



Meetings at English HEPs

Free speech requirements and risks

PRELIMINARY – this Statement sets out the applicable legal obligations under the Higher Education and Research Act 2017 (“HERA”) and other legal requirements for free speech protection at English HEPs, and their implications in practice. Amendments to HERA made by the Higher Education (Freedom of Speech) Act 2023 (“HEFSA”) came effect on 1st August 2025. More detailed information is contained in BFSP’s other statements referred to below.

IMPORTANT – THIS STATEMENT WILL BE REVISED from time to time as the law, guidance and knowledge develop. IT MAY BE OUT OF DATE: see its publication date and the important notice at page 21.

This statement provides information about the legal and regulatory requirements for securing free speech in the context of the holding of meetings at English universities and other registered Higher Educational Providers (“HEPs”).

Best Free Speech Practice (“BFSP”) is a non-partisan campaign which aims to clarify and publicly share what the legal and regulatory requirements and their implications in practice for UK HEPs actually are.

Relevant law

BFSP has provided detailed information about the relevant legal and regulatory requirements and their implications in its Statement *Free speech protection at English universities: The law and requirements in practice* (the “Principal Statement”), which can be found at <https://bfsp.uk/universities-and-free-speech>.

HERA and related guidance

Sub-sections A1(1) and (2) of the **Higher Education and Research Act 2017** (“HERA”) provide that the governing body of an English HEP must take “*the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take*” to secure freedom of speech (within the law) for the staff, members and students (“**Participants**”) of

and visiting speakers¹ to the HEP.² This is often referred to as the “Secure Duty”. The Secure Duty is a demanding requirement and requires active, positive steps to be taken. The obligations are stated in objective terms, giving little material discretion to an HEP as to what steps it needs to take. It results in various requirements in practice, which are discussed in detail below. Free speech obligations override other considerations, subject only to the following:

- the relevant speech must be lawful; and
- the relevant step must be one which is, as a matter of fact, a reasonably practicable for the HEP to take.

Sub-sections A1(3), (4) and (10) of HERA go on to state that the overall objective of securing freedom of speech (within the law) includes securing that:

- the use of an HEP’s premises is not denied to any individual or body on the grounds of their ideas, beliefs or views (or, in the case of bodies, the policies or objectives or the ideas *etc.* of any of their members);
- the terms on which those premises are provided are not to any extent based on such grounds; and
- save in exceptional circumstances, use of its premises by any individual or body is not on terms that require that individual or body to bear some or all of the costs of security relating to their use of the premises.

An HEP must also, under **Section A2** of HERA, maintain a “*code of practice*” (“**FS Code**”) which sets out:

- the HEP’s values relating to freedom of speech and an explanation of how those values uphold freedom of speech;
- the procedures to be followed by both staff and students of the HEP and any relevant students’ union (“**SU**”) for students at the HEP, if it is eligible for financial support, in connection with the organisation of meetings and other activities at the HEP’s premises and the conduct required of such persons in connection with those meetings and activities;³ and

¹ The duty extends to those who will in future be invited to visit and speak, rather than just those who have in fact already been invited. See: *R. (on the application of Butt) v. Secretary of State for the Home Department* [2019] EWCA Civ 256, [2019]1W.L.R. 3873 at [171]–[172].

² While the obligations under Sub-sections A1(1) and (2) fall on the governing bodies of HEPs, they are effectively obligations of the relevant HEP, and we refer to them as such herein.

³ The provision refers to any class of meeting or activity “specified in the code”; the Secure Duty should be taken to require that these classes are drawn as widely as reasonably practicable so as to ensure the protection of free speech.

- the criteria applied by the HEP in deciding whether to allow the use of premises and on what terms; these must include its criteria for deciding whether there are exceptional circumstances which would justify requiring a person or body to bear some or all the costs of security for the meeting or activity.

Section A2 also requires an HEP:

- to take all reasonably practicable steps to secure compliance with its FS Code, including where appropriate the initiation of disciplinary measures;⁴ and
- to bring the provisions of **Section A1** of HERA and its FS Code specifically to the attention of all students at least once a year.⁵

BFSP has created a detailed checklist *Free Speech Codes: Compliance Checklist* (the “**FS Code Checklist**”) for HEPs to ensure that their FS Codes comply with the law, which can be found at <https://bfsp.uk/universities-and-free-speech>.

The Office for Students (“**OfS**”) has published guidance (“**OfS Guidance**”) pursuant to HEFSA, including in relation to the use of HEP premises for meetings.⁶ The guidance is published as *Regulatory Advice 24 – Guidance relating to freedom of speech*. The guidance reflects both the requirements under HERA, and what appears to be the OfS’ own expectations of HEP actions for compliance.

The OfS has previously stated that: “*in our view, it would not be sufficient for [an HEP’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 [HEP]. This means that we would expect [an HEP’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*”; and that the OfS is “*likely to consider the scope of freedom of speech policies across the sector in the future [...]. HEPs may wish to review their codes of practise now, with this in mind.*”⁷ The requirement to maintain a Code in accordance with the new statutory obligations and OfS expectations will inevitably require HEPs to review their existing codes, statements, policies and rules. See BFSP’s [FS Code Checklist](#), which HEPs can use to ensure that their FS Codes comply with the law.

Further, the Higher Education Policy Institute at Oxford University produced a valuable study and report in 2018 on university codes of practice, with its recommendations on how to

⁴ See: **Sub-section A2(4)**.

⁵ See: **Sub-section A2(5)**.

⁶ See: OfS Guidance, paragraphs 198 to 203 (under “Speaker events”).

⁷ OfS’ Insight publication *Freedom to question, challenge and debate*, December 2022 (the “**OfS December 2022 Publication**”) at <https://www.officeforstudents.org.uk/media/8a032d0f-ed24-4a10-b254-c1d9bfcfe8b5/insight-brief-16-freedom-to-question-challenge-and-debate.pdf>

optimise those codes. See the **Appendix** for these recommendations. These should be adopted by HEPs as a matter of best practice, and may, in any event, be required by the Secure Duty under HERA.

