

***London Universities' Council for Academic Freedom
Alumni for Free Speech
Academics For Academic Freedom
Committee for Academic Freedom
Student Academics For Academic Freedom
Best Free Speech Practice***

Sent by email to:

Vice-Chancellors and other senior officers, English universities and other higher education providers
Cc Chairs of Council (or other governing body, by whatever name)

31 July 2025

Dear Vice Chancellor and other officers,

**Review of policies and practices to ensure compliance with free speech requirements:
position post 1 August**

As we approach 1st August, we are writing, as campaigners for free speech and academic freedom, to urge you to review your policies and practices to ensure they are compliant with current and forthcoming freedom of speech legislation and regulation. We hope that this will help your work in this regard.

As you will be aware, the main duties under the Higher Education (Freedom of Speech) Act, which amends the Higher Education and Research Act 2017 (**HERA**), are set to come into force on 1st August. The Office for Students (**OfS**) has recently issued its final guidance outlining the reasonably practicable steps that universities must take to secure freedom of speech within the law. The guidance can be found at <https://www.officeforstudents.org.uk/publications/regulatory-advice-24-guidance-related-to-freedom-of-speech/>.

Universities will, of course, also continue to be subject to the requirements of the Equality Act 2010 not to discriminate against or harass individuals with protected beliefs, their obligations to protect freedom of speech under the Human Rights Act 1998 (**HRA**), and their conditions of registration (which have come into sharp focus following the recent fine on the University of Sussex, of which more below). We refer to the legal and regulatory requirements to protect free speech and academic freedom collectively as the “**Relevant FS Requirements**”.

As you will be aware, high profile cases such as *Phoenix/Open University* and *Sussex* have highlighted the increasing legal and reputational risks of non-compliance. Now is a good time for universities to review and update their policies and practices to mitigate these risks.

The following documents give some indications of the problems and what needs to be done to address them. They can all be found here: <https://bfsp.uk/universities-and-free-speech>. For your information, Best Free Speech Practice (“**BFSP**”) (www.bfsp.uk), is working to clarify and disseminate what the legal requirements and their implications in practice actually are at UK universities.

- *Free speech protection at English universities: The law and requirements in practice* (the “**Principal BFSP Statement**”) (A final draft of this reflecting the final OfS guidance will be published shortly)
- *The Dandridge Review re the Open University/Jo Phoenix*

- *Protected viewpoints under the Equality Act: Risks and necessary actions for employers and others*
- *EDI considerations and inquiries in the recruitment and research approval process at English universities (the “**Recruitment Statement**”).* (A final version of this reflecting the final OfS guidance will be published shortly).

In our view, there are several crucial steps that UK universities should consider taking to ensure that their policies and practices are fully compliant with the Relevant FS Requirements. We outline these below. Failing to robustly uphold academic freedom and free speech could expose universities to significant monetary and reputational risks.

While we appreciate this letter is lengthy—and some of the issues we raise may already be under review—we hope it proves helpful in supporting your institutional readiness.

1. Review of universities’ policies – common elements non-compliant with free speech duties

It is going to be vital that universities’ policies and requirements are revised to ensure that they are compliant with the Relevant FS Requirements—particularly by removing any elements that may unlawfully restrict free speech and academic freedom.

Certain forms of non-compliance commonly recur in universities’ policies. Where these occur, the presence of broad statements safeguarding freedom of speech and academic freedom in university Codes of Practice and other governing documents, while necessary, are unlikely to be sufficient on their own to render a university compliant. This is clear from the OfS’ [regulatory case report](#) on the University of Sussex fine (in respect of identified breaches of the conditions of registration E1 and E2).

We identify below some of the most common forms of non-compliance in university policies. Universities would be well advised to ensure that they review and if necessary revise their policies to ensure they are compliant.

a) Harassment: definitions and policies

University definitions of and policies on harassment and bullying are subject to stringent standards of compliance. Definitions and policies which extend beyond the letter of the law— in the case of harassment, as in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997 (in its entirety, and as interpreted by section 7 of the Act) —and which thus restrict lawful speech, are highly likely to be non-compliant, unless the university can show that the restrictions qualify as a proportionate means to a legitimate end under the HRA.

The category of restrictions which qualify will be small, given the very high degree of protection which the HRA confers on freedom of speech and academic freedom. There must be compelling justification for a restriction, it will need to be the least intrusive of all the available options and it must otherwise be compliant (in particular, “proportionate”), in accordance with the HRA. In particular, blanket restrictions on speech, and restrictions which seek to directly or indirectly restrict the particular content of speech are unlikely to qualify, as the OfS has made clear (see para 42 and 43 [of this page](#)). The OfS report on its investigation into the University of Sussex makes clear that the OfS will rigorously enforce this aspect of compliance.

