

# Freedom of speech, academic freedom and good campus relations

A summary of 2022 sector roundtables

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# 1. Introduction

In the spring of 2022 Advance HE, Universities UK and GuildHE worked together to convene a series of roundtable conversations with senior leaders, thematic experts and academics from UK HE institutions. The five sector roundtables covered a series of relevant topics: academic freedom, employment, EDI, student unions and governance. The discussions revealed a number of areas that require close consideration and began to generate debate as to what institutions could consider in developing policy and taking practical action. This publication provides a summary of these discussions.

The roundtables resulted in a joint sector statement and commitment by UUK, GuildHE, Advance HE, NUS and CUC on promoting academic freedom and freedom of speech:

<https://www.universitiesuk.ac.uk/latest/news/higher-education-sector-statement>

In defining ‘freedom of speech’ and ‘academic freedom’, this report will follow the sector statement<sup>1</sup>.

Issues relating to freedom of speech, academic freedom and the promotion of equality, diversity and inclusion (EDI), and good relations between different groups, have been on the agenda for higher education institutions (HEIs) for many years. However, recent events, including in the UK a number of high profile court cases along with proposed changes to legislation (the Freedom of Speech (Higher Education) Bill, introduced into Parliament in 2021), mean that there has been increased attention on these issues, and particularly on perceived tensions between them. The impending changes to legislation have direct implications for HEIs in England and are likely to influence how institutions approach freedom of speech, academic freedom and good relations in other parts of the UK.

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<sup>1</sup>Freedom of speech means everyone has the right to express lawful views and opinions freely, in speech or in writing, without interference.

Academic freedom means protecting the intellectual independence of academics to question and test received views and wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in danger of losing their jobs or privileges.

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## 2. Freedom of speech and protection from harm

Free speech and academic freedom are core values of the higher education sector, but free speech does not exist in a vacuum; freedom of speech on campus has to be balanced with other laws and rights. HEIs have a responsibility to balance their free speech duty with their responsibilities to safeguard the dignity and respect of students and staff (as laid down in the Equality Act 2010 and other related legislation). Valuable work has been undertaken by various organisations to help the sector navigate this complex area.<sup>2</sup>

Progress has been made over the past decade, both within institutions and across the HE sector, to promote equality, diversity and inclusion, to prevent discrimination, and to ensure good relations between people of differing viewpoints. HEIs place great importance on ensuring that students and staff from all backgrounds are able to benefit from a university experience free of harassment and bullying.

Expectations on institutions to be more effective in delivering improved EDI outcomes are growing; leadership teams currently have to balance their response to these expectations with wider financial and regulatory pressures at a time of increased public scrutiny. These competing dynamics may be compounded where there are conflicts or tensions around race, religion and sex/gender equality in the HE sector or wider UK society. This highlights the question of what constitutes freedom of speech and academic freedom, and what constitutes harassment of a protected group.

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<sup>2</sup> <https://www.equalityhumanrights.com/en/our-work/news/free-speech-be-protected-university> and <https://www.parliament.uk/globalassets/documents/joint-committees/human-rights/2015-20-parliament/HEPIreport090218.pdf>

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### 3. Developing a proactive approach to free speech, EDI and good relations

With these issues firmly on the HE agenda for the foreseeable future, institutions are becoming more adept at identifying and responding to specific challenges related to freedom of speech, academic freedom and protection from harm. Key challenges were explored by the sector through this series of roundtable discussions, and are presented below, along with some practical suggestions for action.

#### 3.1 Operationalising commitments to free speech in a complex landscape

Freedom of speech and academic freedom have special status in the UK's higher education sector. Creating and maintaining an environment that encourages freedom of expression is essential to ensuring HEIs are centres of intellectual enquiry, dialogue and rigorous debate in the pursuit of knowledge. Academic freedom is also a key component in delivering a high-quality educational experience. Many institutions are considering how they can more clearly articulate and communicate freedom of speech and academic freedom as core institutional values<sup>3</sup>, within an increasingly complex policy space.

