Free speech protection at English universities:

The law and requirements in practice

(In 16 pages)

IMPORTANT – THIS STATEMENT WILL BE REVISED from time to time as the requirements, guidance and knowledge develop. THIS STATEMENT MAY BE OUT OF DATE: see its publication date at the end. ***See also the important notice at page [16].***

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1. Introduction

Best Free Speech Practice ("**BFSP**") is a non-partisan campaign to clarify and publicly share what the legal requirements and their implications in practice actually are for protecting free speech and academic freedom at UK universities and other higher educational providers and institutions ("**HEIs**"). These requirements are generally much more demanding than institutions appear to appreciate.

This document contains a brief statement of the relevant legal and regulatory requirements for free speech protection at English HEIs, together with an explanation of what is required to be done in practice to comply with them, and some additional recommended best practice.

2. Relevant law and other requirements

The legal obligations of English HEIs in relation to freedom of speech are extensive. Recent amendments to the Higher Education and Research Act 2017 ("**HERA**") both strengthen existing duties and add new obligations. Viewpoints on many areas of current controversy are protected as religious or philosophical beliefs ("**Protected Viewpoints**") under the Equality Act 2010 (the "**Equality Act**"). Freedom of speech and academic freedom are also protected under the European Convention on Human Rights ("the **Convention**") as it has effect pursuant to the Human Rights Act 1998 (the "**HRA**"), and ongoing conditions of registration with the Office for Students ("**OfS**") contain their own extensive free compliance requirements. In this statement, the requirements under HERA, the Equality Act, the HRA and the conditions of registration are together referred to as the "**Relevant FS Requirements**".

The guidance ***Regulatory advice 24: Guidance related to freedom of speech*** of June 2025 ("**OfS Guidance**") issued by OfS reflects both the requirements under HERA and what appear to be the OfS's own expectations for HEI actions to secure compliance.

All the following requirements are explained in much greater detail in BFSP's main statement ***Free speech protection at English universities: The law and requirements in practice*** (the "**Principal Statement**").

A. Requirements in HERA and codes/rules relating to free speech

Primary obligation to secure free speech: The governing body of a relevant English HEI[1] 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 speakers at, the HEI. This is often referred to as the "**Secure Duty**".

[1] Defined in HERA as a higher education provider registered with the OfS.

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This is a wide and demanding requirement, and requires active, positive steps to be taken. It is stated in objective terms, giving no discretion to an HEI: if a step is reasonably practicable (construed objectively rather than purely subjectively), it must be taken. The Secure Duty results in various requirements in practice, which are discussed in detail in Part 3. Free speech obligations override other considerations, subject only to the following points.

- The relevant speech must be lawful (which includes criminal and civil laws): unless the relevant expression of views is so extreme as to be unlawful – for instance because it is defamatory or because it amounts to harassment under the Equality Act (see below) – it falls within the Secure Duty.

- HEIs are only required to take the steps that are reasonably practicable for them to take. This includes refraining from taking a step which would have an adverse impact on freedom of speech, when it is reasonably practicable to do so. Various points are relevant.

  Whether a step is reasonably practicable will depend on, in addition to other matters, whether taking it would: be contrary to other legal obligations or the HEI's anti-harassment and -bullying policies which have themselves been sufficiently carefully written to be compliant; interfere with what the OfS Guidance defines as the "essential functions" of an HEI; or threaten the physical safety of anyone within the HEI's premises or premises it controls.[2] The viewpoint that speech expresses and the reputational impact of the speech on the provider are likely to be irrelevant in determining reasonable practicability.

  ***Academic freedom*:** The primary duty discussed above extends to securing that academic staff are free (within the law) to question and test received wisdom and put forward new ideas and controversial or unpopular opinions, without facing the risk of losing their jobs or privileges at the HEI or the likelihood of their securing promotion or different jobs at the HEI being reduced.

  ***Duty to promote free speech*:** HEIs must now positively promote the importance of freedom of speech (within the law) and academic freedom in the provision of higher education. This requires active, serious steps to be taken.

