



# Joint Committee on Human Rights

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From Rt Hon Harriet Harman MP, Chair

**Rt Hon Gavin Williamson MP**  
Secretary of State for Education

By email.

24 June 2021

Dear Gavin

I am writing following the introduction of the Higher Education (Freedom of Speech) Bill. Whilst we support the principle set out in the Bill, that lawful freedom of speech in universities is vital and must be protected, we have some questions and concerns about the detail of the legislation.

## **Our 2018 Report**

As you know, the Joint Committee on Human Rights conducted an inquiry into freedom of expression in universities in 2017-18. Our report reaffirmed that “the right to free speech includes the right to say things which, though lawful, others may find offensive.”<sup>1</sup> We concluded that “unless it is unlawful, speech should normally be allowed” but recognised that completely unfettered free speech can infringe on the rights of others.<sup>2</sup> As well as receiving oral and written evidence, we conducted a student survey, held a web forum and commissioned research to help us come to our conclusions.

- We were concerned about overly bureaucratic processes for inviting speakers acting as a deterrent both to students who wanted to invite speakers, and for speakers to accept invitations.
- We were concerned that Charity Commission regulation of (and guidance to) student unions did not sufficiently recognise the importance of freedom of speech in a university setting.
- We heard fears that the Prevent Duty, specifically a lack of clarity around what constituted ‘extremism’, created a “fear of being reported for organising or attending an event” as well as “increased levels of bureaucracy”.<sup>3</sup> We called for a review of the Prevent Duty to include an analysis of its impact on universities. We note that a review has been announced and hope it will address this.

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<sup>1</sup> Joint Committee on Human Rights, Fourth Report of Session 2017–19, [Freedom of Speech in Universities](#), HC 589, HL Paper 111, para 54.

<sup>2</sup> Ibid

<sup>3</sup> Ibid summary

- There should be a climate of inclusion at universities and racist, sexist, homophobic, transphobic or xenophobic events, even where they fall short of breaching the law can impact on the education of minorities of students who are from those groups.
- We did not propose or support any significant legislative changes in this area.

## **The Higher Education (Freedom of Expression) Bill**

### Risk to free speech

While most clauses of the Bill will have little effect beyond reasserting the need to secure freedom of expression, which already appears in the duty on higher education providers in section 43 of the Education (No. 2) Act 1986, we have questions and concerns about some clauses of the Bill, particularly those that could actually restrict freedom of speech rather than encourage it.

In particular:

- Clause 3 would allow a ‘person’ to bring civil proceedings against a higher education provider or student union which does not meet its obligations around free speech. It appears that this ‘person’ need not have been personally affected and could, for example, simply have heard about an incident on social media. It also appears that a person would be able to bring civil proceedings without having suffered any material loss. Is this interpretation correct? Could you explain the reasoning behind this clause?
- Events have been cancelled due to security concerns after anonymous threats on social media, which may or may not have come from students. Is there a risk that the complaints scheme and possibility of civil action could see HEPs and SUs being held accountable for circumstances beyond their control?
- If higher education providers and student unions risk being sanctioned if an event has to be cancelled, then is it not possible that they may decide not to invite controversial speakers at all?

### Interaction with other legal obligations

We are concerned that though the new Bill attempts to simplify the situation by guaranteeing ‘freedom of speech within the law’, it leaves central issues unresolved. “Freedom of speech within the law” is not a straightforward standard, and unfettered free speech can infringe on other rights. This was demonstrated by the contradictory statements from Ministers around whether this Bill would protect Holocaust deniers.<sup>4</sup> Holocaust denial sometimes falls within the law and sometime does not. There are grounds (you referred to the Equality Act 2010) on which HEPs or SUs can refuse to

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<sup>4</sup> No 10 slaps down universities minister for saying ‘Free Speech Bill’ will allow Holocaust deniers to speak’, *The Independent*, (13 May 2021): [No 10 slaps down universities minister for saying ‘Free Speech Bill’ will allow Holocaust deniers to speak | The Independent](#); HC Deb, 13 May 2021, [col 304](#).

provide Holocaust denial with a platform to protect their (in this case Jewish) students, but such views are not necessarily illegal.