The OfS also stresses in **paragraph 99** of its guidance that harassment and anti-bullying policies must be “*carefully worded and implemented in a way that respects and upholds their free speech obligations. In doing so, particular regard and significant weight must be given to the importance of*

*free speech. Wherever possible, any restrictions should be framed in terms of the time, place and manner of speech, rather than the viewpoint expressed.” Following **paragraph 101** of the OfS’ guidance, it would also be appropriate that policies state explicitly that “statements or views expressed as part of teaching, research or discussions about any subject matter which is connected with the content of a higher education course are unlikely to amount to harassment”. The OfS’ guidance makes it clear that if academic speech is legal under English law, then universities must take all reasonably practicable steps to secure it. The viewpoint expressed—including whether it is offensive, controversial, or at odds with institutional values—is irrelevant to determining reasonable practicability (**paragraph 123**).*

To be compliant, universities should therefore as a minimum ensure that the wording in their definitions of harassment in their policies closely aligns with that of the Equality Act and the Protection from Harassment Act. In particular, universities should include the “reasonable person” test of the Equality Act.

If the intention is to go beyond statutory requirements, then there need to be additional safeguards around “freedom of speech principles”, as the OfS has emphasised (see E6.9 and E6.11(j) [of this page](#)). In particular, under condition of registration E6, university harassment policies must be consistent with the need for universities to apply a rebuttable presumption that statements or views expressed as part of teaching, research or discussions about the content of a higher education course are not likely to amount to harassment. It would be beneficial to state this explicitly within any harassment policy.

It is reasonable for university harassment and bullying policies to prohibit severe personal attacks, bullying, or mobbing of individuals for expressing lawful views, and to indicate that such behavior may lead to appropriate disciplinary action. However, any such policy must also make clear (consistent with the freedom of speech principles linked above) that its implementation will give particular regard to, and place significant weight on, the importance of freedom of speech within the law, academic freedom, and tolerance for controversial views. See also the further discussion below about additional steps which HERA may require.

b) Requirements to comply with values: the curriculum

Any university policies relating to speech should not require staff or students to uphold particular values, agenda or viewpoints, including those of the university, or put in place any requirements which would limit their lawful speech where it is reasonably practicable not to have such requirements. This includes social media policies. This is expressly stated in **paragraph 147** of the OfS guidance.

Some universities (or schools or faculties within them) have been adopting statements or policies that explicitly embed commitment to certain values, agenda or viewpoints. Often, these include values whose proper meaning and application are the subject of ongoing social and political debate.

For example, some policies adopted by UK university faculties include embedding Equality, Diversity and Inclusion (EDI). While these are important areas, many aspects of EDI, as currently understood and practiced, go beyond statutory requirements and reflect particular policy choices rather than legal obligations. As commentators have noted, institutional approaches to EDI often draw on assumptions rooted in [Critical Social Justice](#) theory—an area of considerable academic and public debate. Embedding contested values in official statements may have a chilling effect on free speech and academic freedom, particularly for those holding minority or dissenting views. Dame Nicola Dandridge’s [Independent Review](#), commissioned by the Open University following its disastrous

employment tribunal result regarding the treatment of Professor Jo Phoenix, found that EDI was a significant source of free speech problems at the university (paragraphs 2.14-2.15, and 4.8-4.9).

Embedding contested values, agenda or viewpoints, or requiring staff or students to uphold these values etc., risks (or may guarantee) less favourable treatment for staff or students with views which dissent from these values etc., and the suppression of such views. Such views are likely to qualify as protected characteristics under the Equality Act (beliefs opposing aspects of Critical Race Theory, for instance, have already done so), and such protection is highly likely to extend to views which are opposed to EDI as a broad banner under which a range of contested ideologies are promoted and enforced. Thus, embedding such values etc., or requiring students or staff to uphold such values etc., risks constituting discrimination under the Equality Act. It would also be highly likely to be contrary to HERA and the HRA. For further details, see AFFS's recent report [*University Recruitment: EDI requirements causing free speech compliance failures*](#) (the "Recruitment report"). As regards the curriculum, Paragraph 207 of the OfS guidance states that "academic staff should not be constrained or pressured in their teaching to endorse or reject particular value judgements". The corresponding Example 51 cites the case of a university requiring that "all teaching materials on British history will represent Britain in a positive light". Removing this requirement is deemed likely to be a "reasonably practicable step"

c) University trans policies

A specific aspect of the above: as you will be aware, there has been huge controversy in recent years about trans-related policies, although the principles we highlight below have wider implications.