  ***Meetings and security costs*:** HEIs must use all reasonably practicable steps to secure that the use of their premises is not denied to any individual or body on the grounds of their ideas, beliefs or views; and the terms on which those premises are provided must not be based on such grounds. HEIs must also ensure that, save in exceptional circumstances, they must secure that use of their premises is not on terms that require the organiser to bear some or all of the costs of security.

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[2] OfS Guidance, paragraphs 61, 106, 108, 120-122. Examples 11, 12, 13,16, 17, 18, 19. For further details, see the BFSP's *Principal statement of the requirements for protecting free speech for English HEPs* (the "**Principal Statement**"), Section 2A.

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***Codes of practice*:** HEIs must maintain a "code of practice" ("**FS Code**") which sets out: the HEI's values relating to freedom of speech and how those values uphold freedom of speech; the procedures to be followed by both staff and students of and any students' union at the HEI in connection with the organisation of meetings and other activities at the HEI's premises and the conduct required of such persons in connection with those meetings and activities; and the criteria applied by the HEI in deciding whether to allow the use of premises and on what terms. Each HEI must bring the FS Code to the attention of its students at least once a year and must itself take all reasonably practicable steps to secure compliance with its FS Code, including where appropriate the initiation of disciplinary measures.[3]

***Complaints*:** HERA requires the OfS to create and run a complaints scheme. This is discussed under "*Complaints, accountability and liability*" below.

OfS Guidance: the OfS Guidance sets out requirements in practice consequent on the obligations under HERA and the OfS' expectations with respect to compliance with HERA, so is a key source of information.

B. Equality Act, PSED and the protection of Protected Viewpoints

Under the Equality Act, HEIs must avoid unlawful discrimination (including "indirect" discrimination) against and harassment of people, including academics and students, who have the "protected characteristic" of holding (or not holding) particular religious or philosophical views (defined as "**Protected Viewpoints**" above). The Equality Act specifies various contexts in which unlawful actions can occur, including employment and further and higher education. See BFSP's detailed Statement ***Protected viewpoints under the Equality Act: Risks and necessary actions for employers and others*** (the "**BFSP Equality Act Statement**") for a detailed discussion of all this.

Protected Viewpoints have been held to include gender-critical views, views which challenged aspects of critical race theory, anti-Zionist views and views critical of Islam.[4] The law in this area is still evolving. If they wish to avoid finding themselves in breach of the law, HEIs need to work on the basis that advocacy for free speech and other human rights, and opinions (whether religiously or philosophically based) in respect of other currently contested areas, must logically also be treated as Protected Viewpoints in appropriate circumstances and will, in time, be confirmed as such. Such obviously contested areas would include, for example, the so-called "decolonisation" of the school and university curriculum, views in relation to religions and their effects, and views in relation Israel and Palestine.

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[3] Consequential requirements of this are discussed in Part 3.

[4] *Forstater v. CGD Europe et al*., 2021 (Appeal No. UKEAT/0105/20/JOJ), *Corby v ACAS*, September 2023 (Case No: 1805305/2022), *Miller v University of Bristol*, February 2024 (Case No,1400780/2022), and *Lee v IFoA*, July 2025 (Case No. 6010437/2024).

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There can, however, be "inappropriate (sometimes expressed as "objectionable") manifestations" of Protected Viewpoints which do not qualify for protection.

***Liability for conduct of employees*:** Section 109(1) of the Equality Act provides that anything done by an employee in the course of their employment, or an agent on behalf of their principal, must be treated as also being done by their employer or principal. It does not matter whether that thing is done with the employer's or principal's knowledge or approval. An employer has a defence (the "**Section 109(4) Defence**") if it can show that it took all reasonable steps to prevent an employee from doing the alleged act or anything of that description. The threshold to qualify for the Section 109(4) Defence is high, and requires employers to take proactive and substantive steps, if they are to avoid liability.

***Public Sector Equality Duty*:** The Public Sector Equality Duty ("**PSED**") applies to public authorities (including most HEIs). It requires HEIs, in the exercise of their functions, "to have due regard to" the need to eliminate unlawful discrimination and harassment (and other unlawful acts) under the Equality Act, including against people who hold or express a Protected Viewpoint; to advance equality of opportunity between persons who share a relevant protected characteristic (e.g. a Protected Viewpoint) and persons who do not share it; and to foster good relations between persons who share a relevant protected characteristic (e.g. a Protected Viewpoint) and persons who do not share it.

