed discussion of this complex area.

- taking these issues seriously at senior levels, which will involve: free speech promotion and protection being a sufficiently regular agenda item for its governing body; having an appropriately constituted and empowered committee of its governing body or other senior working group to ensure proper compliance with its free speech obligations; and having an appropriate free speech officer as discussed below;
- ensuring that terms of reference of all committees that could affect compliance with free speech duties expressly provide for consideration of this impact¹²;
- ensuring it has an effective accountability structure: all staff with responsibilities relating to areas that could affect compliance with free speech duties should have clear responsibilities for promoting and securing free speech within those areas, and understand those responsibilities. This will particularly apply in respect of leaders in areas such as EDI and some academic disciplines, by or in respect of which controversial agendas may be enforced, such as requiring compliance with contested values in induction, training, recruitment or promotion processes, and in respect of the curriculum. There should be a chain of responsibility and supervision between those staff members and the governing body;
- ensuring that its risk officers and functions are aware of these issues and the risks they create, and that significant free speech risks are on its risk register and given an appropriate level of seriousness;
- having appropriate and effective reporting and complaints systems in respect of free speech issues and complaints; ensuring they are structured and staffed so as to deal with issues and complaints promptly and effectively; and appropriately addressing the fact that many complaints will be against the HEP and its staff, so will need to be resolved by people who are sufficiently independent to avoid material conflicts of interest; and
- recording all decisions that could directly or indirectly (and positively or negatively) affect free speech within the law. These records should demonstrate how the HEP has had particular regard for the importance of free speech within the law¹³.

¹² OfS Guidance paragraph 102: this includes a list of committees responsible for various specified matters. This will apply more widely than just in respect of obligations under HERA: for instance obligations to protect “protected viewpoints” under the Equality Act.

¹³ OfS Guidance paragraph 100. This is very onerous, and there is a good case to be made for restricting this to decisions which materially affect free speech.

- Appointing a **free speech officer** to be its internal advocate for free speech and academic freedom, with responsibility for ensuring that the HEP complies with its legal obligations and follows and enforces its own rules appropriately. That officer should be appropriately senior (sufficiently so to participate in governing body meetings), empowered, available (although this does not necessarily have to be a full-time position, particularly if they have other staff to help them fulfil their role), experienced and trained, and non-conflicted¹⁴.
- **Ensuring that Participants have adequate induction and training** (in the context of the nature of their involvement with the HEP) about protection of free speech and academic freedom, and understand the nature of the requirements to protect free speech¹⁵. This particularly applies in respect of staff who are involved in functions which could create free speech risks or have free speech implications, including anyone involved in appointments, promotions and disciplinary processes.

Action required to protect free speech and stop suppression of viewpoints

- **Taking active and effective action to ensure that it and its Participants comply** with applicable obligations, including its code of practice and related rules, and **enforcing compliance** with disciplinary action where appropriate¹⁶.
- **Dealing with controversies effectively; protecting Participants; resisting pressure:** How HEPs deal with controversies – as in social media storms, demands for disciplining or that

¹⁴ Given that controversies around aspects of diversity agendas appear to have given rise to many of the free speech problems in recent years, it is hard to see how a free speech officer can also have material standing in respect of an HEP's EDI function without insuperable conflicts of interest.

¹⁵ The OfS Guidance states that:

- “adequate induction” means that all staff and students will have at least an up-to-date understanding of: the free speech code of practice and how it applies in practice; *their own free speech rights under HERA, the HRA and the Equality Act*; the free speech rights of members, members of staff, students and visiting speakers under HERA, the HRA and the Equality Act; and the free speech complaints scheme and their own right to use it. (Paragraph 117.)
- “adequate training” means that staff will have an up-to-date understanding of: the free speech code of practice and how it applies in practice, including its application in detail to the member of staff's role in the organisation; the requirements of HERA, the HRA and the Equality Act in relation to freedom of speech and how they apply in detail to the member of staff's role in the organisation; and the OfS' free speech complaints scheme and its relevance to the member of staff's role in the organisation. This should further extend to understanding their duties. (Paragraph 116.)

¹⁶ These are key lessons of the *Fahmy* and *Phoenix* cases, described in Appendix 2. And see Example 2 in the OfS Guidance.

meetings not be held and the like – will be the sometimes very public face of how well (or not) they are securing free speech in practice.