The OfS investigation into the University of Sussex found that Sussex's "Trans and Non-Binary Equality Policy Statement" restricted freedom of speech and academic freedom and may have caused the university to breach its obligations under Section 43 of the Education Act 1986 (and therefore HERA, had the relevant amendments to the act been in force).

The offending sections of Sussex's trans policy (which breached condition of registration E1) were taken nearly verbatim from a template issued by a predecessor organisation to Advance HE, and, as a [*report*](#) from the Committee for Academic Freedom makes clear, adopted by numerous other universities. Therefore, the trans policies of numerous universities are likely to be in breach of the conditions of registration, and HERA when the recent amendments to the act come into force. Any such policies must be revised to ensure they are compliant.

Universities should be aware, in particular, that:

- definitions of transphobia which effectively equate gender-critical views with transphobia, including the definition long campaigned for by Stonewall, which extended to the 'denial/refusal to accept someone's gender identity' are not compliant. Moreover, the courts have repeatedly held that an organisation equating gender critical views with transphobia constitutes harassment under the Equality Act. Such definitions are therefore at risk of constituting harassment.
- "blanket bans" on not using a person's preferred pronouns are highly likely not to be compliant (OfS Draft Guidance, Example 35).

d) Recruitment, promotion, and appraisal policies

Under HERA, universities must not require applicants to any academic position or promotion to commit (or give evidence of commitment) to any values, beliefs or ideas, if that may disadvantage any candidate for exercising their academic freedom within the law (see OfS guidance, paragraphs 139 and 151 and various examples in the guidance). Universities frequently do this, and those which

do are highly likely to be non-compliant, as documented in AFFS' [Recruitment report](#) (see Appendix 2 for the relevant legal and regulatory requirements).

University policies and guidance on job advertisements, the recruitment process, promotions, and appraisals should, to reduce compliance risks, explicitly state that individuals will not be required to commit or give evidence of commitment to values, beliefs, or ideas. For further information, see Best Free Speech Practice's [Recruitment Statement](#).

2. Ensure adequate protections for free speech

In addition to ensuring that their policies do not restrict speech, universities must have adequate policies, requirements, and practices positively protecting free speech in order to be compliant. In practice, this results in numerous actions which universities are required to take, and which are detailed in BFSP's detailed statement [Free speech protection at English universities: The law and requirements in practice](#). Below, we list a few, particularly crucial points for universities, if they are to be compliant.

a) Robust free speech codes

Universities must have robust free speech codes which are not limited to the organisation of meetings, but extend to securing freedom of speech generally at the university – including matters such as teaching and curriculum content. This is a requirement in practice under HERA and the regulatory expectation of the OfS. The OfS has stated in its December 2022 Insight publication [Freedom to question, challenge, debate](#) that “in our view, it would not be sufficient for a university’s free speech code only to deal with the organisation of meetings [...]. In our view, a free speech code should go a lot further than that. We consider that such a code should provide a broader framework for ensuring free speech at the university... This means that we would expect a university’s free speech code to include broader statements about free speech and academic freedom, and to extend to activities such as teaching and curriculum content”.

Free speech codes, and any other university policies protecting or limiting speech (with the exception of appropriately drafted rules prohibiting bullying and harassment which are themselves compliant) must not, generally, require speech to meet any conditions additional to being lawful. The Relevant FS Requirements’ protections for free speech and academic freedom are not contingent on any such additional matters, other than that any steps that universities are required to take must be “reasonably practicable”. For instance, requirements that speech is “respectful” or “well evidenced” are likely to be non-compliant. It is not possible to have “respectful” discussions where one side considers the other’s views stupid or bigoted. In university policies protecting or limiting speech, we recommend that “respect” should be replaced with a concept such as “tolerance” and requirements that views be couched in language which does not descend to abuse or vituperative personal attacks, no matter how offensive a person finds others’ views. Rules prohibiting bullying and harassment are themselves subject to strong regulatory and legal requirements to ensure that they do not unjustifiably restrict speech (see above).

