The OfS' new free speech guidance will transform English campuses

The beefed up document could temper the influence of anti-rational ideologies and restore public trust in academia, say Ian Pace and Abhishek Saha

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It is heartening that, for once, a consultation exercise in UK higher education appears to have actually made a tangible difference to the proposals in question.
The Office for Students' final version of its guidance on how universities should interpret England's Higher Education (Freedom of Speech) Act 2023 is considerably more robust and extensive than the draft version published in March 2024.

The act itself was reintroduced in a somewhat weakened form in January, having been paused by the incoming Labour government last July, shortly before it was scheduled to come into force. During the intervening period, various academic freedom organisations lobbied for the Act's implementation and participated extensively in the consultation on the draft guidance. Those organisations include two with which both of us are active: the London Universities' Council for Academic Freedom (LUCAF) and Academics for Academic Freedom.

A debate over one aspect of the 2024 draft guidance played out in this magazine last year, when we both responded to a piece by academic Naomi Waltham-Smith and lawyer James Murray. At the heart of the debate was Article 10(2) of the European Convention on Human Rights, which concedes that the exercise of freedom, "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 reasons.

Waltham-Smith and Murray argued that this was not adequately accounted for in the draft, leading to over-protection of lawful speech. In our reply, we contended that the Article sets a floor rather than a ceiling for our free speech rights.

In their formal consultation response to the OfS, Waltham-Smith and Murray, with Julius Grower, extended their argument, claiming that if an institution may "permissibly interfere with the speech [under] Article 10(2)" then it may prohibit lawful speech without needing to consult the Act. LUCAF's consultation response directly challenged this view, arguing that universities may prohibit lawful speech under Article 10(2) only when it is not reasonably practicable to secure that speech. Otherwise a "huge and dangerous loophole" would open in the legislation –

one that universities could exploit, especially in response to activist pressure, to deny protection precisely to those most in need of the law's safeguards.

The OfS has decisively aligned with LUCAF's interpretation. It affirms that if speech is lawful under English law, universities must take all reasonably practicable steps to secure it.

In addition to clarifying key legal principles, the final version of the guidance significantly strengthens and expands the protections for freedom of speech and academic freedom set out in the draft, making abundantly clear that staff and students must not face discipline for expressing lawful views.

One major cause of the current malaise is the rise of politicised appointments within universities, where job descriptions, titles and shortlisting criteria serve as ideological filters – often at the expense of scholarly merit. Encouragingly, the guidance affirms that no job applicant or staff member should be required to affirm a particular viewpoint, although subject competence may rightly be required. It also makes clear that universities must remove any requirement to demonstrate commitment to equality, diversity, and inclusion in promotion processes, and must not contractually oblige staff to subscribe to the imperatives of "social justice."

Full records should be kept to ensure no candidate is disadvantaged on account of their viewpoint, and all panel members should receive training on freedom of speech and academic freedom.

Indeed, the range of activities for which the guidance requires such training is extensive and will include most professional as well as academic staff. This will genuinely constitute a culture shift – and might generate some resentment and pushback. Beyond this, institutions are required to create a free speech code of practice and alert students to this at least once a year.

The examples given in the guidance are pertinent: a foreign government imposing ideological tests; academics accusing Shakespeare of racism or expressing pro-life views in an external forum; or sharing other lawful opinions on a blog. Equally important is the example of the mathematics lecturer who neglects core material and teaches incoherently instead; this is not protected because if it were, this would undermine the core teaching function of a university.

The guidance also makes unequivocally clear that the OfS will not protect Holocaust denial – a claim often made by critics. And it has incorporated points raised in consultations about the importance of institutional neutrality and avoiding bringing pressure to bear on teachers to toe a certain line, including in the context of professional accreditation, which could require some renegotiating of the latter.

"Reputational" concerns for the institution are deemed irrelevant to whether speech should be protected, and strong examples are given of the right of academics to criticise religions regardless of student complaints or institutional mission statements on "inter-faith understanding" – although how this could weather possible new government initiatives on Islamophobia remains to be seen. More widely, academics

should be able to hold whichever views they like on various human groups so long as they do not discriminate against them.