- Where a Participant is under attack for expressing their lawful opinions, the primary HERA obligation and, often, the need to qualify for the Section 109(4) Defence¹⁷ require an HEP to take all reasonably practicable steps to stop (or stop recurrence of) various types of hostile actions, including harassment, personal attacks and online pile-ons, that are being taken against the Participant because of their lawful viewpoint, especially where those actions are in possible breach of the HEP's own relevant rules and requirements.¹⁸
- This is likely to involve some or all of: identifying the Participants who are, or may be, taking those actions, and informing them where they are or are likely to be in breach of its relevant rules and requirements and requiring them to stop taking the relevant actions; taking disciplinary action against the relevant Participants, where and to the extent appropriate, and such other action as is likely to help remedy the situation; and, if the relevant actions involve likely criminality, considering seriously (with advice) whether they should involve the police.
- HEPs must not succumb to pressure from Participants or others (a) to take actions which suppress or restrict lawful free speech or which materially disadvantage another Participant or visiting speaker in connection with their holding or expressing certain opinions, or (b) not to take steps to enforce its rules and requirements regarding free speech protection. Succumbing would very likely give rise to a breach of the primary obligations under HERA, and this pressure would itself be a breach by Participants of an HEP's rules and requirements if they are appropriate to comply with HERA.¹⁹

¹⁷ The *Fahmy* and *Phoenix/Open University* cases were in essence about attacks by employees made to harm and distress a colleague for her views which dissented from the ideology held by the attackers constituting harassment by the employer.

¹⁸ The OfS Guidance says that HEPs “should promptly reject public campaigns to discipline, expel or fire a student or member of staff for lawful expression of an idea or viewpoint. These may take the form of organised petitions or open letters, an accumulation of spontaneous or organised social media posts, or long-running focused media campaigns. [...] Depending on the circumstances, rather than publicly distancing itself, it may be more helpful for [an HEP] to reiterate the importance of free speech for all staff and students, including the person affected. It may also be especially important for the response to be timely.” (paragraphs 50 and 51. See also Examples 6 and 7). This is very useful clarification as far as it goes, but insufficiently wide if they are to have done enough to comply with their obligations under HERA and qualify for the Section 109(4) Defence (see more at Appendix 2), HEPs need to be active in stopping attacks and, if appropriate, bringing disciplinary action.

¹⁹ See Note [].

HEPs need to have practices, policies and requirements in place to enable them to do the above²⁰.

- **Not allowing its complaints and disciplinary functions to become instruments of free speech suppression**, contrary to the Relevant Requirements. Every complaints process should include a fair, objective and rapid triage process for complaints relating to speech, and this should reject vexatious, frivolous or obviously unmeritorious complaints relating to speech; an HEP should also not pursue vexatious complaints or trivial investigations into other matters against an individual because of their lawful expression of a viewpoint.²¹ An HEP must treat all complaints relating to speech with caution. Complaints processes should be concluded as rapidly as is reasonably practicable, compatibly with the interests of justice²². An HEP must not proceed with any complaints or disciplinary proceedings which are likely to constitute unlawful discrimination or harassment, and in any event, conduct complaints and disciplinary proceedings in such a way as to avoid unlawful discrimination and harassment²³. HEPs should not encourage students or staff to report others over speech that could include the lawful expression of a particular viewpoint²⁴.
- **Not enforcing controversial agendas; the curriculum; research:** Whenever HEPs promote certain viewpoints in respect of areas which are the subject of debate or controversy, to (directly or indirectly) require or exert pressure for the endorsement of or acquiescence to those viewpoints, or suppress the expression of lawful dissenting viewpoints, will be a clear breach of the primary requirements under HERA, unless they are legally obliged to take the relevant actions²⁵. They also risk constituting harassment under the Equality Act; an institution disapproving of a viewpoint has been held to be sufficient to constitute harassment²⁶. HEPs should therefore not require Participants to commit (or give evidence

²⁰ See the *Fahmy* case, described in Appendix 2: a failure to have the right rules was cited as one of the reasons why it could not escape liability for harassment by its employees.

²¹ See OfS Guidance paragraphs 70 and 72, which are well illustrated by Example 18.

²² See OfS Guidance paragraph 71.

²³ See the *Meade* case, described in Appendix 2.

²⁴ OfS Guidance paragraph 69 and Example 17.

²⁵ Examples 4, 7, 9, 10, 11, 14, 15, 22, 28 and 30 in the OfS Guidance illustrate this well.