The PSED is very specifically worded. It does not require (or justify) consideration of an HEI's wider Equality, Diversity and Inclusion ("**EDI**") related programmes or agendas beyond those specific stated aims. It is a duty to "have due regard", i.e. to think and give appropriate weight in context: it is not a duty to take any specific action. Positive duties, such as those imposed under HERA, are likely to override it.

Dandridge Review*:** The independent Review, commissioned by the Open University ("**OU**"), and conducted by Dame Nicola Dandridge, following the OU's disastrous failure to protect Professor Jo Phoenix from discrimination and harassment for her views, contains valuable information on the causes, and steps necessary to avoid, liability under the Equality Act. See BFSP's report ***The Dandridge Review re the Open University and Jo Phoenix.

C. Human Rights Act and compelled thought

The free thought and speech rights of academics and students are protected under the Convention, as enacted in the UK by the HRA. These freedoms include the freedom to offend, shock and disturb. Compelled thought and speech are unlawful, as are actions and requirements which have a "chilling effect" on relevant people's views. Political expression (in a wide sense rather than a narrow party-political one) attracts the highest degree of protection, as does academic free expression. Any interference by an HEI with the expression of views by and academic freedom of its Participants will require exceptional justification.

The right to free expression does not apply to the limited range of expression which is so extreme as to fall within Article 17 of the Convention (the best-known example being

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Holocaust denial). It is also subject to the qualification that the "exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society" for various specified purposes, including for the protection of the rights of others. Such restrictions must be accessible, clear and precise, and are subject to a "proportionality" test, which will need to be assessed on a case-by-case basis, with reference to relevant jurisprudence: it does not give HEIs discretion. There is a high bar for justifying restrictions on free speech, and academic freedom in particular. Contrary laws and other requirements (and HEI policies to implement them) can thus operate to restrict Convention free speech rights, to a limited extent. For information on this matter, see BFSP's forthcoming statement on proportionality, and the Principal Statement, Part 2C and the Appendix.

While the relevant Convention rights are primarily worded as negative (i.e., non-interference) obligations, HEIs are also under positive obligations, which are somewhat unclear but which include to create a favourable environment for participation in public debates for all concerned (see more on this requirement at Part 3 below).

D. Criminal matters: the Protection from Harassment Act 1997

Taking various types of action against another person is criminalised: where taken in connection with that person's viewpoints, they can become relevant to free speech issues. Most relevantly, under the Protection from Harassment Act 1997 (the "**PHA**"), a person must not pursue a course of conduct which amounts to, and which he knows or ought to know amounts to, harassment of another person. Harassment in this context includes alarming a person or causing a person distress. The PHA may give rise to both civil and criminal liability. Intent does not have to be proved, although criminal harassment will be subject to a higher standard of proof. Other potentially relevant offences are described in the Principal Statement.[5]

There are many ways in which illegal activity by staff or students "on its watch" can harm an HEI: from reputational damage, to regulatory/compliance failures, to unlawfulness and liability on its own part. Illegal activity by a member of staff will cause an HEI acute problems, which will be even worse if the perpetrator is apparently acting within the scope of authority conferred by the HEI. If an HEI discovers that illegal activity has or may have occurred, it will need to act promptly and carefully. This will likely involve taking and following timely legal advice.

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[5] These include putting a person in fear of violence, malicious communications and improper use of public electronic networks, some forms of protest which cause serious disruption and speech that amounts to support for a proscribed organisation. Blackmail can also be relevant: in 2026, a man was found guilty of blackmail for making threats against venues in order to pressure them not to host a controversial speaker.

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E. Requirements as to governance and consequent on charitable status

HEIs are required by their conditions of registration to have governing documents that uphold the public interest governance principles that apply to them (condition E1), and to have in place adequate and effective management and governance arrangements to operate in accordance with its governing documents and to deliver those public interest governance principles in practice (condition E2). These include principles relating to securing freedom of speech and academic freedom.

