

Freedom of speech in higher education

Podcast transcript

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David Bass, Director of EDI, Advance HE

Adam Dawkins, University of York

Key

+ **David Bass:** DB (host)

+ **Adam Dawkins:** AD

Transcript

DB: Welcome to Advance HE's podcast on governance and freedom of speech. Advance HE have been working with the sector on freedom of speech and academic freedom and EDI over the past 18 months. We've held roundtables with UUK and GuildHE. That's resulted in a sector statement. UUK, GuildHE, NUS, CUC and Advance HE all signed a proactive approach of freedom of speech and EDI. We want to underline that these are both fundamental values of higher education and really, that they should be progressed together.

Obviously, we have the Freedom of Speech bill that is likely to create this director of free speech role with the OFS. It's going to give it new regulatory powers. We want to be talking about this to the sector really openly and with different groups and with different ways.

We had our Governance Conference recently and we had a panel on freedom of speech and governance. We heard from Smita Jamdar, Roberta Blackman-Woods, Janet Legrand, but unfortunately, Adam Dawkins from the University of York was ill and he wasn't able to attend.

So Roberta has written up some of her thoughts in a blog for Advance HE. That will be on our website, but as another part of that series, we wanted to provide a space for Adam to come and share his experience and discuss his views with us as well. We think he's got a lot to add to this conversation. We're really pleased that he's able to join us and have this chat and share his thinking with you.

So Adam, welcome and can you please introduce yourself to our audience?

AD: Thanks very much, David. I'm delighted to be here today, having this conversation, and it was a shame I wasn't there in November.

So just a little bit about myself. I'm University Secretary at the University of York, a job I've been doing for about three years now, but I suppose in total, I've supported and advised three university governing bodies and five chairs over the last fifteen years. I'm also just about to finish a second term on the board of a students' union.

So, hopefully, I'll bring a range of perspectives on free speech and academic freedom, particularly as they interface with governing bodies, and also some practical experience as an insight. Part of my role as university secretary is to work with other colleagues, including our academic registrar, other professional support colleagues, the students' unions, for

example, to interpret and uphold regulation in relation to free speech and speakers on campus at the university.

So I hope that's an introduction to myself. I suppose a little bit of a sense, it does feel like free speech and academic freedom are literally on the agenda of exec boards and governing bodies more prominently and frequently than they were in the past. I think there are probably a number of reasons for that. Clearly, there's government policy. This is seen as a government priority in many senses, and that universities are not operating optimally in this space according to government.

It's obviously been a key piece of the prevent duty as well, which has been in place since 2015, and of course, for the last two years, we've had the HE free speech bill, which is reaching its final courses as we know. But I suppose also as well, there has been an upsurge in global campaigning around many aspects of human rights, Black Lives Matter, climate emergency and a general intense location of fraught debates around identity politics, which have led to highly polarised discussions. So I do think the context is shifting as well.

DB: Thank you, Adam. Our universities champion free speech. They also need to make sure that they're investing in good relations between different groups on campus, that they're proactive in creating a quality of opportunity. That includes a lot of the complex and controversial topics that come up when we talk about freedom of speech. We need to make sure that everyone that comes into our campuses, our spaces is treated with dignity and tolerance and civility. But particularly for those who marginalise groups, getting that balance right is rarely straightforward.

From your perspective and your experience working with the boards, how do we support boards in our institutions in taking forwards proactive approaches to both a quality and diversity and freedom of speech and academic freedom? How do we foster confidence in what is undeniably a highly complex and very dynamic area?

AD: Thanks, I'm really pleased you mentioned proactive there, David, because that is one of the key features of the HE free speech bill as well. One of the changes is that it raises the bar for universities to not simply ensure that free speech and academic freedom is secured on campus, but that institutions should be actively promoting those rights. So that's the kind of free speech, academic freedom side.

As you've said, to align that and reconcile it with equality duties, it's how we then advance lawful free speech, but also foster good relations between groups on campus. I think that's absolutely critical.

So I think one way to foster confidence amongst the governing body members is to secure their backing to institutional charters, as we've seen. You mentioned the joint charter with Advance HE, CUC, GuildHE, institutions' own value statements, because all of this should actually spin from institutions, value statements, rather than it being seen as a regulatory requirement as we know it's going to be increasingly. But charters and statements are

simply words. So it's very easy for us to talk about that balancing act in a charter or in a value statement, but how you enact that in practice is really important.

So I think it's really key that we're honest and upfront with our governing bodies, but there are tensions and debates that the upholding of free speech and academic freedom will naturally bring, and that that's an inevitable and expected outcome of upholding free speech as well.