The Equality and Human Rights Commission (the “EHRC”) has issued a guide⁸ which contains various statements as to the extent of HEPs’ obligations⁹ about, and other useful guidance on making decisions in relation to, meetings and risk mitigations¹⁰.

Equality Act

As is now clearly established in case law, various viewpoints on currently contested issues are protected philosophical beliefs (“**Protected Viewpoints**”) under the **Equality Act 2010** (“**Equality Act**”). These include “gender-critical” and “anti-Zionist” viewpoints and ones which contest aspects of “critical race theory”. Employers and education providers need to avoid discrimination against and harassment of people with such viewpoints in certain specified contexts relevant to the use of HEPs’ premises for meetings.

Employers are liable under the Equality Act for discrimination and harassment committed by their employees in the course of their employment, unless they can show that they took all reasonable steps to prevent this happening. This has given rise to some now well-known embarrassments and liabilities on the part of employers for failing to take sufficient steps to prevent harassment of their employees by their colleagues because of their Protected Viewpoints. This would apply in respect of HEPs and their employees. On the other hand, HEPs have limited duties under the Equality Act in respect of the behaviour of staff *acting in capacities which do not give rise to such responsibilities on the HEP’s part*, (for instance, comments made on a private social media group) and limited duties in respect of the behaviour of their students. See the Principal Statement for detailed discussion of this.

Of particular relevance to HEPs’ obligations in relation to meetings are the recent *Fahmy*, *Meade* and *Phoenix/Open University* cases. More details about these cases can be found in the ***Protected viewpoints under the Equality Act: Risks and necessary actions for employers and others***(the “**BFSP EA Statement**”). They concerned the protection of Protected Viewpoints under the Equality Act and employers’ liability for the unlawful actions of their employees, including personal attacks at meetings, and online pile-ons. Given that misuse of an

⁸ EHRC’s Guide Freedom of Expression for HEPs and SUs in England and Wales (“**EHRC Guide**”), Section 3.4. See: <https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-england-and-wales.pdf>. **Note, however, that the EHRC Guide was issued prior to the new obligations under HERA coming into effect and prior to the developments under the Equality Act over recent years, so should be regarded as out of date and will no doubt be revised in time.**

⁹ See section 7.

¹⁰ See section 6.

employer's disciplinary process has been held¹¹ to be discrimination and harassment, it seems highly likely that a misuse of meeting approval processes by employees so as to disadvantage people because they hold particular viewpoints would also amount to discrimination and harassment, depending on the detailed circumstances.

In relation to the organisation, conduct of and behaviour at meetings, the Equality Act (which is frequently relied on in the context of employment disputes) is, generally, more likely to be relevant to management and staff meetings/gatherings rather than to meetings which only involve students or meetings involving external speakers.

Human Rights Act

Given that most (if not all) HEPs are "*public authorities*", the fact that the freedom of thought and expression of Participants and visiting speakers are specifically protected under the **European Convention on Human Rights** (the "**Convention**")¹², as enacted in the UK by the Human Rights Act 1998 ("**HRA**"), is also a potentially relevant consideration in relation to the use of HEPs' premises for meetings. Further detail about the relevance of the HRA in the university context is to be found in the Principal Statement.

While the relevant Convention rights are primarily worded as negative obligations (i.e. not to interfere with freedom of thought or expression unless that is justified), HEPs are also under positive obligations to "*create a favourable environment for participation in public debates for all concerned, allowing them to express their opinions and ideas without fear, even if these opinions and ideas are contrary to those defended by the official authorities or by a large part of public opinion, or even if those opinions and ideas are irritating or offensive to the public*".¹³ While the nature and extent of these positive obligations are unclear, we believe that they must include: making it clear that Participants are expected not to take actions which materially interfere with other Participants' free speech rights, appropriate training in this regard and ensuring that HEPs' own policies and requirements are not such as restrict Participants' free speech rights (this is discussed in detail elsewhere). A reasonable interpretation of this obligation would also include imposing appropriate and proportionate rules on Participants restricting disruption of meetings and attacks on and other hostile actions against other Participants for their viewpoints, and appropriate enforcement of those rules, and we consider that HEPs would be unwise not to proceed on this basis.

Under both HERA and the Equality Act, HEPs have a clear legal responsibility to take all "reasonably practicable"/"reasonable" steps to prevent staff and (primarily under HERA)

¹¹ In the *Meade* case.

¹² Under **Article 9** (Freedom of thought, conscience and religion) and **Article 10** (Freedom of expression).

¹³ *Dink v. Turkey*, judgment of 14 September 2010 (in French only), at 137.

students from acting in ways that attack or prejudice people for their lawful free speech, and this includes acting to prevent or hinder a meeting as discussed below.

Where a free speech issue is current, if an HEP has the right rules, procedures and practices already in place, and then does its demonstrable best to stop the relevant actions when it becomes aware of them, it has the best possible chance of avoiding liability and embarrassments in respect of the relevant meeting or event.

Conditions of Registration and the Sussex case

English HEPs must comply with their conditions of registration. Compliance is overseen by the OfS, which has the power to fine or deregister (remove the degree awarding powers of) non-compliant HEPs. Two conditions of registration are particularly relevant to free speech and academic freedom¹⁴.

Condition E1

Condition of registration E1 requires that an HEP's governing documents uphold the "public interest governance principles" of:

- Academic freedom: Academic staff at an English HEP have freedom within the law to question and test received wisdom; and to put forward new ideas and controversial or unpopular opinions; and
- Freedom of speech: The governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.

"Governing documents" are widely defined for these purposes and will include any of an HEP's policy documents which describe its "objectives or values". In particular, an HEP's FS Code, which must, by law, deal with procedures relating to the organisation of meetings and the conduct required in connection with meetings, will be a governing document.¹⁵

Condition E2

Condition E2 requires that an HEP "have in place adequate and effective management and governance arrangements to:

¹⁴ Less directly relevant, but worth remembering, is Condition E6, a new condition of registration and will come into force on 1st August 2025. E6 relates to harassment and sexual misconduct as regards students, but includes important free speech provisions.