Pursuant to Section 8A of HERA, the OfS will, from 1 April 2027, also be required to put in place conditions of registration which include requirements that the governing body of the HEI complies with the Secure Duty and the other primary obligations under HERA described above.

A further condition of registration E6, relating to (inter alia) harassment regarding students, sets out various requirements for free speech protection in relation HEIs' harassment policies.[6] E6 also restricts harassment policies going beyond what is stated in the Equality Act.

As educational charities, most HEIs must beware that charity law defines the purpose of "advancing education" broadly, but an intention to promote or an attempt to inculcate a particular view or political orientation – i.e. propaganda – is not educational for the purposes of charity law. This is very relevant to situations where, for instance, an HEI has policies which are provided by external campaigning organisations. See the Principal Statement, Part 2E.

F. Complaints, accountability and liability

***Legal claims and regulatory accountability*:** Claims have been successfully brought under the Equality Act for discrimination against and harassment of people with Protected Viewpoints, and under the HRA. Failure to comply with free speech duties can be a breach of an HEI's registration conditions and result in enforcement by the OfS, including substantial fines.

***Complaints scheme*:** The OfS operates a complaints scheme in respect of failures of free speech protection under the Secure Duty, which is available once a complaint under an HEI's own scheme has run its course (or 90 days, whichever is sooner).[7] Students have to bring complaints to the Office for the Independent Adjudicator.

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[6] It emphasises the need for HEPs to have particular regard to, and place significant weight on, the importance of freedom of speech within the law, academic freedom and tolerance for controversial views in an educational context or environment; and requires HEPs to apply a rebuttable presumption that the content of courses, or statements on any subject matter connected to the content of a course, is unlikely to amount to harassment.

[7] See: https://www.officeforstudents.org.uk/for-providers/freedom-of-speech/free-speech-complaints-scheme-rules/.

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***Liability for individuals, and those who induce Equality Act breaches*:** Under Section 111 of the Equality Act, a personal claim may be brought against anyone who has instructed, caused or induced a contravention of relevant parts of the Equality Act. This has become acutely relevant in the light of non-compliant elements in policies which appear in recent years to have been taken nearly verbatim by some HEIs from templates supplied by external providers.

G. Constituent institutions and students' unions

The same duties and remedies under HERA now also apply to "**CIs**" (colleges, halls, and other "constituent institutions") of HEIs, with minor adjustments. The Equality Act regime also applies to CIs and students' unions, but the PSED does not apply to students' unions. The HRA does not apply in respect of CIs which are not themselves public authorities, or to students' unions. The Secure Duty requires HEIs to take their own reasonably practicable steps (given the nature of the relevant structures and relationships) to ensure compliance by their CIs and students' unions as regards the HEI's Participants.

3. Requirements and implications in practice

Compliance with the Relevant FS Requirements requires HEIs to take the following steps. See the Principal Statement for further detail.

A. Key general obligations

- **Not to discriminate, harass or bully in connection with viewpoints:** A key general obligation, which underlies many of the other obligations in practice below, is not to discriminate against, harass or bully Participants or visiting speakers in connection with their lawful viewpoints (especially Protected Viewpoints under the Equality Act), and to take all reasonably practicable steps to prevent their Participants from doing so.
- **Take sufficient steps to satisfy its duty to promote free speech.** This duty requires HEIs to work to achieve a positive official attitude and general atmosphere within the HEI towards free speech. It requires HEIs to ensure that free speech is described in positive terms in all its documentation, and in its training in particular, and not to allow free speech to be presented in a negative light in its documents and official pronouncements.

B. Rules, codes, policies, governance and training

- **Have an appropriate FS Code.** The FS Code must contain the information explained at Part 2A above. An HEI should have a clear and simple statement about the FS Code, which should summarise its contents and make clear how to access it; and must regularly provide specified information to Participants about relevant free speech requirements and its own obligations in relation to free speech. Detailed information on best practice regarding FS Codes is contained in the OfS Guidance.[8]

[8] Paragraphs 168-169.

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- **Ensure that its policies, practices and requirements are appropriate in the context of the Relevant FS Requirements.** This has two key aspects.