²⁶ In the *Meade* case (see Appendix 2). See also the *Fahmy* case, described in Appendix 2. "A consequence of crafting internal policies with the aim of satisfying the ideological preferences of single-interest accreditation schemes is that it carries a risk of disturbing the balance of rights which the [Equality Act] seeks to achieve. [...] It is likely to result in a conflict between the employer's policy aims and the rights of employees who hold protected philosophical beliefs which conflict with those of the accreditation schemes in question. For example, any requirement placed by [HEP] upon members of

of commitment) to values, beliefs or ideas being promoted by them²⁷. This extends to things like induction EDI training.

HEPs must therefore not impose ideologies or viewpoints (such as a “decolonisation” agenda) as part of the curriculum, to the extent that to do so would (among other things) contravene their obligations under the Relevant Requirements or their obligations as charities, or unlawfully discriminate against or harass people in respect of their views which count as “protected characteristics”. In particular, an HEP “should ensure that decisions about the curriculum and the way it is delivered safeguard the ability of academics to teach and communicate ideas that may be controversial or unpopular but lawful, and opportunities for students to be exposed to such ideas” and “academic staff should not be constrained or pressured in their teaching to endorse or reject particular value judgements”²⁸. See BFSP’s statement “*Decolonizing the curriculum*”: *potential free speech problems* for more detailed information.

Participants should be free to undertake academic research within the law. This freedom should not be restricted or compromised in any way because of a perceived or actual tension between any conclusions that the research may reach or has reached or the viewpoint it supports, and the organisation’s policies or values. Nor should it be restricted or compromised in any way because of any external pressure connected with those conclusions.²⁹

- **Sufficient institutional neutrality**³⁰: The above requirements and risks lead inevitably to an underlying issue: if an institution takes sides, in an area of passionate and polarised debate, with one contested position, it necessarily formally 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, and creating or tolerating environments in which attacking people for their viewpoints is acceptable. A number of recent public failures (with unlawful harassment and discrimination found by tribunals) have largely arisen

staff to demonstrate support of [a particular viewpoint] is plainly likely to place people with [opposing] beliefs at a disadvantage, particularly if it is accompanied by a penalty for failure to demonstrate such support.” (From a 2024 opinion by Akua Reindorf KC in respect of likely free speech protection failings at KCL.)

²⁷ While OfS Guidance paragraph 54 (and others) and Examples 5 and 9 focus on academic staff in the employment context, similar protections logically apply in respect of all Participants.

²⁸ OfS Guidance, paragraphs 103 and 112 and Examples 28 and 29.

²⁹ OfS Guidance, paragraph 105 and Examples 22 and 23.

³⁰ See Note 57 above. “The freedom to hold whatever belief one likes goes hand-in-hand with the State remaining neutral as between competing beliefs, refraining from expressing any judgment as to whether a particular belief is more acceptable than another, and ensuring that groups opposed to one another tolerate each other...”, per Choudhury P in *Forstater v CHG (Europe)* [2022] ICR 1, at paragraph 55. How have institutions so badly lost sight of this principle?

as a result of an underlying failure of objectivity and endorsing and enforcing (or not preventing the unlawful enforcement of) one side of a bitterly contested debate³¹.

HEPs and their representatives therefore need to maintain sufficient institutional neutrality on matters of polarised public debate, i.e. at least take an approach which is very careful to avoid actions and language which risk counting as discrimination or harassment under the Equality Act or suppressing free speech contrary to HERA, while of course complying with their wider relevant legal obligations. This is also the effective expectation of the OfS: its Guidance has several examples of the consequences of failures of neutrality³². Achieving sufficient neutrality on a piecemeal basis will be difficult, as it will be hard to be sure of complying in the context of the great variety of factual circumstances and legal requirements that may apply. It will involve risk and a lot of time from senior staff – and inevitably expensive legal advice. We therefore recommend that a general policy of maintaining institutional neutrality on controversial issues is the safest way forward for HEPs.

- **Avoiding and reducing an oppressive atmosphere:** Research strongly evidences that an atmosphere exists at many HEPs or among their Participants in which many Participants (including both academic staff and students) feel intimidated about expressing their opinions. This can arise as a result of the attitude of colleagues or online aggression, or the fear that job prospects may be hindered, or assessments of performance may be downgraded, in connection with their expressing certain opinions. Given that the existence of such an atmosphere gives rise to obvious risks of self-censorship and very harmful effects on free speech at HEPs, HEPs are required by the primary HERA obligation to take all reasonably practicable steps which might stop such an atmosphere developing in the first place or persisting if it already has; qualifying for the Section 109(4) Defence can also require this. This will involve being vigilant to prevent, identify and stop free speech transgressions; firmly enforcing its code of conduct and rules; and taking the other steps set out elsewhere in this Part 3. BFSP recognises that this is an such a protean problem that it is not going to be easy to address, and there may not be many further steps which HEPs can realistically take.