Higher education providers and student unions must strike a balance between different laws and regulations when deciding who to provide with a platform. This may include the criminal law governing 'hate speech', the Equality Act 2010, employment law, the Human Rights Act 1998, and the Prevent duty under the Counter-Terrorism and Security Act 2015. While the Bill reasserts the importance of freedom of expression, it does not make the other obligations any less binding, it simply means HEPs and SUs face harsher sanction if they get the balance wrong.

The University of Essex recently commissioned an independent review into the cancellation of one speaking event and the decision to rescind an invitation to another speaker- on both occasions due to the speaker's views on gender identity. The report, published on 18 May 2021, found that these decisions were unlawful and recommended that apologies be made. It highlighted that some of the University's policies had misunderstood and misrepresented equalities law, which appeared to give University members the impression that gender critical academics seeking to exercise their rights to free speech could be excluded from the institution.<sup>5</sup> The issue of free speech in discussions on gender identity has also recently come before the Employment Appeal Tribunal in the case of *Forstater v CGD Europe*.<sup>6</sup>

- Would ensuring that universities are properly informed on the current law around freedom of expression and how this interacts with other legal obligations, including criminal law and equalities law, have a greater effect on protecting free speech than additional legislation? Do you have any plans to ensure that university guidance properly reflects the law?

### Academic Freedom

Clause 1 (6) of the Bill states that protections for academic freedom will only extend to the academic's 'field of expertise', but academic freedom is only a subset of the more general protection in para 2 of 'freedom of speech within the law' which also applies to 'staff of the provider'.

- What is the effect of both these clauses in tandem – would an academic talking outside of their 'field of expertise' not be protected by the obligation to secure 'freedom of speech within the law'?

### OFS role

The Charity Commission updated their guidance for student unions following our report, placing greater emphasis on the right to freedom of expression in universities - largely addressing our concerns. As the command paper noted, we found

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<sup>5</sup> University of Essex, 'Review of the circumstances resulting in and arising from the cancellation of the Centre for Criminology seminar on Trans Rights, Imprisonment and the Criminal Justice System, scheduled to take place on 5 December 2019, and the arrangements for speaker invitations to the Holocaust Memorial Week event on the State of Antisemitism Today, scheduled for 30 January [2020](#)'

<sup>6</sup> *Forstater v CGD Europe* [2021] 6 WLUK 104

regulatory complexity to have been a factor restricting free speech: “bureaucracy is not the best way to secure freedom.”<sup>7</sup>

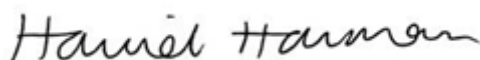
- Why does the Government believe that adding another regulator will lead to greater clarity rather than more confusion?
- Under the complaints scheme in Clause 7, the Office for Students would be required to decide if free speech complaints against student unions or higher education providers are justified. What support, clarity, and safeguards will there be?
- Will there be a means of appeal for student unions or higher education providers who disagree with a decision of the Office for Students?
- How does the Bill ensure that universities and academic courses are protected from interference from Government?

### Funding

When, on occasion, protests, whether by students or non-students, have led to events being cancelled and freedom of expression curtailed, it is not always clear whether this is because the protestors stop the event from happening or because the university authorities judge that they do not have enough resources to ensure the safety of everyone involved. The press announcement of the Bill refers to an incident where “Bristol Middle East Forum was charged almost £500 in security costs to invite the Israeli Ambassador to speak at an event”.<sup>8</sup> Contentious, but legal, speakers will sometimes attract counter-protest, and those protestors (while refraining from intimidation and harassment) are exercising their right to freedom of expression.

- If security is needed to avoid events being cancelled, will higher education providers and student unions be adequately funded to provide this? Who should pay in these circumstances?

Yours sincerely



**Rt Hon Harriet Harman MP**  
Chair of the Joint Committee on Human Rights

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<sup>7</sup> Joint Committee on Human Rights, Fourth Report of Session 2017–19, [Freedom of Speech in Universities](#), HC 589, HL Paper 111, summary.

<sup>8</sup> Department for Education and Office for Students, *Press Release*, (12 May 2021): [Universities to comply with free speech duties or face sanctions](#).