This guidance has the potential to temper dogmatic implementation of the "decolonise the curriculum" movement and the growing influence of anti-rational, post-truth ideologies such as Critical Social Justice and Critical Race Theory. It could end UK academia's decade of adopting contested positions on transgender issues promulgated by bodies such as Athena SWAN and Stonewall. In doing so, it could play a crucial role in restoring public trust in our academic institutions.

The pithy dismissal by the National Union of Students UK that it is "just more nonsense playing into the so-called culture wars" is just a defensive response to the real culture wars in which they and others have been major players.

Ian Pace is professor of music, culture and society at City St George's, University of London. Abhishek Saha is professor of mathematics at Queen Mary, University of London. Both are founder members of the London Universities' Council for Academic Freedom and co-convenors of branches of Academics for Academic Freedom. A longer version of this article, with references to relevant paragraphs in the guidance, can be read here.

Extended version available at https://ianpace.wordpress.com/2025/06/19/the-sea-change-in-academia-through-the-new-office-for-students-guidelines/

The sea-change in academia through the new Office for Students guidelines

his blog article is co-authored by Abhishek Saha and me, and is intended to supplement a piece appearing in Times Higher Education on 20 June 2025, following the issue of the revised guidance on implementation of the Higher Education (Freedom of Speech) Act 2023 by the Office for Students. In particular, because of particular formatting guidelines, Times Higher were unable to include more detailed references to the paragraphs and examples in the OfS guidance, which we have done here.

At the time of writing, the Office for Students has **issued the final version of its guidance** on the implementation of the **Higher Education (Freedom of Speech) Act 2023** (HEFOSA), which was **reintroduced in a somewhat weakened form in January this year**, having been **paused at the eleventh hour** by the new Labour government at the end of July 2024, shortly before it was originally scheduled to come into force on 1 August. During the intervening period, very significant work has been carried out by various academic freedom (AF) organisations, including the two with which both authors are most active: the **London Universities' Council for Academic Freedom** (LUCAF) and **Academics for Academic Freedom** (AFAF). These groups have actively lobbied for the Act's implementation and participated

extensively in the consultation on the draft guidance—about which Ian **published a detailed analysis here** and for which LUCAF **provided this response**.

The **new guidance** is considerably more extensive than the original – 213 rather than 118 clauses, 53 rather than 30 examples. Clearly the OfS have taken account of those with whom they consulted (**they detail the process here**) and the revisions supplement and improve the earlier text.

Article 10 of the European Convention on Human Rights

A debate over one aspect of the **2024 draft guidance** played out in this magazine last year, when **we both responded** to **a piece by academic Naomi Waltham-Smith and lawyer James Murray**. At the heart of the debate was Article 10(2) of the **European Convention on Human Rights**, which concedes that the exercise of freedom, '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 reasons. Waltham-Smith and Murray argued that this had not been adequately accounted for in the draft, leading in their view to too-great protection of lawful speech by the OfS. In our reply, we contended that Article 10(2) sets a **floor rather than a ceiling** for our free speech rights.

In their formal **consultation response to the OfS**, Waltham-Smith and Murray, with Julius Grower, extended their argument, claiming that if an institution may 'permissibly interfere with the speech pursuant to Article 10(2),' then it may prohibit lawful speech without needing to consult HEFOSA. LUCAF's **consultation response**, by contrast, directly challenged this view. We argued that universities may prohibit lawful speech under Article 10(2) only when it is not reasonably practicable to secure that speech under HEFOSA. Otherwise, and if adhering to Waltham-Smith and Murray's position, then a 'huge and dangerous loophole' would open in the legislation—one that universities could exploit, especially in response to activist pressure, to deny protection precisely to those most in need of the law's safeguards.

In the final guidance, the OfS has clearly and decisively aligned with LUCAF's interpretation. [1] It affirms that if speech is lawful under English law (Step 1), universities must take all reasonably practicable steps to secure it (Step 2). Only if such steps are not available may a university restrict lawful speech, and even then only when compatible with Article 10(2), meaning the restriction must be prescribed by law and proportionate.

