



*To: all university risk officers, committees and functions*

22 January, 2026

Dear Risk Officer(s)/ Audit and Risk Committee members

**Risks for your University in failing to secure free speech: legal and compliance breaches**

As you may be aware, Alumni For Free Speech (“AFFS”) is a non-partisan organisation which aims to encourage high standards of compliance in universities and other organisations to protect freedom of speech.<sup>1</sup>

We are writing about the risks that your university faces if it fails to comply with its legal and regulatory obligations to protect free speech. There have been numerous highly public failures in the last decade, and, following material legal and regulatory developments, the risks of such failures are now very serious.

Our alumni love their universities, and we prefer to approach our work in a spirit of co-operation, explanation and support if this is reciprocated – but where it is necessary, we do not shrink from creating difficulties for institutions which ignore problems.

Some examples of free speech problems at our universities (and ones which could occur there), with details of what went wrong, are the following.

- **Sussex: Kathleen Stock.** The University of Sussex was found to be in breach of its Conditions of Registration by the Office for Students (“OfS”), leading to the highest fine to ever have been imposed by the regulator (£585,000) and untold reputational damage. This followed Professor Kathleen Stock’s resignation from the University following a long and aggressive campaign of vilification and harassment over her views. The OfS found that the University “failed to uphold freedom of speech and academic freedom” and created a “chilling effect” at the university, leading to the restriction of lawful speech.
- **Bristol: failures regarding the attacks on Steven Greer reported to OfS.** The University of Bristol behaved egregiously in the case of Steven Greer, and has given no evidence of taking serious action to address the compliance failures it committed. AFFS, together with other free speech campaigns, has reported the University of Bristol to the OfS, and recommended an investigation into the university.
- **The Phoenix/Open University case:** personal attacks on a senior member of staff for her viewpoints, including an aggressive open letter and an online pile-on, were held to be

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<sup>1</sup> More information about AFFS can be found at: <http://www.affs.uk>

unlawful harassment and/or discrimination under the Equality Act 2010 (the “**Equality Act**”) which was attributable to the Open University. There were more than 25 counts of discrimination and harassment, and more than 395 individual events of harassment as a result of individuals signing the open letter. The OU is estimated to have spent in the region of £1 million defending its case. Equating gender-critical views with transphobia was repeatedly found to be unlawful harassment. A culture of forced self-censorship was highlighted in the subsequent Dandridge Review, which found that at the Open University there was a “right” way of thinking that suppressed perfectly legal, if controversial, opinions. The review also suggested an “underpinning principle” of institutional neutrality to avoid a similar situation occurring again or elsewhere. For details of the Review, see the report of our associated campaign, Best Free Speech Practice, [\*The Dandridge Review re the Open University/Jo Phoenix\*](#).

- **AFFS report: compliance failures in university recruitment.** In May 2025, AFFS published a report (the “**AFFS Report**”) on university compliance with free speech duties in the recruitment of academic staff. AFFS investigated over 100 universities across England and Wales, and found compliance failures at over 45% of the institutions reviewed. Failures of this kind are serious compliance failures, inherent to which is very real potential financial and reputational damage. AFFS is now conducting a further review of the compliance of UK universities, and where universities repeatedly fail to correct serious compliance failures, we are reporting them to the OfS and recommending that the OfS launch a formal investigation (Durham was our first formal report, in December 2025).
- **Various other cases relating to the protection of belief under the Equality Act.** Examples include: The Fahmy case: an institution was found guilty of harassment as a result of not taking reasonably practicable steps under Section 109(4) of the Equality Act to prevent its employees from harassing their colleagues for their viewpoints. The Meade case: an employer and a regulatory body were found guilty of discrimination and harassment as a result of inappropriate disciplinary action against an employee for expressing dissenting views on a matter of controversy. These and other failures arose in large part from a profound failure of institutional neutrality about a deeply contested issue.

You will see that most of the problems appear to arise from universities/employers not understanding their obligations and not having the willpower to be active and decisive in complying with them and protecting their staff and students.

Now that the main provisions of the **Higher Education (Freedom of Speech) Act 2023** (“**HEFSA**”) (which made amendments to the Higher Education and Research Act 2017 (“**HERA**”)) have come into effect, English universities and other higher education providers (“**HEPs**”), and their colleges and other “constituent institutions” will need to ensure compliance with substantial and demanding legal duties – *which they can expect to be enforced* through existing conditions of registration and with the introduction of the forthcoming OfS complaints scheme.

As you will be aware, a new Director of Free Speech has been appointed at the OfS. Universities are subject to free speech regulatory duties as part of their conditions of

registration E1 and E2. Universities are also subject to a new condition of registration, E6, which deals primarily with harassment, but which also contains important duties relating to freedom of speech. The OfS has made it clear by its action against the University of Sussex that it will pursue and enforce compliance.