So we could talk about things like conflict of rights. So conflicts of rights is that situation whereby one group has its free speech enacted which inevitably means that another group will have its free speech and rights interfered with to some extent. That conflicts with rights is an inevitability of free speech and academic freedom. I think we have to accept that and that, at best, we have a zero-sum game scenario on our hands here. So I think that's really important to stress.

I suppose finally, that no event that's held on campus, so if we have a controversial speaker or topic, no single event can encompass all perspectives from an EDI angle. Whilst theoretically it would be great if we had a platform where we had a balance of opposing opinions, for example, or indeed different opinions were garnered through the audience, but that's not always the case on the ground when events are held.

Often, institutions will seek to support and facilitate that, but it's often not how it plays out. So it's important that the protection of rights and the balance of rights is much broader than any single event, and often we become so focussed on the event that's being risk assessed and the event that's proceeding that we don't think about it more broadly in terms of the fallout from an event and, if you like, the aftercare that's perhaps needed when an event is held. So ensure that all groups feel supported when lawful free speech is being expressed.

DB: Adam, I think that is such a critical point here. A lot of the tensions, the specific incidents that relate to freedom of speech in our institutions are about equality and diversity. We can't talk about freedom of speech or academic freedom without talking about our approach to EDI.

One of the reasons I think we often see that framing that you've discussed of EDI and freedom of speech as being intention is that we talk about these individual cases, and perhaps we're too often led by the media's focus and narrative in some instances. I think this is something that governing bodies should be thinking about. The framing and strategic decision-making, the direction around freedom of speech and how we ensure that it fits with our institutional values, that matters a lot.

So undeniably, institutions need to focus on individual cases. They will really struggle with some of the balancing decisions, and as you've said, there are going to be times where those decisions are zero-sum. There are going to be specific winners and losers under certain circumstances.

We've discussed this and I've had some conversations with some colleagues as well, and Richard Stewart's been really useful in thinking this through. I think we need to be more upfront about the zero-sum nature of some of the decisions in these cases, and that institutions really can't avoid them. But part of how we do that well and part of how we help people understand and live with those decisions is being clearer about our values and about our overall direction and approach. We have the Equality Act. We have this legislation around free speech, and fundamentally, these are positive-sum frameworks. These are laws and frameworks that are designed to protect and maximise the rights of everybody.

So, yes, we do have to make some zero-sum decisions, but it's within the context and it's in service of a positive-sum approach and working to progress equality for those that have been marginalised across our campuses, and actually to foster good relations. That, for me, feels like a really important point that's gotten lost in some of our conversations here, but Adam, I'm interested from your perspective. What does this look like on the ground at the institutions that you've worked at?

AD: Thanks, David, and I absolutely agree with you that EDI and free speech and academic freedom intersect. So in some cases, it's really obvious when we're talking about, say, the experiences of the prevent duty on racialised minorities or tensions around trans exclusion and gender critical perspectives, and even debates around climate change and its disproportionate impact on marginal groups in society. So I absolutely agree. We have to look at these hand in hand.

So on the ground, I think it's really important to say that in my experience, institutions work on the default presumption that academic freedom will be upheld in teaching and research, and that free speech will proceed in institutions and events will go ahead. We don't start off on the point of trying to actually stop an event happening, even if the notice given to hold an event, which requires a risk assessment, safety considerations and other conditions perhaps to be put in place. Institutions do not as a rule work on the basis of trying to stop events, and I do think there has been a bit of a caricature of cancel culture, as you say. I think it's really important that we correct that because that isn't the reality. That certainly isn't my experience and colleagues' experience in the three universities I've worked in in the last fifteen years in this area.

So that's a starting point, I suppose. I think on the ground, the partnering and relationships is absolutely key. So the quality of the relationships and working with not just professional support colleagues, and that's absolutely valuable, but for example, working with the students' union, often sensitive events are escalated via the students' union because they're often generated by student societies, as you would expect and as you would hope for. But it's really important the quality of those relationships works, and that you can actually undertake meaningful and joined up risk assessments. So that partnering piece is really crucial. I think we could do more to improve that and I'll talk a little bit about that perhaps later on if we get an opportunity.

We do need to locate all of this in the context of values and the principles of fairness and balance. Having clear policy and procedures is absolutely right and points of internal arbitration if we need them. I think that's really important, but it's probably not just about professional support staff being factored into risk assessments around a sensitive speaker or topic being aired on campus. So whilst staff and student wellbeing, equality and diversion and inclusion team, safety and security and communications and media colleagues are all key, it's really important we bring more academic staff into the conversation, including those that have expertise in the topics of contention, and indeed those students who are impacted. I think it's really important we bring those into the conversation.