'Within the law' and factors to determine reasonable practicability

The reigning principle of the guidance is freedom of speech *within the law*, but clarification of what the law says is then necessary. The earlier guidance had been a little vague on what constitutes 'harassment', so this is clarified in detail, first (paragraphs 33-45) with respect to the **Public Order Act 1986**, which refers to 'threatening abusive of insulting words or behaviour' or the distribution or display to another person of some visual material (including writing and signs) which is 'threatening, abusive or insulting'. These conditions do not apply, however, within a dwelling, only a public place. Then (46-49) there is the **Protection from Harassment Act 1997**, which is distinguished from the **Equality Act 2010**. The 1997 act requires

that such conduct be ‘oppressive and unacceptable rather than just unattractive or unreasonable and must be of sufficient seriousness to also amount to a criminal offence’. It also requires that the one carrying out harassment should be aware that it amounts to this, measured by whether ‘a reasonable person in possession of the same information’ would conclude this. When this type of harassment occurs, then the Act does not protect those responsible. One example given is of a targeted social media campaign by one student against another, with repeated comments and tagging in others to encourage them to join in. An institution can then carry out disciplinary action on grounds of a social media policy forbidding unlawful online harassment.

The **Terrorism Act 2020** is also invoked (in paragraphs 50-53 of the guidance), making clear that the Act does not protect support for proscribed organisations or speech encouraging support for such an organisation, including at a meeting. Again there is a requirement that the one doing so is aware of this. Institutions can refuse to host events featuring speakers from proscribed organisations (Ex. 2).

The guidance continues in some detail to consider the factors that are likely or unlikely to affect what is ‘reasonably practicable’. Considerations deemed legitimate include legal and regularly requirements, the need to maintain the essential functions of learning, teaching, research and administration, and physical safety. Those which are not include alignment with a provider’s aims or values, something’s being controversial or offensive, whether the particular viewpoint that the speech expresses is approved of by external or internal groups, and the impact upon reputation of the provider (60-63).

These principal factors are fleshed out in detail, the first especially in terms of the Equality Act 2010. This includes the question of ‘protected characteristics’ (69-71), which include beliefs as defined in a certain manner (an example (Ex. 3) being given of discrimination against a Professor holding gender-critical beliefs), direct and indirect discrimination (72-76) (which requires actions which will disadvantage members of a group who share a protected characteristic, but not including expression of views on theological grounds, so long as these do not lead to actual discrimination (77).

Harassment is also considered in the context of the Equality Act, about action which ‘has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person related to one or more of the person’s relevant protected characteristics’. This requires consideration of the perception of the one allegedly harassed, other circumstances, and ‘whether it is reasonable for the conduct to have that effect’. Ex. 4 gives the example of a lecturer targeting a gay student. ‘Victimisation’ is also detailed in terms of a ‘protected act’ leading to an individual experiencing a detriment. Ex. 5 gives an complicated example whereby manager B is alleged to be sexually harassing employee C, witnessed by Academic A, leading to C bringing a complaint against B and A agreeing to be a witness. A further manager D tells A they will face detriments if they continue to support C. With respect to the hypothetical thread of refusing research leave for A, it is said this should only be judged on its own merits. Furthermore, there is the public sector equality duty (PSED) (90-95) contained in the Equality Act, to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations between those with protected characteristics and others. Ex. 6

cites pressure on a Jewish student to remove a mezuzah from their door, in light of other students finding this provocative. This is said not to be necessary or proportionate, nor take into account the student's right to religious expression.

There is then the Prevent duty (96-97), requiring 'due regard' to stop some being drawn into terrorism, but still emphasising the need to ensure FoS and AF. Harassment and sexual misconduct are also dealt with under the OfS's own condition E6 (98-105), emphasising the compatibility between anti-bullying and anti-harassment policies and protecting freedom of speech, but stressing the important of considering the latter. Examples are given (Exx. 9, 10) of stirring up racial hatred, or making verbal or physical threats of violence, both of which constitute harassment.

Lastly for this section, 'essential functions' (106-119) are defined specifically (as indicated above, teaching, learning, research and administration. Steps taken to protect freedom of speech which fundamentally interfere with these are not considered 'reasonably practicable'. Examples are given (Exx. 11, 12, 13) including disrupting classrooms or stopping ordinary activities through encampments.