¹⁵ Governing documents are defined in the glossary to the conditions of registration as "Documents adopted, or that should have been adopted, by the provider that describe any of the provider's objectives or values, its powers, who has a role in decision making within the provider, how the provider takes decisions about how to exercise its functions or how it monitors their exercise. This test will be broadly rather than narrowly applied. Where a document in part deals with any such matters, and in part with other matters, the whole of the document is a 'governing document'." There is some apparent uncertainty about the meaning and extent of this. The OfS defines it (as evidenced in its report) as including policies about behaviour and disciplinary matters.

- operate in accordance with its governing documents; and
- deliver, in practice, the public interest governance principles that are applicable to it.”

If an HEP satisfies condition E1 but fails *in practice* to uphold academic freedom or free speech, with respect to the holding of meetings, then it is highly unlikely that it has “adequate... governance arrangements to... deliver in practice the public interest governance principles”. Such an HEP would therefore be highly likely to be in breach of condition E2.

The OfS will enforce the conditions of registration: it has recently fined the University of Sussex £585,000 for severe breaches of condition E1 and E2. Given the broad range of steps which will be reasonably practicable with respect to meetings, and which the FS Code (and supporting policies and requirements regarding, for instance, behaviour) must therefore uphold, the safest course for HEPs is to make their FS Codes as detailed and as comprehensive as possible, and to ensure that it is approved, implemented and enforced appropriately.

Legal and regulatory requirements and best practice for ensuring that meetings happen and are not disrupted

The legal obligations and guidance referred to above give rise to extensive requirements in practice. Some of these are considered below.

Preliminary: requirements apply in respect of “internal” as well as “external” meetings

The requirements of HERA and the Equality Act appear to apply equally to “internal” or routine meetings (e.g. lectures, seminars, tutorials and the like and staff meetings) as well as external or formal ones (for instance publicly accessible lectures or debates involving external speakers). This appears to be in line with the OfS’ own understanding and expectation.

Although more “formal” events seem more likely to give rise to free speech compliance risks than routine lectures or seminars, HEPs’ FS Codes should therefore make clear that their core requirements apply to all meetings.

For obvious reasons, the great majority of internal or regular meetings are unlikely to involve any free speech problems, and it is clearly not practicable for a lengthy notification and review process to be gone through in respect of every such meeting. Nonetheless, HEPs do have duties to protect free speech rights in respect of such meetings, and FS Codes must provide for risks to be identified and dealt with.

As regards employee interactions, internal meetings (including staff meetings) could give rise to free speech compliance risks. The most obvious of such risks are those arising from unlawful harassment or discrimination of the kind illustrated by the facts of the *Fahmy* and *Phoenix* cases (as to which see further in the BFSP EA Statement).

People organising internal meetings should be aware of the above through, for instance, it being a part of the training received by managers and other organisers of meetings.

Meetings on college and students' union premises involve some complex issues, which are discussed below.

FS Statement, including the Code

HEPs are required to have an FS Code, as discussed above. See the FS Code Checklist for detailed information about what it should contain.

So as to provide Participants with complete, appropriate and comprehensible information, the law may require that HEPs should do some or all of the following (and best practice definitely requires this).

- Produce a clear and comprehensible formal written statement¹⁶ which brings together into one place, for ease of reference and comprehension, all free speech-related requirements and relevant information (some by reference to links to other documents), including some or all of the HEP's FS Code ("**FS Statement**"):
 - affirming the importance of freedom of speech and academic freedom and the HEP's commitment, in compliance with its statutory obligations, to promoting and securing them (and not actively limiting free speech, for example by requiring 'respect' rather than 'tolerance' for all viewpoints¹⁷);
 - setting out its values and expectations regarding free speech and tolerance of the viewpoints of others, and such of its own rules and other requirements ("**HEP's FS Requirements**") and their practical implications, as are relevant for Participants to know, including a summary of the terms of the provisions of **Section A1** of HERA;
 - including, or summarising and referring to (by way, for example, of a hyperlink), the HEP's FS Code and any other requirements relating to meetings and events, drawing specific attention to the facts that the HEP is statutorily required to secure compliance with the FS Code; and
 - informing Participants of the disciplinary consequences of failure by Participants to comply with the parts of the HEP's FS Requirements that are relevant to them, including the terms of the FS Code.
- Make the FS Statement and FS Code available to the public, in accessible format on its website, in addition to bringing them to the attention of all Participants at least once a year¹⁸ (HEPs should consider whether termly dissemination would be more appropriate).

¹⁶ OfS Guidance paragraph 169.

¹⁷ Department for Education, *Higher education: free speech and academic freedom*, 2021 ("**DfE 2021 Publication**"), Annex B.

¹⁸ HERA Section A2(5)(b).

- Provide a copy of the FS Statement and FS Code to all students who are new to the HEP as an important part of the matriculation process.
- Promptly publish any revisions to the FS Statement and FS Code online and bring any material revisions to the attention of Participants.

See the FS Code Checklist for further information on the Statement, FS Code and their publication and publicity.

Policies, rules, enforcement

Section A2(2)(c) of HERA specifically requires that HEPs' FS Codes set out the conduct required of Participants in connection with relevant meetings and other activities. Section A2(4) requires HEPs to secure compliance with their FS Code, including where appropriate the initiation of disciplinary measures. The creation of appropriate rules and enforcement of procedures and conduct requirements contained in or referred to in FS Codes should also maximise the prospect of HEPs being able to rely on the Section 109 Defence where things do go wrong.¹⁹ It appears that the law, regulatory requirements and/or best practice require HEPs to do the following.

- Create appropriate and effective policies, procedures and rules:
 - about meetings, events and the use of premises, which need to be clear and user-friendly, avoid unnecessary bureaucracy and not become barriers to holding meetings but, rather, facilitate successful and peaceful ones.²⁰; and
 - prohibiting actions intended to prevent or inhibit the holding of lawful meetings. An example of such a rule would be the following.

“No [Participant] may, without reasonable excuse,²¹ take any action intended²² to:

¹⁹ See BFSP's *FS Code Checklist*, pages 7-13.