The OfS has issued guidance (the “**OfS Guidance**”) on universities’ free speech duties under HERA.<sup>2</sup> It is clear from the OfS Guidance that universities are commonly acting unlawfully in breach of their duties under HERA.

Scotland and Wales: The legal and regulatory requirements regarding institutions in Scotland and Wales differs from those regarding English ones as follows: this letter remains, however, very relevant to institutions in those regions.

- Universities in Scotland are not subject to HERA, and are not regulated by the OfS. They are instead subject to the Further and Higher Education (Scotland) Act 2005, which contains duties also similar in some important respects to those under HERA.
- Universities in Wales are not subject to HERA, and are not regulated by the OfS. They are instead subject to Section 43 of the Education (No.2) Act 1986, which contains duties that are very similar to the core duties of HERA. The OfS Guidance is therefore an effective guide to the actions Welsh universities need to take to avoid acting unlawfully.
- Universities in both Scotland and Wales are subject to the Equality Act and the Human Rights Act 1998, in addition to their specific freedom of speech and academic freedom duties. The great majority of the below therefore applies to Welsh and Scottish universities.

Our associated campaign, **Best Free Speech Practice** (“**BFSP**”), is working to clarify and disseminate what the legal requirements and their implications in practice actually are at UK HEPs. It is clear that there is widespread misunderstanding of how onerous their obligations already are and that, as a result, there are many compliance failures. BFSP has produced various detailed Statements for UK universities about the new requirements and their implications in practise. These can be found at <https://bfsp.uk/universities-and-free-speech>. Some key statements are as follows:

- BFSP’s statement [\*Free speech protection at English universities: The law and requirements in practice\*](#) (the “**Principal Statement**”), which sets out the relevant legal and regulatory requirements for HEPs and their implications in detail.
- BFSP’s statement [\*Protected viewpoints under the Equality Act: Risks and necessary actions for employers and others\*](#) (the “**Equality Act Statement**”). Recent cases under the Equality Act have held that beliefs including gender-critical beliefs, views which challenge

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<sup>2</sup> Regulatory Advice 24. Available at: <https://www.officeforstudents.org.uk/publications/regulatory-advice-24-guidance-related-to-freedom-of-speech/>

aspects of critical race theory, anti-Zionist beliefs, and beliefs critical of Islam are protected under the act.

- BFSP's statement [\*EDI considerations and inquiries in the recruitment and research approval process at English universities: Free speech compliance issues\*](#) (the "EDI Support Information in Recruitment Statement"). See also our [Scottish](#) and [Welsh](#) EDI Support Information in Recruitment Statements.
- A [\*Joint Letter on Institutional Neutrality\*](#) from multiple free speech campaigns setting out the urgent compliance need for universities to adopt institutional neutrality, and urging them to do so.
- BFSP's [\*Free Speech Codes: Compliance Checklist\*](#) (the "Code Compliance Checklist"). A detailed checklist for English universities to ensure that their free speech codes, as required under HERA, are legally and regulatorily compliant.
- BFSP's statement [\*Meetings at English HEPs: Free speech requirements and risks\*](#) (the "Meetings Statement"), which sets out HEPs' obligations with respect to meetings on and off their premises.
- BFSP's statement [\*Protests at English universities: Free speech requirements and risks\*](#), which sets out HEPs' obligations regarding the free speech of protesters and those targeted by protests.

These statements can be found at <https://bfsp.uk/universities-higher-education>. We hope you will find them useful. We are happy to answer questions if that would help.

The Principal Statement lists actions which universities should be taking to implement their obligations. If they do these, they will dramatically reduce the risk of free speech problems.

The most important relevant actions that universities should be taking in order to minimise their risks are the following.

- Have **appropriate governance arrangements and free speech protection structures**. This includes, inter alia, complying with their conditions of registration, taking requirements relating to free speech seriously at senior levels, having checks and balances on decisions, having effective accountability structures, and having effective reporting and complaints systems in respect of free speech. Failure to comply with its conditions of registration with respect to freedom of speech was the cause of the University of Sussex receiving a £585,000 fine from the OfS.
- **Free speech protection structures must be separate from the EDI function**. Given that EDI has been a common source of free speech problems (as is now acknowledged by Advance HE in their recent [guidance](#)), free speech protection structures must be separate from the EDI function, to avoid a conflict of interest and concomitant compliance failures. The Dandridge Review, following catastrophic legal failures at the Open University, recommended that the university "separate out" its approach to issues of belief from its approach to other aspects of identity".