  First, ensuring that it does not have policies, practices or requirements which unjustifiably prevent or restrict lawful free speech, for instance, through mis-stating or exaggerating legal obligations on it which may conflict with the Secure Duty or having behaviour requirements which go beyond what is required by relevant underlying legislation such as the Equality Act.

  Second, creating requirements to ensure compliance with the Relevant FS Requirements, including securing compliance with its FS Code. Such requirements should expressly prohibit certain material actions by Participants against people in respect of their viewpoints, such as discrimination and harassment, online pile-ons, making inappropriate complaints and allegations, and inappropriate disruption of meetings, including by the use of the "heckler's veto", to prevent others' speech. These restrictions will themselves need to be compliantly with the free speech rights of Participants. HEIs will need to have appropriate and effective processes for curtailing and remedying activity which is contrary to free speech related requirements and appropriate disciplinary processes in order to secure compliance with free speech requirements.

- **Have appropriate governance arrangements.** This will include: taking the steps necessary to comply with its conditions of registration; taking requirements relating to free speech seriously at senior levels; putting in place and following delegation arrangements setting out explicitly which committees or individuals are authorised to make decisions which may affect free speech compliance; having robust decision making arrangements including appropriate checks and balances to ensure compliance, ensuring that the terms of reference of all committees that could affect compliance with free speech duties expressly provide for consideration of this impact; and ensuring that its risk officers are aware of relevant risks and take them seriously.

- **Appointing a free speech officer** to be an internal advocate for free speech and academic freedom, with responsibility for ensuring that the HEI complies with its legal obligations and follows and enforces its own rules appropriately. We ask: given the intense activism and competition between agendas that exist within HEIs, how they can comply with the Relevant FS Requirements, and condition of registration E2 in particular, without such an officer to advocate for free speech at a high level, looking at a university's policies and practices from the point of view of free speech compliance and available to give knowledgeable advice when a crisis arises? That officer should be appropriately senior (sufficiently so to participate in governing body meetings where relevant to their role), empowered and resourced, available (although this does not necessarily have to be a full-time position as long as the person has sufficient time available), experienced and trained, and non-conflicted.

- **Ensure that adequate induction and training is available to Participants** about protection of free speech and academic freedom, and that they understand the nature of the HEI's requirements for free speech protection.

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C. Management, staffing and training re free speech protection; the EDI function

- **Have appropriate free speech systems and structures:** HEIs must have sufficient systems and structures to effectively promote free speech, intervene proactively to protect participants at risk of harassment or formal punishment for their views, and prevent the suppression of speech. Such structures must be separate from the EDI function, which is a key finding of the Dandridge Review, because of the insuperable conflicts between the desire (indeed it being a person's job) to promote and enforce EDI agendas and the need to protect dissent from aspects of those agendas. Free speech systems and structures must be staffed by individuals who are of appropriate seniority and experience, appropriately trained, have available time, and are even-handed and neutral in their handling of problems. They will need to act consistently and leave their own viewpoints "at the door".
- **Reduce the risk of the EDI function being a source of free speech problems:** the conflicts between agendas promoted under the EDI banner and the rights of dissidents from those agendas frequently results in the EDI function being a source of free speech problems[9]. Preventing compliance risks requires an understanding within the EDI function: of the distinction between those relatively narrow aspects of most HEIs' EDI programmes which reflect legal obligations and wider aspects; that free speech requirements include the right to dissent from EDI policies without negative consequences. It also requires having the right structures, systems, requirements, personnel and training in place, including free speech structures and systems separate from the EDI function, to ensure that EDI agendas are managed so as not to infringe the Relevant FS Requirements.