²⁰ See OfS Guidance, paragraphs 160 and 161, and Example 38. In addition, the DfE has stated its expectation that: an HEP should clearly set out the steps that need to be taken in relation to the organisation of events or other activities that are to take place on the HEP's premises (including any premises occupied by the HEP's SU) where issues of free speech may arise; these steps should be as simple as possible; and the HEP should not require unnecessarily complicated or burdensome processes to be followed in connection with the organisation of events or activities, recognising that such requirements may dissuade students from seeking to organise events or activities and thereby inhibit free speech. DfE 2021 Publication, Annex B.

²¹ For the purposes of this prohibition, actual or claimed ignorance of the HEP's FS Requirements should not be treated as a reasonable excuse.

²² An action or course of action which has the prohibited effect will be deemed to be intended as provided above, and because of the intended subject-matter of the Meeting, if no other convincing explanation for it is provided.

- prevent or hinder a meeting, event or other activity (“**Meeting**”) from happening at the premises of [HEP] (or any of its constituent institutions), or elsewhere in circumstances where the Meeting will be attended, in part at least, by [Participants]; or
- render the Meeting or activity impossible or impracticable to hold or more difficult or expensive to organise or publicise than that Meeting would otherwise be,

because of the intended subject-matter of the Meeting or the statements made or beliefs or opinions held or expressed of any persons organising or intended to participate in that Meeting.²³”

- The HEP should make clear that any such rule does not restrict the right to protest, provided that protests are peaceful, and not intended to obstruct a meeting.

The OfS Guidance²⁴ states that the content of these requirements should be consistent with the following principles:

- everyone has the right to free speech within the law;
 - [HEPs] should seek to expose students to a wide range of views, including those that challenge commonly accepted ideas and conventional wisdom. There should be no limit in principle to the range of views within the law to which students, staff and members might be exposed across the full range of speaker meetings and other activities covered by the code. These may include views that some or all students might find shocking, disturbing or offensive
 - if those organising an event invite speakers who they might reasonably have suspected would use their platform to break the law (e.g. because they have done so previously) they may fall foul of the law themselves.; and
 - peaceful protest is itself a legitimate expression of freedom of speech. However, protest must not shut down debate.
- Enforce such rules appropriately and consistently; if necessary taking disciplinary action. HERA requires HEPs to secure compliance with their FS Code, including where appropriate the initiation of disciplinary measures.²⁵ They need to be ready to act quickly and effectively if a problem develops.

²³ Prohibited actions will include: knowingly making misrepresentations or exaggerated claims of the likely negative consequences of holding the Meeting, for instance making claims of likely violent protest which are not supported by real and credible evidence; acting on such misrepresentations or exaggerated claims in the knowledge that they are misrepresentations or exaggerated; and threatening violent protest or other adverse consequences in connection with the holding or the Meeting.

²⁴ OfS Guidance, paragraphs 178 and 180.

²⁵ Expressly in sub-section A2(4), as well as pursuant to the Secure Duty in Section A1.

Review and approval of meetings: procedures etc.

FS Codes must set out the procedures to be followed by Participants in connection with the organisation of meetings and events. The OfS Guidance²⁶ states that:

- the scope of the procedures section should be broad;
- an HEP should have in place a process for the timely consideration of controversial events. The purpose of the process would be to put in place any necessary mitigating steps that permit the event to go ahead; a person should be identified as responsible for this process; and
- the procedures for organising room bookings and speaker events should adhere to the following principles, which are widely recognised:
 - they should make clear that the starting point for any event is that it should go ahead and that cancellation is exceptional and undesirable;
 - the procedures should be clearly set out;
 - the process should not take longer than necessary;
 - there should where possible be a single, identified point of contact for questions about the process;
 - there should be identified person(s) responsible for approval of an event. Any final decision to cancel an event, or to delay indefinitely, should only be taken by a suitably senior official (who may be, for instance, at pro-vice-chancellor or vice-chancellor level), who has delegated authority to take it; and
 - there should not be onerous requirements for information.

More widely, the OfS Guidance states that the content of the procedures section should clearly and expressly require decision-makers, in making any decision or adopting any policy that could directly or indirectly (and positively or negatively) affect freedom of speech, to act compatibly with the statutory free speech duties²⁷. This duty should lead to disciplinary measures if contravened.

HEPs need to ensure that all Participants who are involved in any approval process understand the requirements and their responsibilities.

Internal meetings

Although it would not be appropriate (and would likely be impractical in any event) for “internal” meetings to be the subject of automatic formal review and approval processes of

²⁶ OfS Guidance, paragraphs 173, 175, 176 and 201 and Example 48.

²⁷ OfS Guidance, paragraph 174.

the sort which will apply to one-off lectures or debates, FS Codes should specifically address internal meetings and should have tailored processes for consideration of risks and dealing with potentially difficult meetings and events. BFSP recommends that FS Codes should require that people organising internal meetings give thought to whether the meeting could involve discussion of contested subjects and may give rise to disruption and/or free speech problems for that or other reasons and should inform the relevant staff responsible for the review and approval of meetings. A review process would then be necessary, whose purpose would be to identify and take steps to allow the event to go ahead. For instance, it might be necessary to consider whether security arrangements need to be made in case a problem develops.

HEPs will need to be ready to deal with potentially contentious internal meetings and issues arising and have the right policies, procedures and rules in place, and ensure their students and staff understand what they are prohibited from doing during internal meetings. Relevant staff and managers should be ready and able to intervene effectively if something goes wrong.

Regarding particular meetings and events

As stated by the EHRC²⁸ and as is implicit in the OfS Guidance,²⁹ an HEP's starting point should be that the meeting, event or activity should be allowed to proceed, without any unreasonable restrictions or mitigations.³⁰ An HEP should only consider cancelling an event if there are no reasonable options for running it.

HEPs are expected not to interfere with free speech or academic freedom any more than is necessary to ensure that the event goes ahead safely and within the law.³¹ If an HEP decides to impose restrictions or mitigations on a meeting or event, it must:

- ensure that they are not more onerous than the minimum level which is necessary to ensure that the relevant safety or other concern is addressed;³² and

²⁸ See EHRC Guide, Section 6.