Now, again, that's easier said than done when there may only be a short period in which to risk assess an event to support it going ahead. It is really important we do that, and then I suppose finally, I think what could be helpful – and I do say 'could' because there is a word of caution here – the role of a new director for free speech and academic freedom which we will see inaugurated once the HE freedom of speech bill becomes legislation, that could be really helpful if it isn't framed as a monitoring and punitive function, and it isn't presented as there to essentially police institutions that are, by default, failing in our duties around free speech. Let's not work on that assumption. I think if the role is framed as actually an arbitrator and an ombudsman role, like we see with other appeal mechanisms shall we say, I think that will be much more fruitful than the way it's perhaps currently presented in the HE bill.

So I really hope that when that role is appointed to ... and let's remember, that role is going to be on the board of the OFS as well. It's going to be an influential role. Let's hope it is actually framed in a sensitive way that supports dialogue and facilitates dialogue and the sharing of good practice with institutions. I think that'll be really crucial. So that's a positive opportunity if we can get that right.

DB: Thank you, Adam. We've jumped right into the challenges and complexity in this topic, but having outlined why this is so important and why it's difficult, let's step back a little bit. How would you define and clarify the role of the governing body, the specific role of a university board in relation to freedom of speech and academic freedom?

AD: Thanks, David. It hasn't really changed from the 1986 and 1998 legislation, apart from the HE free speech bill talking about the governing body needing to proactively champion free speech and academic freedom. The existing legislation already asks that that was ensured and that it's the governing body's responsibility and accountability to do so.

So this does go right to the top. The governing body does have that final accountability. So it is important that it is informed, that it has proper balanced oversight where honest conversations are held with a governing body about the challenges and some of the zero-sum gains that we were talking about earlier.

Obviously, the governing bodies should ultimately be signing off policy and codes of practice in this space because it sets the tone and the values for free speech and academic freedom to flourish. And indeed, it's there to take assurance that there are effective systems in place,

whether that's via senates, via audit and risk committees and principally, from executive boards.

So it is there to provide critical challenge and to ensure that the right things have been put in place. Clearly, it's not there to do the doing. It's not there to be doing the risk assessment and it's very important that that's a broad tenet of governance anyway. But I'd also say the governing body is there to support the institution in difficult decisions that need to be taken, providing the institution has acted effectively, in good faith, complying with the legislation and the spirit of it. And indeed balancing that with the public sector equality duty to which it's also bound, in the context of institutional values as well, then I think it's really important the governing body actually has institutions' backs here as well.

It can sometimes feel like a lonely space when there is criticism around events taking place. I do think it's important that that understanding and backing is there because we don't see the backing from the regulator at present. I think that's where the sharing of good practice is really important as well, so that all institutions can benefit from how others are doing this and how they're doing it well.

DB: That's really helpful. Thank you, Adam. Let's build on that a little bit, and can you talk to me about the particular challenges for governors, individually and collectively then in undertaking this role?

AD: Yes, sure. I think firstly, we don't want to deter a pipeline of talent joining our governing bodies. For the most part, our independent council members are lay board members, on the governing body, are volunteers, they are bringing their time and expertise to the board. We don't want such topics to be so incendiary and devise that it actually deters individuals from putting themselves forward. Whilst it's quite right that governing bodies are under scrutiny because of the legal obligations in this very important area, we want to know that they feel that they can be supported and that they can take the right decisions, without always the glare of public and media scrutiny, which appears to sometimes be the case, particularly in popular media in this space.

To support them in challenges, we really need to help governing bodies understand the ideological complexity in this arena. We should do that by drawing on academic colleagues more, as I said earlier, to help governing bodies understand that we can't just expect the student representatives that sit on our governing bodies or indeed our senate nominees, for example, to provide that academic and student-based perspective on very complex matters.

We need to bring more people into that discussion, so that York will start – and many other institutions are doing this. You know, we are bringing together our senates and our council to have joint discussions in this area because it's so important that there is a shared understanding of the rights, responsibilities and how this fits into institutional culture and values. I think it's important there is that shared understanding.

Then finally, we've mentioned this already, but recognising and being comfortable to some extent with the fact that there is going to be some degree of fallout from, for example, a sensitive speaker talking about a controversial topic coming onto campus. There will be some degree of fallout, and I'm not saying that in that we should be complacent with that, but that is par for the course of debate and enquiry and upholding lawful free speech. We have to be comfortable and be able to tolerate that and I think if we can get governing bodies comfortable in that space, I think that will be really supportive for institutions and members of the university community more widely.