- Have a **focused free speech officer** to be an internal advocate for free speech and academic freedom, with responsibility for ensuring that the HEP complies with its legal obligations and follows and enforces its own rules appropriately.
- **Dedicate adequate resources to protecting freedom of speech.** A recent [study](#) by AFFS has found that universities spend on average 214 times more on EDI than on free speech protection. Subsequent AFFS [research](#) has found that greater EDI spending is significantly statistically correlated with free speech compliance failures. Allocating adequate resources to free speech protection is essential to creating a tolerant culture and preventing compliance failures.
- **Ensure their policies do not restrict speech in ways that are unlawful or regulatorily non-compliant.** Universities should take care in particular that their anti-bullying and harassment policies, which may legitimately restrict some speech, do not do so unlawfully. They should take external legal advice and use legal definitions where appropriate. The OfS fine on the University of Sussex was for a university policy which restricted speech in a way that caused the university to breach its regulatory duties, and which was also likely unlawful. As the Dandridge Review makes clear, inadequate policies contributed to the harassment suffered by Joanna Phoenix at the Open University, for which the university was found in the courts to be liable. In the similar case of *Ms D Fahmy v Arts Council England*, the courts found that Arts Council England was liable for harassment suffered by its employee for her beliefs, in part because its policies omitted the protected characteristic of belief under the Equality Act.
- Have **adequate policies to protect and promote free speech.** This will include having adequate rules on students and staff prohibiting them from restricting others' free speech. Many actions restricting others' free speech, for instance, the use of the heckler's veto, or deliberately preventing meetings from going ahead, are unlikely to be covered by universities' harassment and bullying policies. New, specific rules prohibiting such actions are therefore necessary. See, for detail on such rules in relation to meetings at HEPs, BFSP's Meetings Statement. Also necessary will be policies to allow for the timely identification and mitigation of threats to free speech. HEPs further have an explicit duty to promote free speech, which very likely must be partially fulfilled in their policies.
- Be **active in enforcing their own rules** when problems arise. Universities must enforce their rules relating to free speech proactively, including through disciplinary measures where appropriate. The Dandridge Review emphasised that at the Open University policies and rules relevant to free speech were often not enforced. Our experience is that universities often act as if their anti-harassment and anti-bullying rules do not apply in free speech cases. This is emphatically wrong.
- Stop **activists from attacking people** for their viewpoints and **pressurising universities** to take actions which would themselves contravene their own rules, such as not circulating information on particular events or cancelling or postponing meetings.

- **Not select applicants to positions at the university on the basis of their commitment to any values, beliefs, or ideas, including EDI, and not require evidence of such commitment.** As set out in the OfS Guidance, selecting applicants partially on the basis of their commitment to EDI, university values, or any other beliefs, values, or ideas, and requiring evidence of commitment to these, are highly likely to be unlawful. Requiring holders of positions to be committed to any values, beliefs, or ideas will likely be similarly unlawful.
- Adopt **institutional neutrality** on matters of public controversy; avoid enforcing controversial viewpoints and agendas. This means that the HEP itself does not take an official position on matters of public controversy, in order to create a free environment for staff and students to take views on such matters, and to avoid hostile atmospheres developing for people with the “wrong” views. Increasing numbers of universities are doing this, up from a handful not long ago to now include, alongside others, one third of Russell Group universities.
- Restructure and if necessary terminate **relationships with external pressure groups** to the extent that these relationships require universities to suppress dissent from the ideologies or agendas promoted by these groups.
- **Not require staff to take any training which requires them to affirm any particular values, beliefs, or ideas.** Requiring staff to endorse any viewpoint or value judgement as part of training, for instance, through a requirement to complete a test with a certain number of “correct” answers is compelled speech and unlawful, as set out in the OfS Guidance.

You are the risk specialists, but we gently suggest that you might do well to:

- Review BFSP's Statements and assess the types and levels of risks that free speech compliance failures will create, and how, where and why they are most likely to arise.
- Share BFSP's Statements with relevant officers at your university who operate in areas which are significant in the context of these risks. Ask them to review these Statements and give their assessment of the risks and how they might arise in the future.
- Work with relevant officers to assess what needs to be done to reduce those risks, and work with them to ensure that relevant measures are properly implemented and carried into effect, and that relevant staff are properly trained in what they need to do in this regard.
- One risk you have is resistance to being more active about free speech protection within your university. Some of this may be because being better at protecting free speech will be inconsistent with agendas people personally pursue or are responsible for. We appreciate that this may create some internal conflict, but ensuring that free speech is properly protected will be a very significant contribution to risk reduction at your university and will lead, in time, to a more tolerant and less contentious environment. You may wish to draw their attention to the risks of personal liability that the Statements describe.

Finally: as we say above, we intend to approach our work in a spirit of co-operation and support where this is reciprocated, and would be very happy to provide advice and clarification on a confidential basis if that would help. We do understand, however, that you may want to be cautious about interacting with us. It would, though, be helpful to have a confirmation of receipt.

Yours faithfully

## **Alumni for Free Speech**

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