²⁹ Also stated by the DfE 2021 Publication, Annex B.

³⁰ An example of an unreasonable restriction might be a requirement that the contents of a speech be provided in advance (see, in this regard, paragraph 41 of the *Report of the Joint Committee on Human Rights Inquiry into Freedom of Speech in Universities* of 27 March 2018). Even more unreasonable would be any requirement that a speech be revised so as not to address certain issues or to exclude certain passages. Another example of an unreasonable mitigation might be a requirement for (or for the organisers to pay for) excessive security arrangements (see more below). Compromising with individuals or groups demanding the cancellation of an event because of its content or the views held by attendees by postponing that event is highly likely to be unreasonable.

³¹ OfS Guidance, paragraph 203 and Example 50.

³² See the OfS Guidance, paragraphs 160, 161. Note that postponement of a meeting is very onerous, and can often mean cancellation in effect, for instance where the speaker is busy or the meeting was due at the end of a term. It should only be a requirement of last resort.

- strive to be even-handed and impartial in relation to controversial issues in relation to which Participants hold starkly differing but lawful views. Where an HEP decides to impose restrictions or mitigations at a meeting or event where a speaker is taking a particular position on an issue, but not to impose similar requirements at an event where a speaker is taking a different position on the same issue, it should document and be able to justify its reasons for doing so.³³

The need to be impartial in relation to the use of HEP premises for meetings and events is an aspect of the wider requirement of institutional neutrality which underpins the foundational commitment to free speech and academic freedom which HEPs have repeatedly, and rightly, restated; it is also essential for avoiding compliance failures. If, in relation to an issue of public controversy, an institution takes sides 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 personal attacks on people for their viewpoints is acceptable.

It may be appropriate that the (headline) subject-matter of a speaking event which is open to Participants generally should be clearly advertised in advance so as to enable people who may be offended by views expressed to decide whether to attend or not. This should not, though, be such as to prevent or hinder the holding of the meeting or event or the free expression of views, or create hurdles or inconvenience for the organisers, or require that the meeting or event be presented in any particular way (including negatively). Requesting copies of a talk or paper in advance of a meeting is not appropriate.³⁴ Note that requiring “trigger warnings” for meetings will risk contraventions of relevant requirements, for instance as implying official criticism of the relevant content.

Dealing with challenges and problems; mitigations

As HEPs must take all reasonably practicable steps to enforce their FS Codes, they should deal with any issues raised or challenges made in respect of the holding of or content or speakers at meetings or events promptly and effectively. Any issues raised as objections to the holding of a meeting should be dismissed if they do not raise reasonable concerns about a potential breach of the law or of the HEP’s policies or rules (which are themselves consistent with the Secure Duty under HERA).³⁵ Where objections are not summarily dismissed, they should be

³³ See: DfE 2021 Publication, Annex B.

³⁴ It has been stated by the Joint Committee on Human Rights not to be a “reasonable condition” to impose on (external) speakers. *Report of the Joint Committee on Human Rights Inquiry into Freedom of Speech in Universities*, 27 March 2018, 41.

³⁵ See: OfS Guidance, paragraph 164.

investigated promptly, carefully and objectively, so as to confirm the truth or otherwise of claims or allegations made in respect of the upcoming meeting or event.

If challenges are made or problems created in respect of a planned meeting and the relevant HEP suspects that this is deliberately done in order to prevent or hinder the meeting, the HEP should point out to relevant Participants that they may be in breach of the HEP's FS Code, related requirements and the meetings procedures and will be subject to disciplinary processes if this turns out to be the case. If it is likely that their actions will cause extra costs, e.g. for security, an HEP could warn that it may seek to recoup those costs from Participants who are found to have breached the HEP's FS Requirements in this regard.

HEPs should have contingency plans and decision-making structures in place (e.g. in relation to access to sources of additional security), so issues can be responded to promptly and effectively and risks of cancellation of meetings or events reduced. This would likely include having forms of documents ready for rapid use, such as warning letters to people who are threatening to disrupt a meeting.

However attractive a compromise option it might appear in the face of controversy, the postponement of a meeting can be very onerous for its organisers. Such postponements can often mean cancellation in effect (e.g. where the speaker is busy or the meeting was due at the end of a term). This option should, therefore, only be considered as a last resort and only when it can be shown, as a matter of fact, to be the only reasonable course to take.

So long as an HEP takes reasonably practicable steps to make appropriate alternative premises available, it might be consistent with its obligations that it regulates such use so as to avoid groups with competing views on controversial issues coming into conflict, for instance where a group with views contrary to those of another seeks to book premises close to premises used or occupied by that other group.³⁶

HEPs should only impose chairs of meetings where strictly necessary in order to ensure orderly conduct and not so as to effectively restrict the rights of participants at the meeting or event to speak their minds.

Particular risks of non-compliance with obligations relating to free speech arise where meetings or events are (expressly or effectively) prevented from being held at a very late stage, in particular as a result of alleged safety concerns or the like in circumstances where there is no time to address any concerns raised with the consequence that the meeting or event has to be cancelled. This is a well-known and regular tactic of opponents of particular types of speaker or viewpoints. Accordingly, any HEP which does not:

- take a wary and sceptical approach to late claims or allegations;
- warn the relevant individuals that, if they make allegations or threaten to prevent or disrupt meetings or events from ulterior motives to prevent the event from going ahead, then they are already in breach of its HEP's FS Code or policies, rules or procedures and

³⁶ See OfS Guidance, paragraph 200 and Example 47.

may be subject to disciplinary processes, and will be in further breach of such requirements if they continue with such actions or do actually prevent or disrupt the meeting or event, and that this will be regarded as an exacerbating factor in any disciplinary processes; and

- take all reasonably practicable steps to ensure that the meeting or event does happen despite these issues,

risks being in breach of its free speech obligations under HERA and, potentially, of breaching its obligations under the Equality Act and the HRA.

