

Higher Education (Freedom of Speech) Bill

December 2022

WONKHE



Free speech bill

- Third reading later today

Report stage last week

- Non-disclosure agreements re complaints about sexual abuse, sexual harassment or sexual misconduct, or (wider) bullying or harassment
- Statutory tort – academic freedom v freedom of speech; three options, Lords went with abolition



Duty to take steps

- The governing body of a registered higher education provider must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to
 - secure freedom of speech within the law for staff of the provider, members of the provider, students of the provider, and visiting speakers.
 - secure that, where a person applies to become a member of academic staff of the provider, the person is not adversely affected in relation to the application because they have exercised their academic freedom
 - “academic freedom”, in relation to academic staff at a registered higher education provider, means their freedom within the law— to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of being adversely affected in any of the ways described
- (reasonably practicable = balancing duties esp EA2010 and the PSED, HRA etc)

Code of practice

- The provider's values relating to freedom of speech and an explanation of how those values uphold freedom of speech
- The procedures to be followed by staff and students of the provider and any students' union for students at the provider in connection with the organisation of—
 - (i) meetings which are to be held on the provider's premises and which fall within any class of meeting specified in the code, and
 - (ii) other activities which are to take place on those premises and which fall within any class of activity so specified,
- the conduct required of such persons in connection with any such meeting or activity, and
- the criteria to be used by the provider in making decisions about whether to allow the use of premises and on what terms (which must include its criteria for determining whether there are exceptional circumstances).
- The governing body of a registered higher education provider must take the steps that are reasonably practicable for it to take including where appropriate the initiation of disciplinary measures) in order to secure compliance with its code of practice.

Duty to promote

Duty to promote the importance of freedom of speech and academic freedom

- The governing body of a registered higher education provider must promote the importance of freedom of speech within the law, and academic freedom for academic staff of registered higher education providers and their constituent institutions, in the provision of higher education.

Students' unions

- Approved fee cap, but not SUs of constituent colleges
 - Identical but separate duty re securing FoS inc CoP
- Plus
- affiliation to the students' union is not denied to any student society on grounds specified in subsection (4)
 - (a) in relation to an individual, their ideas or opinions
 - (b) in relation to a society or other body, its policy or objectives or the ideas or opinions of any of its members.
 - the union's support and funding for events and activities to which the duties in section A5 are relevant

OfS

- Condition of registration
- Complaints scheme (exhaust internally first)
- Director
- Register of SUs
- Overseas funding monitoring

What are we left with?

- Director for Freedom of Speech and Academic Freedom
- An NSS question (the least of the sector's problems)
- Complaints scheme that overlaps that of the OIA (see-saw)
- Duties directly on students' unions (multiple CoPs)
- Academic freedom not linked to field of expertise
- Foreign funding monitoring
- Individuals and bodies not required to bear security costs

Questions

- Joint codes?
- Duty to promote
- Disciplinary initiation
- Balance or freedom – funding
- Testing times
- Complaints flowcharts and r'ship with OIA
- Franchise and partners

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