Institutions have a requirement to navigate the complex interaction between existing free speech legislation (and, for English HEIs, the proposed Freedom of Speech Bill) with other legislation, such as the Equality Act, European Convention on Human Rights, Employment law and the Prevent duty. Recent cases involving academics whose work, teaching or views have attracted controversy suggest that more internal guidance and policy may be required.

The challenges of balancing these different agendas are both recognised and documented. Freedom of speech and academic freedom sit alongside other freedoms, notably in relation to EDI. Determining the balance between freedom of expression and protection from harm is a significant and live issue for HEIs. Institutions have a duty to consider how they can eliminate harassment and ensure that mechanisms are in place so that ideas which some may find uncomfortable or challenging can be expressed without causing undue harm to students, academics and other staff. The EHRC's guidance, published in 2019<sup>4</sup>, sought to help navigate these challenges in creating inclusive environments that encourage open discussion and dialogue, and a wide range of scholarship.

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<sup>3</sup> See e.g. <https://www.nottingham.ac.uk/governance/free-speech-and-academic-freedom.aspx>

<sup>4</sup> [Freedom of expression: a guide for higher education providers and student unions in England and Wales | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/our-work/freedom-expression-a-guide-for-higher-education-providers-and-student-unions-in-england-and-wales)

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In response to this issue, institutions might:

- + consider how the sector statement on promoting academic freedom and free speech<sup>5</sup> can be adopted, used or communicated across your institution
- + develop, in consultation with staff and students, a whole institution approach to freedom of speech, outlining intentions, expectations, responsibilities and accountabilities
- + review relevant policies and codes of practice, and clarify accountability for issues relating to freedom of speech to ensure effective scrutiny, and institutional management
- + ensure EHRC guidance on the interaction between free speech and EDI in higher education is understood and used by relevant staff
- + discuss issues relating to freedom of speech with students and staff, ensuring expectations of behaviour are clearly communicated
- + consider how the executive and governing body are informed and equipped to provide effective scrutiny and direction of the institution's approach to freedom of speech.

### 3.2 Zero tolerance for harassment and fostering good relations

HEIs are champions of free speech and also they have significant commitments to advancing equality and creating inclusive environments for all staff and students. Whilst there is no right in law 'not to be offended' the, right to express unpopular opinions is not a right to express those opinions in a way that silences the voices of others, harasses them unlawfully<sup>6</sup>, or puts them in danger of violence.

Attendees discussed free speech and the potential tensions with approaches to delivering EDI. Across the HE sector, academic freedom and freedom of speech are often described and experienced, in practice, as in competition and conflict with EDI. Some argue that the Equality Act 2010 has been used to prevent those with unpopular or controversial opinions from having their voice heard. Others would contest that freedom of speech is often used as a vehicle for undermining the rights and protections that marginalised groups are afforded. The division of opinions contributes to the complex terrain that institutions are currently navigating as they develop their approach to freedom of speech and creates risk that each decision in balancing competing rights is seen as 'taking a side' in a conflict.

Many of the incidents that arise around free speech are also challenges to HEIs' approach to equality and diversity and do require balancing competing rights and perspectives. For the sector to promote free speech and inclusion, these commitments may have to be increasingly understood and progressed together. It was discussed that HEIs could create a vision for freedom of speech that includes championing the voices of marginalised and

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<sup>5</sup> <https://www.universitiesuk.ac.uk/latest/news/higher-education-sector-statement>

<sup>6</sup> <https://www.legislation.gov.uk/ukpga/2010/15/section/26>

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underrepresented groups, and a commitment to inclusion that explicitly encourages diversity of ideas and perspectives and welcomes more robust discussion and debate.

It was suggested that institutions could deliver this more positive approach, by more actively promoting freedom of speech and academic freedom, while also ensuring that *all* staff and students from different backgrounds and perspectives can be confident in the HEI environment and engage free from bullying or harassment. Institutions are also finding that building this type of engagement requires more emphasis on culture, and dialogue and relations between different groups<sup>7</sup>. HEIs' legal responsibility, under the Public Sector Equality Duty, to consider how they foster good relations between different groups, is a relevant and important consideration in this regard.