Protests

Peaceful protest is itself a protected form of expression. It should not, however, be allowed to shut down debate or unreasonably infringe the rights of others both to attend and to hear what is said, or to intimidate or harass people with excessive abuse, threats and the like, thus deterring people from attending or expressing their views.³⁷ HEPs must take the steps required of them to protect the lawful free speech of the protesters and demonstrators, and also ensure that protests and demonstrations do not inappropriately interfere with others' free speech rights.

The content of an HEP's FS Code regulating conduct at/in relation to meetings must reflect the above principle. Thus, protests and demonstrations, which are intended to or have the effect of preventing or seriously disrupting legitimate meetings and events will be contrary to an HEP's FS Code and associated requirements, if they have the right policies in place. In order to comply with the Relevant FS Requirements, HEPs will need to intervene actively in order to secure free speech at the relevant meeting or event. Physical barriers to entry and unreasonable creation of noise and disturbance intended to shut down meeting or events or drown out lawful speech should be prohibited and prevented. Provided that the HEP's requirements and relevant actions are 'proportionate' as contemplated in the HRA, and enforced proportionately, it can be legitimate to stop protesters from shutting down debate, for the purposes of securing free speech at the relevant meeting or event. This will inevitably involve difficult and urgent decisions and will not always be easy in practice. Good preparations, including actions which have been confirmed in advance as being "proportionate" in relevant circumstances, will be essential. The OfS states that it may be a reasonably practicable step (and therefore required under HERA) for HEPs to have a process for identifying controversial events ahead of time and putting in place mitigating steps to allow the events to go ahead.³⁸

Importantly, in order to protect the free speech rights of protesters, interventions by HEPs to ensure that protesters do not prevent speech should focus, wherever possible, on the time, place, and manner of the protesters' speech. Thus, if, for instance, it appears likely that a

³⁷ See: OfS Guidance, paragraphs 180d, and 202.

³⁸ OfS Guidance, paragraph 201, and Example 48.

protest outside an event would take place at such volume that it would drown out the proceedings and make it impossible to conduct the event, then it is likely that an HEP would be obliged to require the protest to take place at an alternative location. In this case, unless there were a specific reason to the contrary, an HEP would also likely be obliged to allow the protest to go ahead in an alternative location, rather than cancelling it outright.³⁹

On some well-publicised recent occasions,⁴⁰ HEPs have permitted (or not prevented) protesters seeking to intimidate or prevent Participants or members of the public from attending meetings or events at HEP premises and/or activities (e.g. banging of drums or banging on doors or windows of premises) intended to drown out speakers and prevent them from being heard. On other occasions, protestors have been allowed to gain access to and to attempt to disrupt lawful meetings and have not been swiftly removed and/or disciplined. FS Codes and related procedures should make clear that this sort of unlawful and disruptive behaviour is not permitted, will not be tolerated and Participants who engage in it will be liable to face disciplinary measures of the sort envisaged under Section A2(4).

See the Principal Statement, and a more detailed BFSP statement on this topic to be published shortly, on the BFSP website for further details.

Questions of cost (e.g. for security)

The imposition of unaffordable security costs has previously resulted in meetings on unpopular subjects being cancelled, with activists threatening physical force and noisy disruption.

HEPs will need to be actively involved in monitoring and supervising security issues and assisting often inexperienced organisers to arrange appropriate security. The following is required in relation to cost issues.

- HEPs should be as transparent and consistent as possible about how questions of cost will be addressed, and the applicable criteria and requirements.
- Section A1(10) requires HEPs to secure that, save in exceptional circumstances, use of their premises by any individual or body is not on terms that require that individual or body to bear some or all of the costs of security relating to their use of the premises⁴¹. Their FS Codes must include their criteria for deciding whether there are exceptional circumstances

³⁹ OfS Guidance, paragraphs 107-112, and 160-161. Examples 11, 12, and 13.

⁴⁰ For example: the multiple attempts to show a controversial documentary at Edinburgh University which were repeatedly and unlawfully prevented by protestors including staff and students; the disruption of a meetings involving Helen Joyce at Gonville & Caius College in Cambridge and Dr. Kathleen Stock at the Oxford Union.

⁴¹ It appears that a booking fee which is applicable to all users of the premises in the same way (e.g. daytime, evening or weekends), and which covers general running costs of the building in which the relevant premises are located (which may include general security costs relating to that building) may be charged, as this does not specifically relate to the relevant person's use of the premises.

which would justify requiring a person or body to bear some or all the costs of security for the meeting or activity.^{42, 43}

- A key test will be reasonable practicability. The fact that a course of action is expensive would not necessarily justify it being treated as not reasonably practicable or “exceptional”. The cost would likely need to be both significant and grossly disproportionate to the benefits likely to be obtained in order for an HEP to be able to justify not taking an action on grounds of cost.⁴⁴
- Where an HEP decides that security is required, it must actively seek to minimise both the degree of security required and its cost. It should document any decision as to security measures and security costs, and who should bear any costs, setting out the reasons for those decisions.⁴⁵ If an HEP decides that the relevant circumstances are exceptional, so as to justify imposing costs on people or groups planning to hold a meeting or event, it should endeavour to minimise the security required and costs imposed on the people or groups planning to hold the relevant meeting or event, as such costs can quickly render an event impracticable.
- The DfE has stated⁴⁶ that, when making a decision on security costs, an HEP should consider whether the speech is from a particular perspective or on a particular topic that is generally disadvantaged and/or particularly susceptible to being stifled within the HEP. Whether or not required under HERA, this would be best practice.
- Where an event is refused any permission required or a venue on the basis of security costs, or the HEP requires the people or group planning to hold the meeting or event to pay some or all of the security costs, the reasons must be clearly explained in writing.

Recording decisions

HEPs should make and retain a written record of decisions taken to:

⁴² See: HERA Sub-sections A1(10) and A2(1)(d). But see footnote 41 re general costs included in generally applicable hire charges. See also the OfS Guidance, paragraphs 181-187.

⁴³ For further details on requirements relating to costs, see *BFSP’s FS Code Checklist*, pages 17-19.