³¹ A failure of neutrality on contested issues was at the heart of the embarrassments that were the *Fahmy*, *Meade* and *Phoenix/Open University* cases, described in Appendix 2.

In May 2024, following a scandal that cost its President her job, Harvard University announced that it had accepted a working group’s report and recommendations that the “[u]niversity and its leaders should not . . . issue official statements about public matters that do not directly affect the university’s core function” as an academic institution; the group reasoned that when the University “speaks officially on matters outside its institutional area of expertise”, such statements risk compromising the “integrity and credibility” of [its]academic mission and may undermine open inquiry and academic freedom by making “it more difficult for some members of the community to express their views when they differ from the university’s official position”.

³² Examples 4, 5, 6, 7, 9, 10, 14, 22, 23, 28, 29 and 30.

- **Ensuring that any staff or student courses, “tests” or “training”,** for instance for new arrivals, do not wrongly inhibit or suppress free speech. See BFSP’s statement *Introductory EDI courses: potential free speech problems* for detail about the relevant legal requirements and their effects in practice³³.
- **Avoiding or restructuring any association or relationship with any organisation** where that relationship requires it to take sides in relation to contested issues, or requires or encourages it to suppress the expression of views which dissent from the agenda being promoted by any such organisation.³⁴

Meetings

- **Meetings:** Taking all reasonably practicable steps to ensure that the use of its premises is not denied to any person or body because of their viewpoints, policies or objectives, including as to the requirements imposed in relation to hiring and using venues, and taking various specified steps to ensure that meetings are conducted appropriately. This applies both to internal meetings and ones with external speakers (including participants in debates or discussions).³⁵

HEPs’ free speech codes should contain specified procedural and other information regarding the holding of and conduct at meetings and events, including a process for the timely consideration of risks to the event, the purpose of which would be to put in place steps that permit the event to go ahead. The document should specify who would be responsible for planning and taking these steps.³⁶

³³ See OfS Guidance paragraph 118.

³⁴ The policies or requirements of HEPs are sometimes written in ways which reflect the viewpoints or desired outcomes of campaign organisations but which misrepresent relevant legal requirements or the nature of the HEP’s and Participants’ obligations and/or operate to suppress dissenting viewpoints. Free speech issues with training and tests regarding diversity matters have sometimes arisen because they have been designed by or acquired from campaign organisations or other external providers which have (deliberately or otherwise) misstated or exaggerated the relevant legal requirements and their implications. These must not be allowed to happen.

³⁵ From HERA **Section A1(3) and A2** and OfS Guidance paragraph 79.

³⁶ HERA **Section A2**. The OfS Guidance contains detailed requirements, including about the procedures for organising and required conduct at meetings, at paragraphs 76 to 86. Paragraph 79 states that “The scope of the procedures section of the document should be broad. It should not be limited to policies relating to external speakers or events. The code of practice should apply (and be linked) to the procedures to be followed by staff and students of the provider ...] when organising any activities that relate to academic life, whether those activities take place on or off campus. This includes activities listed in” paragraph 75d of the OfS Guidance”.

Save in exceptional circumstances, HEPs must not require the organiser of an event to bear any of the costs of security relating to the event.³⁷ Their free speech codes must set out the criteria for determining whether there are such exceptional circumstances. These criteria should be clear, objective and neutral and should be framed in such a way that “exceptional” circumstances only arise very rarely. Both the criteria, and the definition of what counts as exceptional circumstances, should not (so far as is consistent with the law) depend on any of the relevant person’s or body’s viewpoints, policies or objectives or the ideas or opinions likely to get legal expression at the meeting. An HEP “might have a stated policy that it will not pass on the first £X of security costs associated with the use of its premises, where X is stated as a numerical quantity that applies to all individuals or bodies regardless of their ideas, opinions, policies or objectives; and where security costs rarely exceed £X”; but it must apply this policy uniformly.³⁸

See BFSP’s statement *Meetings at English HEPs: Free speech requirements and risks* for detailed information about the requirements relating to meetings.

Admissions, appointments, promotions and termination

- **Admissions:** An HEP should not discriminate against a person in connection with their lawful viewpoints, for instance by refusing them admission, marking them down in the admissions assessment process or revoking or changing the terms of their admission to the HEP.³⁹ It should not admit students or visiting academics on the basis of funding arrangements or other criteria that have the effect of restricting their or others’ free speech or academic freedom within the law. They should be proactive about checking that those applying to be visiting academics do not pose risks to academic freedom.⁴⁰
- **Employment, appointments and promotions:** An HEP must not discriminate against a person in respect of their lawful viewpoints in connection with their employment

³⁷ HERA Section A1(10).