In response to this issue, institutions might:

- + develop and communicate an approach to freedom of speech, academic freedom and EDI as complementary aims, aligned with institutional values
- + set clear expectations that harassment, of any staff or student, will not be tolerated
- + clearly and regularly communicate institutional policy relating to freedom of speech and bullying and harassment, including processes for the investigation of complaints
- + undertake specific activity to foster good relations between different groups and ensure that all students and staff are made aware of expectations and responsibilities in relation to fostering good relations (for example in codes of conduct).

### 3.3 Building a robust and inclusive culture of enquiry

Academics, staff and students often report being under pressure to tailor work or speech to different considerations, a view which also came up in the roundtables. Many of the trickiest challenges around freedom of speech, academic freedom and inclusion relate to conflict between lawful speech and institutional values, policies or culture, or conflict between different lawful acts of speech.

For instance, commentators in the UK and participants in the roundtables have spoken of academics with more conservative views feeling unable to express their ideas within higher education environments, claiming that there is currently a chilling effect in the classroom<sup>8</sup>. Similarly, students from a range of backgrounds and identities may self-censor, limiting the diverse range of students who engage with e.g., protest, societal debate, or student politics.

It was discussed that staff may adjust their research and teaching or wider institutional roles and activities to respond to pressures of marketisation, regulation and management. This

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<sup>7</sup> See e.g. <https://wonkhe.com/blogs/to-resolve-conflicts-in-the-campus-culture-wars-we-need-to-listen-as-well-as-speak/>

<sup>8</sup> [Academic-freedom-in-the-UK.pdf \(policyexchange.org.uk\)](https://policyexchange.org.uk/academic-freedom-in-the-UK.pdf)

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may include pleasing 'student consumers', accommodating regulatory frameworks or helping the institution or department climb up league table rankings or achieve equality charter marks. There are reports of academics self-censoring in order to secure career prospects and research being expected to align with 'strategic priorities' for the Research Excellence Framework and grant income. Casualisation of employment was also identified as a limitation on speech. For example, UCU issued a statement in 2021 arguing 'the truth is that widespread precarious employment strips academics of the ability to speak and research freely and curtails [their] chances for career development'.

Lawful speech may have consequences. It was discussed, for example that there have been cases where staff have lost their job because their conduct did not meet their institution's values and standards on behaviour, even though the staff member's behaviour has been lawful. Participants agreed that these tensions cannot be regulated or managed away. There will always be conflicts between different views within HEIs, and institutions have to be able to exercise institutional autonomy in setting a strategic direction and implementing policies to deliver institutional aims. It was suggested that HEIs could work to enhance the robustness of institutional culture, to be more conducive of greater disagreement, protest, and diversity of perspective within campus environments, whilst still delivering institutional policy and direction. And it was argued that the ability to support more constructive dialogue arising from conflicting perspectives is a hallmark of an inclusive culture and should be a shared aim between work on freedom of speech and EDI.

There was agreement that promoting freedom of speech and academic freedom as institutional values, relevant to all staff and students, is essential to the identity and activity of HEIs. Institutions might further this work by:

- + developing an approach to academic discussion and debate which centres academic freedom, evidenced reasoning, and the quality of scholarship
  - + ensuring that students are equipped to interrogate competing views and the legitimacy of scholarship, through e.g. training or embedding academic freedom in teaching and learning
  - + working across HEI communities and with student unions to develop institutional approaches to protest which balances freedom of expression with the rights of all staff and students to be protected from harassment and bullying
  - + creating opportunities for meaningful discussion with staff of the impact of institutional policy, or marketisation and casualisation, on speech
  - + equipping line managers with the knowledge and skills to support differences in perspective as well as to identify and deal with issues of staff behaviour in a timely and effective manner
  - + ensuring regular scrutiny of institutional culture and performance relating to freedom of speech and good relations by the governing body, including balancing competing rights.
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- + Using staff and student surveys to temperature-check opinions about the institutional climate in relation to freedom of speech and campus relations and use this evidence to inform local action.

