

## Written evidence from Nigel Biggar et al (FOE0019)

### *A McDonald Centre and Legatum Institute briefing paper*

#### **Introduction**

- The security of freedom of speech and academic teaching and research in universities is currently an issue of acute international concern, especially in the Anglophone world. Given the worldwide prestige of British higher education, the UK Government has an opportunity to offer global leadership in addressing it.
- There is hard evidence that the free speech and academic freedom of significant minorities of university students and lecturers in the UK are being inhibited. Those affected range from Conservative voters on the Right, through Leave supporters on both Right and Left, to feminist critics of transgender ideology on the Left.
- The 2017 and 2018 reports by the Policy Institute at King's College London and by the parliamentary Joint Committee on Human Rights underestimate the scale and seriousness of the problem.
- Fundamentally, what is at issue is the preservation and promotion of the public good of universities, namely, as properly liberal institutions that educate citizens to voice, entertain, and discuss diverse ideas and views, and to do so in a rational and responsible manner, so that light might prevail rather than heat. As British society has become more politically and culturally polarised, the role of universities in providing a forum for measured deliberation and critical thought has never been more important.

#### **4. What Government could do**

- 4.1 The Government could begin by ensuring that **the Senior Team and Board of the Office for Students (OfS)** contain sufficient political diversity to allow appreciation of the nature and scale of the problem.
- 4.2 The OfS is already required by statute to have regard to public interest governance conditions, including the need for higher education institutions to ensure academic freedom, as well as free speech. According to the 2018 JCHR report, the Department of Education has said that the OfS would monitor compliance with the public interest principle of securing freedom of speech and would sanction non-compliance (s. 27). Indeed, it said that “[t]he Government expects OfS to take an interventionist approach to monitoring freedom of speech” (s. 97). In its own response to the report the Government accepted Recommendation 14, according to which the OfS should:
  - (1) have “an *accessible means of feedback for students to report incidents* of intimidation and issues related to free speech”, on which the OfS could act as an arbiter between the students, student unions and universities;
  - (2) *visit universities* where the right to freedom of speech seems insecure, to ensure that both they and student unions are respecting that right; and
  - (3) *report annually* on free speech in universities, including naming when universities have been non-compliant with their responsibility to secure

free speech, under the Education Act 1986 (JCHR, *Freedom of Speech in Universities: Responses*, Appendix 1: Government Response, pp. 16-17). It is not clear that the OfS is doing any of these things. For example, it appears to invite merely generic ‘notifications’ about issues, and to use them for monitoring purposes only: <https://www.officeforstudents.org.uk/contact/complaints-and-notifications/>. In contrast, the Information Commissioner’s Office provides a much more accessible, step-by-step procedure: <https://ico.org.uk/make-a-complaint/>.

Among the things that the Government could readily do are:

- (1) *commission a review of the OfS’s performance to date*; in order to
- (2) *ensure that the OfS is living up to its promise* with regard to defending and promoting free speech and academic freedom; and, to that end,
- (3) *ensure that the composition of the OfS’s senior team, board, and student panel is characterised by sufficient political diversity* to be appropriately representative of relevant internal and external interests.
- (4) encourage academics to lobby their universities to *align their interpretation of the Equality Act 2010 with the law itself* by having the OfS publicly draw the evidence of non-alignment to the attention of university authorities.

4.3 The JCHR report observed that the **Charity Commission’s** impact on the freedom of speech of student union officers “emerged as a significant issue” in its inquiry (s. 80); that the Commission’s 2013 guidance, “Protecting charities from harm”, encourages student unions to take a risk-averse approach when hosting events involving ‘controversial’ speakers (s. 82); and that the Commission had told the JCHR that it would “reassess its approach” (s. 85). The report also recommended that Government should *consider whether the OfS should take over the regulation of student unions from the Charity Commission* (Conclusion and Recommendation 15). Government could easily take stock of what has happened on that front and move things further along, if need be.

- [4.4]
- 4.5 Two influential lobby groups—**Advance HE and Stonewall**—actively discourage universities from supporting free speech. Both advocate a commitment to equality that goes beyond existing law and denies academic freedom. Advance HE offers accreditation to universities wishing to sign up to its ‘equality charters’ on gender (Athena Swan) and race. Stonewall operates a ‘Diversity Champions’ scheme. These schemes all seek to control speech and attitudes. Advance HE’s model ‘trans equality policy statement’ for university departments reads: “The curriculum will be checked to ensure that it does not rely on or reinforce stereotypical assumptions about trans people, and that it contains material that positively represents trans people and trans lives”. Stonewall’s guide, *Delivering LGBT-inclusive higher education*, forbids its Diversity Champions from inviting ‘anti-LGBT’ speakers. These are defined as those who deny “that trans people exist as the gender they say they are”. Commitment to these schemes requires institutions to deny debate on definitions of gender and sex, and to reject existing legal definitions of both. Affiliated institutions must demonstrate their commitment to equality through regular assessments and by creating bureaucratic structures to promote equality and diversity at the expense of freedom of speech. As a result, most universities fund equality and diversity units that are solely

or primarily concerned with upholding the policies of Advance HE and Stonewall, rather than with upholding existing law on equality and on academic freedom.

- Universities are keen to sign up to Advance HE's and Stonewall's initiatives. Membership signals their commitment to equality and brings financial reward. Many funding bodies will now only fund university departments with an Athena Swan award while others strongly encourage membership of Athena Swan and/or Stonewall Diversity Champions. These bodies include the government-funded UK Research Innovation (UKRI), which is meant to base its funding decisions on academic excellence (<https://www.ukri.org/files/legacy/skills/equalitystatement-pdf/>).  
Government could address this by:
  - (1) **refusing to fund** organisations (such as UKRI) that require or encourage membership of the schemes above; and
  - (2) **ceasing to affiliate** with Stonewall and/or Advance HE (via the Ministry of Education, which is currently a Stonewall Diversity Champion);
  - (3) **requiring universities to give priority to the promotion and sustaining of academic freedom** over initiatives that are not concerned with their core mission.
  
- 4.6 The OfS could **commission a task force to review and assess compliance with the Education Act (no. 2) 1986, s. 43** by universities throughout the UK. Alternatively, an ad hoc task force could be established, which would report directly to the Minister of State for Universities.
  
- 4.7 The OfS could oblige universities:
  - (1) **to have an Academic Freedom Code of Practice**, accompanied by a transparent structure for its implementation and oversight, and a policy statement that descends from abstractions to spell out the (high) threshold required to justify the abridgement of professional academics' free speech and freedom to design curricula and determine the content of reading lists.
  - (2) **to report on their internal complaints procedures, and on decisions rendered in internal hearings**. At the moment, social media complaints against conservative or non-conformist academics often move university authorities immediately to caution, and sometimes suspend, the academics in question, creating an instant chilling effect. Moreover, this empowers external agitators to bombard university accounts with complaints, and radical staff and students to agitate from within.
  - (3) **to set high protective thresholds**, to prevent complaints from being acted upon unless there is evidence of a violation severe enough to override free speech protections.
  - (4) **to affirm the priority of rights to free speech and academic freedom** over policies on bringing the university into disrepute and policies on 'work and study'.
  
- 4.8 The OfS could **establish an appeal process** beyond any particular university for free speech cases.

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