DB: Adam, we've just kind of talked about and outlined the complexity of this topic and the challenges that our governing bodies face. You've touched on how we understand and mitigate risk. We've talked about critical incidents. We've talked about institutional values, stewardship of culture, how governing bodies scrutinise and oversee those decisions. We've talked about some of the new regulation that's coming in and the new director of free speech role.

Let's bring this back to a positive place and talk about how can institutions improve their practice? How can they improve how they promote and uphold free speech in practice?

AD: Thanks, David. Absolutely. Whilst I think institutions as a whole are doing a good job in this space, I do think there are areas for improvement and to learn from each other. I think one area is academic freedom. I think we can all be guilty of conflating free speech and academic freedom as if they're exactly the same activity or the same right, and they're not. I think it's important that we recognise that academic freedom relates specifically to academic staff and indeed to the rights and obligations of academic staff. Those areas that protect academic staff in voicing their academic freedom, but also the obligations and duties that go with that.

I think that needs to be set out more clearly. That institutions need to do that in conjunction with academic colleagues and the academic community as a whole. It's not something that should be led by professional support teams to find its place as a paragraph in a charter. I think it's really important that that is shaped within the community.

I've already mentioned improved partnering and I think when we are assessing events which might be sensitive and those events proceeding and what measures might need to be put in place for an event to proceed, it's important that we don't just bring in student representatives from the students' union, for example, great job though they do. I think it's really important we bring in students more broadly and we bring in academic staff into those discussions as well.

Thirdly, I think we need to think about the accessibility of our documentation. It's very tempting to have a formal policy and a charter statement up on the website, but actually we need really accessible frequently asked questions, for example, that take out and strip out the legalese that we sometimes see in such documents. So that really, it's written for the lay reader, whether that be a student or a member of staff that isn't immersed in the politics and legislation of this area.

I think that's really important. Reinforcing the point as well that institutions do not necessarily have discretion here around who is invited onto campus, and I think it's really important that that is understood and that we're able to think about the legal and the critical imperative for those events to take place and why they need to, but to do that in a way that's accessible.

Then finally, to reinforce the point that an event is a moment in time. It's a snapshot of a sensitive issue, and it's really important that what happens after the event is addressed as well and that we look to safeguard students, for example, after an event has taken place. That there's a degree of aftercare and how we do that and how well we engage with students is really important, including students that might put their head above the parapet on a particular issue surrounding an event on social media. And the risks that that might put them under in terms of trolling and doxing and things like that, and how the university can support students in that space. There's certainly lessons that I think we could all think about in strengthening how we approach this.

So I hope that's a bit of a flavour of some of the improvements we've been reflecting on, David, at our own institution.

DB: Thank you, Adam. I really like that idea that I think underpins a couple of your points just now, that being proactive around freedom of speech and academic freedom is really closely tied to engagement. Engagement with our students, engagement with academic communities, engagement with staff more broadly, engagement around events. That feels like a really kind of core message to a lot of what you've talked about here, and being much more intentional in how we engage communities in these practices.

AD: I think it is intentional, and let's be clear here. This is hard work as well. All of this is hard work and it's supposed to be. The securing of free speech and academic freedom on campus is not an easy endeavour. I worry slightly, whether it's the regulators or whether it's our statements and charters on free speech, when we simply state that free speech and academic freedom is part of the DNA of the university, and it's at the heart of what we do. Yes, that may be right, but it kind of underplays the hard work needed to secure free speech and academic freedom. It's hard work precisely because we are universities. We are sites of enquiry and we're full of intellectual historians, philosophers, political scientists, scholars of feminism and queer theory.

It's no wonder that this is a difficult area to manage, and I mean that in a good way. We actually have a lot of resources and expertise that we should bring to bear on these very difficult discussions.

DB: That feels like an entirely appropriate and optimistic sentiment for us to end with. So can I just say thank you, Adam, for coming on and sharing your thoughts with us today. I really appreciate the candour and openness of discussing what are really sensitive and difficult topics. Please do keep a look out for future work in this space. This is something that we're going to want to keep talking to the sector about and working on together.

So thank you again, Adam, for coming on and I look forward to continuing this conversation.

Ad: My pleasure, David. Thanks for inviting me.



Contact us

All enquiries:

Email: communications@advance-he.ac.uk

Website: www.advance-he.ac.uk

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