D. Action required to protect free speech and stop suppression of viewpoints

- **Take prompt, active and effective action to ensure that it and its Participants comply** with applicable obligations, including its FS Code and related rules, and enforce compliance with disciplinary action where appropriate.
- **Deal with controversies effectively; protect Participants; resist pressure:** take prompt, active and effective action to defuse a controversy and ensure that it and its Participants comply with the Relevant FS Requirements. This can include reminding their staff and students of the HEI's requirements, in particular regarding free speech and anti-bullying and harassment; where appropriate, warning them of the consequences of contravention; where appropriate, enforcing their rules, including through disciplinary measures; and taking such other action as is likely to help remedy the situation.
- **Have appropriate and effective reporting and complaints procedures and systems in respect of free speech issues and complaints.** Ensure that its systems are structured and staffed to be able to deal with free speech complaints promptly and effectively, and in particular to review and address free speech problems in accordance with the Relevant FS Requirements. The best way for an HEI to avoid complaints being forwarded to the OfS is to run its own complaints scheme appropriately and to reach a result that the complainant

[9] As recognised by both the Dandridge Review and a recent AHE guide relating to this subject.

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understands and accepts.[10] Relevant staff will need to be thoroughly trained about what the law in fact requires and how to operate the system effectively, and to be suitably independent from the object of the complaints.

- **Not allow its complaints and disciplinary functions to become instruments of free speech suppression, contrary to the Relevant FS Requirements.** Every complaints process should include a fair, objective and rapid early triage process so as to ensure rejection of vexatious, frivolous or obviously unmeritorious complaints relating to a Participant's lawful viewpoints at an early stage. An HEI should not permit the pursuit of obviously vexatious or trivial complaints or instigate formal investigations into a Participant following complaints which relate to their lawful expression of a viewpoint (especially a Protected Viewpoint).

- **Not allow inappropriate official endorsement (or effective enforcement) of controversial agendas or suppression of dissent; the curriculum.** Whenever endorsement or promotion (directly or indirectly) of viewpoints requires or exerts pressure for the endorsement of or acquiescence to those viewpoints, or suppresses the expression of lawful dissenting viewpoints, there will be a clear breach of the Secure Duty, unless an HEIs' actions are legally justifiable. Further, HEIs must therefore not impose any ideologies, viewpoints or agendas (such as a "decolonisation" agenda) as part of the curriculum, to the extent that to do so would compel the expression of certain views, suppress dissent or otherwise contravene their obligations under the Relevant FS Requirements or their obligations as charities.

- **Work to create a favourable environment for all for participation in public debates**: HEIs are under a positive obligation under the Convention 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".[11] Taking material steps to achieve this must also be a "reasonably practicable step" for the purposes of the Secure Duty, and would make a significant difference to free speech protection. What is actually required in practice is unclear and will vary from institution to institution.

- **Avoid and reduce an oppressive atmosphere; cultures of conformity:** Related to the above, research strongly evidences that an atmosphere exists at many HEIs in which many Participants feel intimidated about expressing their opinions. This includes an environment in which colleagues are more likely to feel entitled to attack a person or act to his/her detriment as a result of his/her holding or expressing his/her views, or indeed not expressing assent to the institutional position; or a justifiable perception of risks of this nature. Given that such an atmosphere would give rise to obvious risks of self-censorship

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[10] See BFSP's statement ***Free speech complaints about English HEPs: Requirements and minimising risks.***

[11] *Dink V Turkey*, judgement of 14 September 2010 in French only, at 137.

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(a "chilling effect") and very harmful effects on free speech at HEIs, HEIs are required by the Secure Duty to take all reasonably practicable steps which might stop such an atmosphere developing in the first place or persisting if it already has. Qualifying for the Section 109(4) Defence under the Equality Act can also require this. It will involve HEIs being vigilant to prevent, identify and stop free speech transgressions; firmly enforcing its code of conduct and rules; and taking the other steps such as promoting the importance and value of free speech set out elsewhere in this Part 3.

- **Sufficient institutional neutrality.** If an institution takes sides, in an area of passionate and polarised debate, with one contested position, it necessarily formally sets itself against the other position. This gives rise to a very obvious risk of disadvantaging or creating a hostile environment for people who hold that other viewpoint; creating or tolerating environments in which attacking people for their viewpoints is acceptable; and of failing to comply with the requirements immediately above. A number of recent public failures (with unlawful harassment and discrimination found by tribunals) have largely arisen as a result of an underlying failure of objectivity and endorsing and enforcing (or not preventing the unlawful enforcement of) one side of a bitterly contested debate. HEIs therefore need to maintain sufficient institutional neutrality on matters of polarised public debate. By this we mean that they should take care to avoid actions, statements and language which by, taking a side in relation to publicly contested issues, risks suppressing free speech at the HEI and, in an extreme case risks breaching the HEI's legal and/or regulatory obligations. It is hard to do this effectively without having a formal statement of institutional neutrality, and more than 30 UK HEIs have now implemented these.