Per the OfS guidance, paragraph 169d, there should be a clear and simple statement about the free speech code included in any document (such as a policy) which may affect free speech or academic freedom, stating that in cases of uncertainty, the definitive and up-to-date statement of the university’s approach to freedom of speech is set out in the code.

b) *Prohibit harassment of individuals for their views*

Universities must have rules explicitly prohibiting staff, students, and employees from harassing individuals for their views. Universities must also have certain other rules on student and staff behaviour to secure speech (such as having rules preventing or severely disrupting meetings), although the exact extent of those rules is a difficult area which remains to be further clarified. In the aftermath of the treatment of Jo Phoenix at the Open University, and the subsequent disastrous employment tribunal for the university, it is clearly essential that such rules exist, and are plainly communicated to staff and students. BFSP has issued a statement ***Requirements for staff and student behaviour: English HEPS' free speech compliance obligations***, with further information and specimen requirements that reflect the view of AFFS and BFSP on these requirements. This is currently being revised and will be available on its website.

A key requirement in practice is that universities must enforce these rules, for instance by warning individuals that they are contravening them, and where appropriate taking disciplinary action. It is remarkable how poor universities have been about this in recent years: this is one of the key failings in practice which led to the compliance disasters and financial losses in the Stock/Sussex and Phoenix/Open University cases. Universities must have adequate policies, management structures, and practices to do this.

The above policies should, however, make it absolutely clear that they do not prevent individuals from subjecting the views of others to strong criticism (without descending into severe personal abuse, harassment etc.). These policies should also make clear that they will be applied in a manner consistent with the OfS' freedom of speech governance principles (see E6.9 and E6.11(j) [of this page](#)).

c) *Complaints against individuals for their lawful views*

Universities must not pursue complaints made against individuals for their lawful views. University complaints procedures should include a fair, objective and rapid triage process for complaints relating to speech, which should ensure that complaints made against individuals for their lawful views are rejected. Similarly, universities should dismiss demands to fire or discipline members of staff for their lawful views in a prompt and neutral way, however widespread the demands (OfS Guidance, paragraphs 164 and 143). Deliberately making inappropriate allegations should itself be a disciplinary matter, as "the process is the punishment", so even having to answer to allegations which are dismissed is a detriment.

3. Review relationships with external campaign groups

Many universities maintain close relationships with external campaign groups which have directly caused compliance failures at those universities. For instance, Stonewall long campaigned, with significant success, for universities to adopt definitions of transphobia which extend to gender critical views, causing widespread non-compliance and unlawfulness at universities which adopted such definitions (it has since revised that wording). The Equality Challenge Unit, predecessor to Advance HE, [issued to universities](#) a template on trans policies, which, when adopted by the University of Sussex, caused the university to breach its conditions of registration (and almost certainly its obligations under HERA, had the recent amendments to the act been in force) and incur fines of £585,000 in total. Numerous other universities adopted elements from this template.

Universities maintain such relationships through receiving advice from, designing policies with, and participating in schemes run by these organisations. In order to prevent future compliance failures,

universities ought to review, restructure, and if this cannot be done adequately, terminate all aspects of their relationships with external campaign groups.

4. Review EDI and other training: risk of non-compliance

The OfS has emphasised (see paragraph 212 of its guidance) that universities ‘should not require training or induction that imposes a requirement to endorse any viewpoint or value-judgement.’

The Committee for Academic Freedom (CAF) [published a report last year](#) highlighting concerns about mandatory training at several prominent London universities. The report found that some mandatory training courses misstate the law and compel staff to affirm controversial points of view, contrary to OfS guidance. Best Free Speech Practice has issued a statement about the potential compliance problems with mandatory training. (This is now out of date, and is being revised to take account of (e.g.) the OfS guidance and the Sussex case, and will be available on its website by the end of June.)

Mandatory training courses, or ones which require agreement with disputed factual claims or value judgements in order to “pass”, are particularly likely to be non-compliant. Any training courses which require individuals to endorse controversial value judgements or viewpoints must be revised to ensure that this is no longer the case. Further, where training courses extend to matters of debate or controversy (in our experience, this is extremely common) the courses must not be presented in a way such as to create a hostile or intimidating environment for those who disagree with their content, and thus risk constituting harassment under the Equality Act. The surest way to avoid this is to make clear to recipients of the training course that they have a right to dissent.

5. Ensuring that its relevant governance arrangements are compliant

In the light of the recent Sussex fine for governance failures, universities urgently need to review their governance arrangements. Compliance with HERA (“all reasonably practicable steps to secure free speech”) also require this. Various actions are explained in detail in the Principal BFSP Statement. They include the following.