³⁸ The OfS Guidance contains detailed requirements about security costs at paragraphs 87 to 94: see also Examples 19, 20 and 21. [NB, para 91 wider than SUs, check if revised or amend]

³⁹ Pursuant to:

- the Equality Act, in respect of people who have viewpoints which count as “protected” for its purposes; and the HRA; and
- the primary duty under HERA (Sub-sections A1(5)-(9)), in respect of people who count as Participants. OfS Guidance paragraph 43 relates HERA to the revocation of offers of admission.

⁴⁰ See OfS Guidance paragraph 44 and Example 3.

generally. An HEP should secure that, where a person applies to become a member of staff or for promotion, that applicant is not adversely affected in relation to the application, or the appointment or promotion process, because of lawful viewpoints held or previously expressed or because (in the case of applicants for academic positions) they have exercised their academic freedom within the law.⁴¹

- **Discipline and termination:** Staff and holders of other positions should not be prejudiced or subjected to disciplinary measures because they have lawfully expressed their lawful viewpoints. HEPs should not terminate employment for, or deny reappointment to, any member of staff because they hold or have expressed a particular viewpoint, and must secure that no member of academic staff is at risk of losing their job or any privileges because they have exercised their free speech rights under HERA.⁴²

- **No EDI commitments or statements:** HEPs should not:
 - require applicants for positions or promotions to commit (or give evidence of commitment) to values, beliefs or ideas, if that may disadvantage any candidate who holds, or has expressed, particular viewpoints, or an academic for having exercised, or exercising, their academic freedom within the law; or
 - require Participants to commit (or give evidence of commitment) to values, beliefs or ideas, if that may disadvantage a Participant who holds, or has expressed, particular viewpoints, or an academic for exercising their academic freedom within the law.

More widely:

- seeking information on Participants' viewpoints/alignment with values at all in connection with employment, appointments or promotions risks being seen as being done in preparation to discriminate based on their viewpoints, and more generally is likely to have an intimidating/chilling effect (and thus potentially constitute harassment). This should not happen; and

⁴¹ This is an important requirement pursuant to:

- the Equality Act, in respect of people who have viewpoints which count as "protected" for its purposes; and the HRA; and
- the primary duty under HERA in respect of Participants, and also (under Sub-sections A1(5)-(9)) external applicants for academic positions. This is stated in OfS Guidance paragraphs 45 and 57: while this is stated there to apply in respect of applicants for academic positions only, the obligations apply more widely.

⁴² Pursuant to the primary obligation under HERA; the Equality Act in respect of people who have viewpoints which count as "protected" for its purposes; and the HRA. See OfS Guidance, paragraphs 52 and 53 and Example 8.

- taking actions which pressurise people who want a position or indeed a career at HEPs to suppress or hide their opinions, or take actions or say things they do not believe in, in order to (as it appears to them) maximise their chance to secure a position, progress in their careers or obtain research funding, are also likely to be unlawful.⁴³
- **Records:** An appointment, promotion, disciplinary or dismissal process should include a sufficiently detailed record of all decisions. This record should include evidence that the relevant process did not penalise a candidate or member of staff in connection with their viewpoints or for their exercise of free speech or academic freedom.⁴⁴
- **Including appropriate free speech related requirements in all relevant employment or appointment contracts** and in the job specification for all appointments of senior staff and in their contracts with students.

⁴³ These are important requirements pursuant to:

- the Equality Act, in respect of people who have viewpoints which count as “protected” for its purposes; and the HRA; and
- the primary duty under HERA in respect of Participants, and also (under Sub-sections A1(5)-(9)) external applicants for academic positions. This is stated in OfS Guidance paragraphs 46, 54 and 58 and Examples 5 and 9: while this is stated there to apply in respect of applicants for (and holder of) academic positions only, the obligations apply more widely.

⁴⁴ OfS Guidance, paragraphs 47, 55 and 59 focus on protecting academic freedom, but this logically extends to all members of staff.

It is unclear to BFSP whether the primary obligation under HERA requires this extent of record keeping, but good governance must require sufficient record keeping to demonstrate that an HEP is performing its duties (which would extend to admissions as well), while achieving a balance as so as to avoid excessive, onerous paper-pushing.