⁴⁴ Relevantly to this, the DfE has stated that: “HEPs should not be too quick to cite security costs as a reason to prevent an event from going ahead, though there will be limited circumstances where it is reasonable for a HEP to consider costs as prohibitive. [...] In most cases it should be possible to at least mitigate the issues of security costs and, wherever possible, individuals wishing to express lawful views should not suffer as a result of the unlawful attempts of others to disrupt their right to free speech” DfE 2021 Publication, paragraph 51. (Note that this statement predates the amendments to HERA and is now effectively superseded by more stringent requirements.)

⁴⁵ See also: DfE, 2021 Publication, Annex B.

⁴⁶ See DfE 2021 Publication, Annex B.

- refuse permission for a meeting or event to be organised;
- cancel or postpone a meeting or event which has already been organised;
- impose restrictions or mitigations on a meeting or event, such as the appointment of an independent chair;
- take any action which may render a meeting or event harder to organise or hold; and
- take or require any security measures or impose security costs, as mentioned above. In documenting its decision, the HEP should indicate the factors taken into account and their reasons for making the decision.⁴⁷

No platforming policies

In relation to so-called “no platforming” policies:

- HEPs can reasonably adopt a list of proscribed bodies and other organisations overtly holding terrorist or other unlawful views representatives of which ought not to be invited by Participants to meetings or events intended to be held on HEP premises.
- Insofar as maintained by HEPs, such lists need to comply with HEPs’ obligations under Section A1, the Equality Act and the HRA (keeping in mind that maintaining institutional neutrality is to a degree inherent in those obligations). This means that, in order not to breach HEPs’ free speech obligations, such lists need to be very limited and the justifications for including any particular organisation or speaker on it compelling (e.g. that the relevant organisation is proscribed under law).

Safe spaces

So-called “safe spaces” for students should also be discouraged in the context of the obligations to secure free speech. If a HEP wishes to create a “safe space”, it should take care that this does not operate so as to create inappropriate restrictions on Participants’ or visiting speakers’ freedom of speech. To the extent that they are designed to “protect” Participants from viewpoints which count as Protected Viewpoints for the purpose of the Equality Act, they risk involving a HEP in unlawful discrimination under that Act against the people who hold Protected Viewpoints. Furthermore, to the extent that the creation of such “safe spaces” involves official disapproval of the Protected Viewpoint concerned, there is an added risk that HEPs’ or SUs’ actions could count as harassment under the Equality Act.⁴⁸ It will be extremely difficult to justify “safe spaces” which purport to apply across campuses or cover important

⁴⁷ This is the DfE’s stated expectation: see DfE 2021 Publication, Annex B.

⁴⁸ See *Meade v. Westminster City Council and Social Work England* (2024) ET Case No: 2201792/2022 & 2211483/2022). See also: BFSP’s detailed statement about this case at <https://bfsp.uk/universities-and-free-speech>.

shared facilities within student buildings. Rather, they need to be limited in space and/or time and/or scope.

Obligations regarding colleges and similar institutions and students' unions

Similar duties to those which HERA imposes on the governing bodies of HEPs apply to the governing bodies of "constituent institutions" ("CIs") (being schools, colleges, halls and other institutions) of an HEP.⁴⁹ HERA, as the Government intends to amend it, will not place direct obligations on HEPs' associated students' unions ("SUs"), to the extent that they are separate legal entities. The Principal Statement contains discussion of the application relevant legal requirements to CIs and SUs in this context.

It must be the case that most of HEPs' duties under HERA⁵⁰, for instance as regards having rules prohibiting Participants from bullying other Participants for their viewpoints, do not somehow cease to apply just because an action happens to take place on a college's premises, or those of a SU, and they should continue to enforce those requirements against their Participants, irrespective of the location of the relevant actions.⁵¹ Participants are subject to their HEP's FS Code and related requirements regarding behaviour and actions which relate to the HEP and other Participants, irrespective of where those actions are actually taken. This includes actions within colleges and other CIs and on students' unions' premises. This should be made clear in HEPs' FS Codes.

It appears to be the case that HEPs' duties under Section A1(1) include their taking such steps as are reasonably practicable for them to take to ensure that their CIs and SUs are aware of the relevant law and adopt, comply with and enforce policies, rules and practices of their own so as to reflect/give appropriate effect to the relevant law as regards Participants (but not in respect of people within the CI or SU who are not Participants), although this can be subject to severe limitations in practice because of those organisations' operational independence as discussed below. The following are relevant in respect of meetings on CI premises:

- Under HERA Sections A1, A2⁵², and A4, meetings on the premises of CIs are the subject of obligations applying to both HEPs (to the extent that its Participants are participating in the relevant meeting) and their relevant CI; as regards HEPs, particularly the duty to take

⁴⁹ See: HERA, Section A4.

⁵⁰ With the major exception of HERA Sub-sections A2(2)(b) and (c), in respect of the organisation (etc) of meetings and events at places other than the HEP's premises. See further discussion below.

⁵¹ For instance, a Participant bullying another by organising an online pile-on should not be regarded as not prohibited by an HEP's policies/rules just because they happened to be sitting inside a college or students' union at the relevant time. This would be absurd and would in many cases render some HEPs' key duties nugatory (we have seen Cambridge argue this; it was not a good look, and appeared to reflect a misunderstanding of their duties).

⁵² Sub-sections A2(2)(b) and (c) are limited (as they apply to HEPs) to the organisation (etc) of meetings and events on an HEP's premises, so have little direct application to HEPs in this context. But, as they are applied in respect of CIs by Section A4, they of course do.

reasonably practicable steps to secure freedom of speech. To the extent that CIs take reasonably practicable steps to secure freedom of speech with respect to meetings on their premises, by, for instance, having and correctly applying and enforcing their requirements regarding behaviour in respect of meetings, it will not be a reasonably practicable step for an HEP to duplicate these activities. Thus, it appears appropriate for CIs to take the lead on protecting freedom of speech with respect to meetings on their premises.