- Ensuring that it has taken all actions required to comply with its conditions of registration. This will involve ensuring that its governing documents and governance structures and operations in respect of all matters that could affect free speech (positively or negatively), are consistent with its conditions of registration. This involves having management and governance arrangements which are adequate to deliver in practice academic freedom, and to ensure that the governing body of the HEP takes reasonably practicable steps to secure freedom of speech within the law. Failings in this regard were the cause of a large penalty for the University of Sussex.
- Taking requirements relating to free speech, and associated needs and risks, seriously at senior levels.
- Ensuring that terms of reference of all committees that could affect compliance with free speech duties expressly provide for consideration of this impact.¹

¹ This is stated in the OfS guidance, paragraph 192.

- Ensuring they have checks and balances to ensure that their policies and processes do not adversely affect free speech or academic freedom;²
- Ensuring 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.
- Ensuring that 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 treated with an appropriate level of seriousness.
- Having appropriate and effective reporting and complaints systems in respect of free speech issues and complaints. This is discussed in detail below.
- Having appropriate systems and structures in place to ensure that free speech and academic freedom are appropriately promoted and protected, and their protections are appropriately enforced.
- Appointing a free speech officer (see below).
- Ensuring that staff and students have adequate induction and training about protection of free speech and academic freedom.³

6. Need for a free speech officer

A reasonably practicable step which will be likely to make a material difference to an HEP's ability to secure freedom of speech for Participants is the appointment of a dedicated free speech officer. A dedicated free speech officer is, therefore, almost certainly required under HERA.

How can a university minimise its risks of non-compliance, if it does not have a dedicated champion to advise senior leadership on compliance, serve as internal contact for freedom of speech concerns, and lead on the university's statutorily defined duty to promote free speech? We ask: would the recent disasters at the Open University and the University of Sussex have occurred, if the universities had had appropriately resourced and empowered free speech officers? Appointing a free speech officer is very likely necessary, and would be an effective step to satisfying both the "secure" and "promote" duties under HERA.

To support this initiative at the local level, we also recommend appointing academic freedom leads within each Faculty or School.

To ensure impartiality, those appointed must be demonstrably independent of roles that could present a conflict of interest—particularly senior management or formal EDI leadership responsibilities. They should also possess a strong working knowledge of, and principled commitment to the legal and academic foundations of free speech and academic freedom. The officers would not need to hold formal responsibility for academic freedom oversight; their role would be advisory, facilitative, and cultural.

² See the OfS Insight publication *Freedom to question, challenge and debate*, December 2022. The OfS has explicitly stated that it will consider these third and fourth points when assessing compliance with regulatory conditions.

³ See the dOfS Guidance (paragraph 211).

This proposal is consistent with HERA, and indeed is almost certainly required to ensure compliance in practice with it. Establishing a free speech officer (or officers) would send a strong signal of institutional commitment to the ‘promote duty’ and help foster a culture that actively supports academic freedom and freedom of speech.

7. Underlying need: commit to institutional neutrality

Although not directly required by HERA, a commitment to institutional neutrality is essential to a university complying with its duties under HERA. A commitment to institutional neutrality means that a university does not take “official positions” or adopt a “university point of view”, or take actions which amount to the above by, for instance, stating positions in its policies or official communications, on matters of public controversy.

The purpose of institutional neutrality is to enable scholars, students, and employees of the university to freely take positions on these matters, in an environment without pressure to conform to any particular set of ideas.

Many recent compliance failures (for instance, mandatory training requiring the endorsement of controversial positions, the failure of universities to protect individuals with disfavoured views from harassment, and requirements to teach or not teach certain controversial topics) arise from or relate to a failure to maintain institutional neutrality.

A commitment to institutional neutrality would significantly reduce the chances that a university will take action that is non-compliant with HERA, or other laws, including the Equality Act. Institutional neutrality was recommended in the [Dandridge Review](#) (Recommendation 1, Appendix 3, Underpinning principle 1).

We hope that the above may be useful in your university’s preparations for the coming into force of the Higher Education Freedom of Speech Act.

Finally, we ask that you confirm receipt.

Yours faithfully,

Professor Abhishek Saha (Queen Mary University of London), Professor Stephen Warren (Imperial College London), Professor Ian Pace, (City St George’s, University of London), Professor Lee Jones (Queen Mary University of London), Professor Michael Ben-Gad City (City St George’s, University of London) and Michelle Shipworth (University College London): Founder Members of the London Universities’ Council for Academic Freedom

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