

Free Speech in UK Universities: an update

The last time Professor Watson introduced me as a speaker, he promoted me from Lord Young to Viscount Young. Alas, I'm only a life peer, not a hereditary, although my father was also a life peer and I made a joke about that in my maiden speech last year, claiming to be the only 'nepo baron' in the House of Lords. That turned out to be a mistake, because for weeks afterwards I was stopped by other members in the corridor telling me about other sitting peers whose parents had also been life peers. Turns out, there are about two dozen 'nepo barons', most of them on the Labour benches. So much for Labour's fulminating about seats in Parliament not being "reserved for individuals who were born into certain families".

I know I'm among friends here and, like me, you care about the erosion of academic freedom and free speech in Britain's universities. Since I founded the Free Speech Union in 2020, we've fought over 6,000 cases and about one in twelve of those involve a university as the other party — which means universities are, collectively, among the worst offenders in the country when it comes to restricting lawful speech. The academics we've defended include Selina Todd, Kathleen Stock, Tim Luckhurst, Jo Phoenix and Steven Greer. Alongside other free speech campaigners and campaigning organisations, some of them in this room, we helped draft the Higher Education (Freedom of Speech) Act (HEFSA), campaigned for it, helped pilot it through Parliament, and then — when Bridget Phillipson tore up the commencement orders within days of becoming Education Secretary — launched judicial review proceedings and effectively forced her to perform a partial U-turn.

Last month, she announced that at long last the Government will commence section 8 of HEFSA — the complaints scheme — and I wanted to explain why universities should welcome that decision. I'm confident that all of you will welcome it, but you may be in a minority among your colleagues, so here are some arguments you could make in its defence, most of which, I'm sure, will have occurred to you already.

First: the complaints scheme is better for universities, not just complainants.

The existing routes for enforcing free speech and academic freedom — judicial reviews, employment tribunals, the OfS's E1 and E2 conditions — are slow, expensive and high-stakes. They are bad not only for staff and students, but for universities.

The expense of the existing routes is the biggest argument for the complaints scheme. The University of Sussex's legal costs in its battle with the OfS cost it somewhere between £350,000 and £400,000. The OfS's own costs in that case ran to £250,000–300,000. The FSU intervened in that case and just that alone cost us roughly £60,000. How can ordinary academics who believe a university has failed to discharge its duty to protect their academic freedom afford to hold their university to

account under the present arrangements?

The complaints scheme, by contrast, is cost free. If a complaint is upheld, the OfS can recommend practical remedies — reviewing policies, changing processes, correcting a specific decision, or providing compensation where appropriate, although I expect that will be a rarity. The scheme is not simply a mechanism for sanctioning universities; it is also a mechanism for correcting mistakes and improving institutional practice. For universities that have accumulated some poor habits over the past decade, that should be welcome rather than threatening.

Second: the complaints scheme will help universities understand where the law actually stands.

There is genuine uncertainty in many institutions about where the boundaries of lawful speech lie, what steps universities must take to protect it, and what restrictions are permissible. This uncertainty is not always disingenuous — though sometimes it is — but it is usually harmful. When in doubt, too many university administrators default to a ‘safety first’ approach, where ‘safety’ means protecting their students from exposure to disagreeable ideas. The complaints scheme will help clarify this.

A steady stream of relatively small decisions will give universities practical guidance on how the law applies in real cases. Over time, this should reduce uncertainty and help institutions avoid more serious failures.

I should deal briefly with the Sussex judgment. I know some people have pointed to it as evidence that HEFSA is constitutionally precarious or legally confused. It isn't. The Sussex fine was imposed in relation to the OfS's existing E1 and E2 powers. HEFSA played no role in it. The HEFSA duties and the complaints scheme are entirely unaffected by that judgment. Indeed, the Sussex court explicitly endorsed Regulatory Advice 24 — the OfS's detailed guidance on universities' duties under HEFSA — and Sussex agreed with that approach in its own submissions. So the judgment is, if anything, an argument for following RA24 carefully, not for ignoring it.

Third: follow the OfS guidance — and only the OfS guidance.

Regulatory Advice 24 is authoritative. Other documents produced by external organisations — Advance HE, for instance — are not. There has been much talk, in universities and outside them, about "balancing" free speech against other considerations. But the law and the guidance are clear: free speech and academic freedom enjoy a special position in the university, and all steps must be taken with "particular regard" to their importance.

This is not a balancing exercise. Academic freedom and free speech must be

prioritised. Universities should ensure that all academics — not just administrators — are familiar with the detailed examples in RA24. And if you find yourselves in doubt about how a particular situation maps onto the guidance, the answer is almost certainly "more speech, not less".

Fourth: don't outsource compliance to administrators. Involve academics.

Many universities are delegating HEFSA compliance entirely to administrators, while shutting out the academics who actually understand how free speech and academic freedom operate in a university setting. This will lead to groupthink and error.

Free speech and academic freedom go to the core of academic life. Decisions about controversial speakers, departmental disputes, teaching content, research programmes, and disciplinary processes require real understanding of how academic communities work. They are not a compliance problem to be managed by HR professionals — they are a foundational commitment to be honoured.

Organisations like the London Universities' Council for Academic Freedom, and others that campaigned for HEFSA and helped shape the OfS guidance, are ready to provide advice and training on HEFSA and RA24 from the perspective of academics who understand how university departments actually work. I'd encourage you to use them — not the HR department, not Advance HE, and certainly not the consultants who charge £500 an hour to tell universities how to get around their legal obligations.

Fifth, and finally: all of this matters beyond the purely legal.

Universities are in trouble with the public. Public trust in universities has declined sharply. The perception — not entirely unfair — is that many institutions are ideologically captured, that dissenting academics are silenced, and that students are being protected from dangerous ideas rather than exposed to them.

The complaints scheme, properly used, is an opportunity to reverse that perception. A university that welcomes the scheme — that treats it as a tool for improving practice rather than a threat to be managed — sends a signal that it takes its legal obligations seriously and that it genuinely believes in the principles it is supposed to embody. Given that in the not too distant future we may have a government that's less well-disposed towards universities than the present one, restoring public trust is vital if they're to survive and thrive.

Thank you.