Political discrimination

In addition to clarifying key legal principles, the final version of the OfS guidance significantly strengthens and expands the protections for freedom of speech (FoS) and academic freedom (AF) set out in the draft, making abundantly clear that staff and students must not face discipline for expressing lawful views.

One major cause of the current malaise is the rise of politicised appointments, where job descriptions, titles, and shortlisting criteria serve as ideological filters—often at the expense of scholarly merit. Encouragingly, paragraphs 138–153 directly address this in relation to appointments, promotions, and dismissals. No applicant or staff member should be required to affirm a particular viewpoint, though subject competence may rightly be required (139, 147, 151). Full records should be kept to ensure no candidate is disadvantaged on FoS or AF grounds (140, 148, 152), and all panel members should receive FoS/AF training (141, 149, 153). Staff and students must not face discipline for expressing lawful views (143, 145).

The examples given are pertinent: a foreign government imposing ideological tests; academics accusing Shakespeare of racism; expressing pro-life views; or sharing lawful opinions on a blog (Exx. 28, 29, 31). Equally important is Example 30, involving a mathematics lecturer who neglects core material and teaches incoherently instead; this is not protected, as doing so would undermine the core teaching function of a university.

EDI and other identity issues

The guidance also addresses the misuse of equality, diversity and inclusion (EDI) in promotion processes – such as requiring candidates to demonstrate a commitment to EDI principles – which must be scrapped, as such requirements risk suppressing legitimate and lawful criticism (169, 192, 209, Ex. 32**). Alumni for Free Speech have traced** the mushrooming of an EDI industry across institutions, with far greater expenditure than on free speech, while **the Committee for Academic Freedom have**

indicated that EDI-based recruitment policies may be illegal. This guidance should finally put an end to such practices, and to contracts requiring upholding of 'social justice' (Ex. 34) or rules prohibiting 'misgendering' (Ex. 35). It is however made unequivocally clear that the OfS will not protect Holocaust denial (204)—a point often raised by critics.

Wider aspects of the guidance

The guidance has incorporated points raised in consultations about institutional neutrality and consequent pressure brought to bear on teachers, including in the context of professional accreditation (115-119, 207, Exx. 51-52), which may require some renegotiating of the latter.

'Reputational' concerns for the institution are deemed irrelevant to whether speech should be protected (62, 123), and strong examples (Exx. 15, 20) of the right of academics to criticise religions regardless of student complaints, mission statements on 'inter-faith understanding' and the like, though how this may weather possible new government initiatives on Islamophobia remains to be seen.

More widely, academics should be able to hold whichever views they like on various human groups so long as they do not discriminate against them (114). Many of all persuasions should welcome guidance against pressure from foreign governments to silence academics drawing attention to their human rights abuses (62, 123, Exx. 21, 25), or criticising employment practices or provision of accommodation and the like for students (Exx. 22, 23). Submissions relating to research ethics are reflected (196), to ensure there is no unnecessary suppression, as was flagged up by the Sullivan Review.

The range of activities for which the guidance requires training in FoS/AF (209) is extensive and will include most professional as well as academic staff. This will likely have the most immediate impact upon those currently working in universities, and will genuinely constitute a 'culture shift' (and may also generate some resentment and pushback). Beyond, institutions are required to create a free speech code of practice and alert students to this at least once a year, ideally published prominently (167-177).

This guidance has the potential to bring to an end the period in UK academia since 2015, marked by the adoption of contested positions on transgender issues by bodies such as Athena SWAN and Stonewall, and the growth of the 'decolonise the curriculum' movement. Academic culture grew increasingly volatile and censorious, particularly following the global reaction to the killing of George Floyd, further intensified by lockdown conditions and the growing influence of anti-rational, post-truth ideologies such as Critical Social Justice and Critical Race Theory. HEFOSA was introduced in response to this increasingly speech-restrictive environment, and its proper implementation could play a crucial role in restoring public trust in our academic institutions.

The pithy dismissal by the National Union of Students UK that this is 'just more nonsense playing into the so-called "culture wars"' is just a defensive response to real culture wars in which they and others have been major players.

[1] It should be noted here that while the guidance uses the term ‘ceiling’, this refers to *restrictions* rather than *rights*, so is equivalent to a floor on rights.

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