- **Ensure that any staff or student courses, "tests" or "training"**, for instance induction for new arrivals, do not wrongly inhibit or suppress free speech, for instance by presenting one viewpoint as the only legitimate one, ensuring that negative consequences arise for people who disagree with viewpoints promoted at the training, and/or requiring "tests" to be answered in certain way to have "passed". Making such training mandatory can also be a problem.

- **Risks with externally sourced materials; avoid or restructure relationships with organisations which creates free speech compliance risks.** The uncritical use of externally sourced materials has caused compliance problems. Where a relationship with an external organisation requires an HEI to take sides in relation to contested issues, or requires or encourages it to suppress the expression of views which dissent from the agenda being promoted by any such organisation, or results in it failing to maintain a sufficient level of institutional neutrality on contested issues, as discussed above, this creates profound compliance risks for that HEI, which need to be prevented.

- **Research.** Participants should be free to undertake academic research within the law. This freedom should not be restricted or compromised in any way because of a perceived or actual tension between any conclusions that the research may reach or has reached or the viewpoint it supports, and the organisation's policies or values. Nor should it be restricted or compromised in any way because of any external pressure connected with those conclusions. If funding bodies exert pressure on researchers to reach or to avoid particular

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results, amending or terminating these funding arrangements is likely to be a reasonably practicable step for providers and constituent institutions to take.

- **Not implement any accreditation arrangement in a way that disproportionately interferes with freedom of expression.** Many HEIs operate courses that lead to professional qualifications because of their accreditation by PSRBs (Professional, Statutory and Regulatory Bodies), or other accrediting bodies. HEIs which provide accredited courses may be required, by the conditions of their accreditation, to enforce professional standards, for instance through 'fitness to practice' procedures. While professional standards may legitimately impose some restrictions upon lawful expression, any restrictions must be proportionate. In practice, the number of proportionate restrictions will be very small.

E. Meetings and events; protests and demonstrations

- **Meetings and events:** Taking all reasonably practicable steps to ensure that the use of any premises of the HEI is not denied to any person or body because of their viewpoints, policies or objectives. HEIs will need to be actively involved in monitoring and supervising security issues and assisting often inexperienced organisers to arrange appropriate security. Save in exceptional circumstances, HEIs must not require the organiser of an event to bear any of the costs of security relating to the event.
- **Protect the right to protest, prevent protests from restricting speech.** HEIs must take the steps required of them to protect the free speech of the protesters, prevent protesters from restricting others' speech (for instance, through blocking the entrances to venues, or through the use of the "heckler's veto"), prevent excessive and unreasonable disruption of the activities of the HEI and its Participants, and ensure the physical safety of their Participants and prevent actions that are unlawful or contrary to their (compliantly written) harassment policies. See BFSP's statement on this subject.

F. Admissions, appointments, promotions and termination: employment; requiring commitments to values

- **Admissions**: An HEI should not discriminate against a person in connection with their lawful viewpoints in correction with admissions, for instance by refusing them admission (as students or academics) or marking them down in the admissions assessment process.
- **External criteria and influence**: An HEI should not admit students or visiting academics on the basis of funding arrangements or other criteria that have the effect of restricting their or others' free speech or academic freedom within the law.
- **Appointments and promotions:** An HEI must not generally make decisions on the basis of a person's lawful viewpoints in appointments or promotions. It should secure that, where a person applies to become a member of staff or for promotion, that applicant is not adversely affected in relation to the application, or the appointment or promotion process, because of lawful viewpoints held or previously expressed or because (in the case of

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applicants for academic positions) they have exercised their academic freedom within the law.

- **Discipline and termination**: Staff should not be prejudiced or subjected to disciplinary measures because they have lawfully expressed their viewpoints. HEIs must secure that no member of academic staff is at risk of losing their job or any privileges because they have exercised their academic freedom.