- However, a CI likely will not have powers that extend outside its premises (except perhaps in respect of its own staff, students etc). HEPs must therefore be alert and ready to act in respect of actions which occur outside of, or are otherwise external to CIs, but which have the capacity to disrupt meetings on the premises of CIs or prevent them from going ahead. Relevant external actions which can disrupt or prevent meetings internal to CIs through, for instance, intimidating or harassing potential attendees can include obstructive protest, bullying, and online pile-ons.

There is therefore a strong argument for arrangements between the relevant HEP and that CI to avoid duplication between their respective relevant activities for free speech protection. But HEPs must retain powers to intervene should their CIs fail to adequately fulfil their obligations under HERA. Where CIs fail to fulfil their obligations, actively intervening (within the limits of the HEPs' powers) both to secure free speech, and to endeavour to ensure that their CIs do not fail in their obligations again, will be likely to be reasonably practicable, and therefore required under HERA.

The following are relevant in respect of meetings on SU premises:

- While students' unions are not subject to direct obligations under HERA, their administrators may be HEP employees and their officers, members and participants HEP Participants. To the extent that they take actions which relate to the HEP or other Participants or which conflict with the FS Code or requirements regarding behaviour more widely, they are subject to enforcement, the FS Code, and requirements regarding behaviour despite the fact they may be operating within the students' union's premises or in respect of the students' union and its members.
- To the extent that a students' union occupies or uses premises owned by or under the control of the HEP, it would be reasonably practicable for the HEP to make compliance a condition of occupation or use, or otherwise to exert some control over the students' union's conduct in relation to freedom of speech. An HEP's FS Code must set out procedures to be followed by its associated students' union in connection with meetings on the HEP's premises, and the HEP must take those reasonably practicable steps to ensure that its students' union complies with the FS Code.⁵³

There are likely, however, to be significant limitations on HEPs' ability to control the behaviour of their CIs and students' unions; or their use and management of their own premises. Many CIs and most if not all students' unions are separate legal entities and have extensive operational independence, so an HEP will likely not have much effective day to day

⁵³ HERA Section A2(2) and (4).

control over their actions. All will depend on what actions would be “reasonably practicable” for the purposes of HERA, and whether they have been taken. This is fraught with uncertainty. See the detailed discussion of the implications of this in Part 3 of the Principal Statement.

Best Free Speech Practice

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Details of the Committee (authors) and Editorial and Advisory Board of BFSP are on the BFSP website.

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Important: *This document:*

- *is a short summary of a complex area of law, and does not purport to be complete or definitive. It is not (and may not be relied on as) legal or other advice: HEPs and others should consult their legal and other advisers in respect of all matters relating to free speech in connection with their institution, including those referred to in this document;*
- *does not seek to prescribe detailed policies and practices: these will have to be developed by HEPs themselves, in the context of their own particular circumstances;*
- *will be revised from time to time as the law, guidance and knowledge develop; and*
- **MAY BE OUT OF DATE:** *see its publication date above.*

APPENDIX: HEPI RECOMMENDATIONS ON FS CODE CONTENTS

The Higher Education Policy Institute (“HEPI”) produced a valuable study and report in 2018 on HEP Codes of Practice, with recommendations on how to optimise these codes. [See their full study here](#).

We set out their recommendations below, with our suggestions added. We recommend that HEPI’s recommendations should be adopted as a matter of good practice. The extent to which doing so is required by the Secure Duty is unclear, but HEPs would be well advised to work on that basis.

“To optimise the format of codes of practice on freedom of speech, we recommend universities:

- include a cover page to the code detailing the document’s history, including key information on the date of its approval, the next date of review and contact information for the responsible officer;
- consider formulating the codes in other formats (such as braille or audio) to ensure the widest possible readership;
- enhance the usability of the codes by employing hyperlinks throughout all online versions of the policies, as well as writing out web addresses in full in an appendix to the code (or in footnotes or endnotes) to ensure this information is not lost when the codes are printed out;
- make use of additional appendices to the codes to host vital supplementary documentation including application forms and additional guidance, so that this information is all housed in one place;
- visualise application and assessment processes in the form of process flowcharts wherever possible, to allow event organisers to easily understand what is required of them and to ensure the policies are as simple as they can be during the design process;
- take care to define what the code covers both in terms of meeting size and meeting format; and
- outline the precise remits of the code if intended, for example, to be applicable to students’ unions, in other countries, in constituent parts of a university with otherwise autonomous governance structures (such as Oxbridge colleges) or in faith-based institutions, where contradictions may occur with religious doctrine (such as Canon Law in Catholic institutions). *[BFSP: this paragraph is now largely superseded by the fact that the requirements regarding a FS Code are now applicable to constituent institutions and SUs under HERA as revised.]*

To optimise the processes surrounding the codes of practice on freedom of speech, we recommend universities:

- regularly review and update their code, particularly in line with developments in relevant legislation;
- ensure the latest versions of the code are swiftly approved by relevant university boards and committees, and published accordingly on university websites;
- keep a visual record of where the code has been disseminated to allow university committees and boards to decide whether this is appropriate and sufficient at the next review meeting;
- avoid requesting information from speakers or event organisers that could be deemed unreasonable or off-putting (such as routinely requesting copies of speeches before they are made);
- include in the code reasonable timescales for both the initial application to host an event or external speaker and the appeals process;
- offer in the code assistance to event organisers – such as PA systems or added security provisions – to give an event the best chance of going ahead before considering it for cancellation;
- consider including a disclaimer in the code to cover more lengthy and complex decision processes over appeals (although every effort should be made to stick to the original timescales outlined as above); and
- consider employing the expertise of an assessment panel, as opposed to just one accountable officer, to help in the case of deciding whether more complex or controversial events or speakers should go ahead. In addition, higher education institutions – particularly in England – may consider producing additional governance documents, such as statements of commitment to the codes of practice. This will not only help institutions to become clear about what their codes of practice are for, and what purpose they serve, but also help them to prepare for life under the Office for Students and its new *Regulatory Framework*, which may well require providers of higher education to justify their policies and processes in more detail in the future.”