- **No commitments or statements in support of agendas and values:** An HEI should not:

  - require applicants for positions or promotions to commit (or give evidence of commitment) to agendas, values, beliefs or ideas; or

  - require Participants to commit (or give evidence of commitment) to agendas, values, beliefs or ideas.

  More widely:

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

  - taking actions which pressurise people who want a position or promotion, or indeed a career at an HEI, to suppress or hide their opinions or take actions or say things they do not believe in, in order to (as it appears to them) maximise their chance to secure a position, progress in their careers or obtain research funding, is likely to be contrary to the Relevant FS Requirements.

  The above has particular relevance to the widespread practice of requiring applicants to jobs to submit evidence of their support for EDI. See in this context: BFSP's statement ***EDI considerations and inquiries in the recruitment process at English universities: Free speech compliance issues*** for more information on this complex area. See also AFFS's 2026 Report into compliance failures regarding imposing EDI support requirements in connection with their recruitment, which found that 70 of 162 institutions reviewed imposed requirements of this nature; 36 of them desisted and 43 English universities were reported to the OfS.

- **Records:** An appointment, promotion, disciplinary or dismissal process should include a sufficiently detailed record of all decisions connected with a Participant's viewpoints or expression of them including, here relevant, evidence that the process did not penalise a candidate in connection with their viewpoints.

- **Including appropriate free speech related requirements in all relevant employment or appointment contracts** and in the job specification for all appointments of senior staff and in their contracts with students.

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G. Obligations of HEIs relating to CIs and students' unions: enforcing own requirements

- **Obligations of HEIs:** See a discussion of this complex topic in Part 3 of the Principal Statement. It must be that most of HEIs' duties under HERA, for instance as regards its FS Code and prohibiting Participants from bullying other Participants for their viewpoints, do not somehow cease to apply just because an action or event happens to take place within a college or on a students' union's premises, and they should continue to enforce those requirements against their Participants, irrespective of the location of the relevant actions.

  The Secure Duty requires, to a degree, that HEIs take their own steps, to the extent reasonably practicable, given the nature of their structures and relationships, to ensure that their CIs and students' unions take sufficient steps to secure the free speech/academic freedom of the HEI's Participants. There are many limitations in practice on HEIs' ability to do this.

- **Governmental plans and expectations re students' unions:** The Government has stated that it will amend HERA to require HEIs to take reasonably practicable steps to ensure that their students' unions follow their FS Code in both premises owned by HEIs, and premises not owned by HEIs but which are occupied by their students' unions.[12] The government has stated that it expects HEIs to take reasonably practicable steps voluntarily now to enforce their FS Codes on the premises of Students' Unions not owned by them.

H. Information on free speech implications for various topics

BFSP's website provides detailed information on free speech compliance requirements in various contexts, including the Principal Statement and the following:

- ***Protected viewpoints under the Equality Act: Risks and necessary actions for employers and others.***
- ***The Dandridge Review re the Open University/Jo Phoenix: What all universities need to know – and do.***
- ***Free speech protection at constituent institutions of English universities: The law, requirements and risks***
- ***Open letter from free speech campaigns re adopting Institutional Neutrality. AFFS report about this.***
- ***Know your free speech rights, and How to complain about a free speech problem at an English university.***
- ***Free speech codes: compliance checklist.***
- ***Meetings at English HEIs: Free speech requirements and risks.***

[12] DfE publication of June 2025 *The future of the Higher Education (Freedom of Speech) Act 2023*. Note that it appears that this an effective requirement of the Secure Duty anyway.

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- *Managing protests and demonstrations: free speech and other issues.*
- *EDI and similar courses, training and tests: Free speech requirements and risks for English universities.*
- *EDI considerations and inquiries in the recruitment and research approval process at English universities: Free speech compliance issues.*
- *Free speech complaints about English HEPs: Requirements and minimising risks*

Best Free Speech Practice

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Important: ***This document:***

- *is a short summary of a complex area of law and its implications, and does not purport to be complete or definitive. It is not (and may not be relied on as) legal or other advice: HEIs 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 specific policies, practices and requirements for particular HEIs, will have to be developed by HEIs 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.*

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