### 3.4 Challenges around providing a ‘space’ for debates on crucial issues

The groups discussed that HEIs have a public role, articulated e.g. in the Dearing Report<sup>9</sup>, to develop a democratic, cohesive and inclusive society, and a responsibility to bring knowledge, research and analysis, as well as diverse and competing perspectives, into the public domain. It was felt that HEIs’ abilities to defend academic freedom and to deliver knowledge as a public good are both undermined and threatened by a wider climate of self-censorship, harassment or bullying.

Furthermore, in upholding and promoting free speech, HEIs have an important role in providing ‘space’ for debates on crucial issues, but there can be challenges in managing the impact on good relations between different groups. It was suggested that there is also increasing evidence today that, in trying to ensure this ‘space’ is provided, institutions are increasingly having to implement and manage costly, onerous and potentially unsustainable bureaucratic, administrative and security processes.

In response to this issue, institutions might:

- + consider how efforts to equip and support students to encounter and engage with a wide variety of views, including those they may find uncomfortable, could be aligned with or embedded within approaches to inclusive curriculum and pedagogy
- + work closely across different institutional functions and with student unions to manage risks relating to events that have the potential to create tensions between groups
- + develop relationships with local civic and community bodies to enable the effective identification of/joint responses to issues that may destabilise good relations.

### 3.5 Power and impact of online discourse especially through social media channels

It was agreed that the extraordinary growth of social media has meant that legislators, regulators and the judiciary are constantly playing ‘catch-up’. Governments are now applying pressure on social media companies to do more to protect users from abuse and harm.

In the past 10 years many social media, as well as mainstream media, platforms have had to grapple with the challenge of ‘managing’ users with increasingly sharp, unmediated and offensive tones, whilst maintaining enough space for expression, feedback and interaction. The expansion of these media has meant not only marginalised voices securing access to a

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<sup>9</sup> <http://www.educationengland.org.uk/documents/dearing1997/dearing1997.html>

wide public audience but also the voices of those with what some might consider extreme views having access too. The group expressed that the boundaries of what is considered acceptable speech have expanded, creating a new leadership challenge for the HE sector.

Social media has made it easy for developments within a student/university community to be stirred up by external sources. Online campaigns can gather momentum quickly. The roundtables discussed conditions where small numbers of academic staff and students can not only demand the censure of others, but also harass and bully others whilst retaining some anonymity.

In response to this issue, institutions might:

- + establish clear policies on social media engagement for students and staff
- + encourage the use of institutional procedures to deal with complaints relating to freedom of speech through regular communication and transparent reporting.

### 3.6 Complexities in the delineation of responsibilities between the student union and their HEI

Delegates discussed how UK HEIs can take reasonably practicable steps to ensure that freedom of speech within the law is secured. This extends to the entire campus, including student union buildings (even if they are owned solely by the SU and/or located off campus). One roundtable discussed HEIs as indirectly accountable for their student union's actions in relation to free speech, and how HEIs might take steps to support and ensure their student union does not interfere with the free speech of students, staff or visitors on campus, or deny use of student union premises to speakers based on their views. It was felt that it is therefore important that student unions and their HEIs have a strong and productive working relationship.

In response to this issue, institutions might:

- + establish mechanisms for joint working/effective collaboration between university staff and student union staff and officers with designated responsibility for freedom of speech
- + provide opportunities for student union officers and staff to attend freedom of speech-related training alongside university staff.

### 3.7 Continued and persistent public and media scrutiny of how HEIs (and SUs) manage their requirements to support free speech

It was generally agreed that when free speech incidents hit the headlines, there has been an unhelpful tendency to slot these into pre-existing, pervasive narratives about 'culture wars', 'woke' students and student populations. Dealing with the reputational fall out when incidents occur generally requires student unions and institutions to work together.

Ensuring that there are well-established, productive working relationships across HR, EDI and communications disciplines was seen as particularly important. Delegates discussed that both student unions and HEIs will continually need to consider how they can make a meaningful contribution to academic freedom, debate and inclusion, whilst applying and stress-testing approaches to risk management.

In response to this issue, institutions might:

- + develop a whole-institution approach to the management of critical incidents
- + ensure that staff who are likely to be involved in dealing with critical incidents (for example, senior leadership, communications, HR) are trained, equipped and supported to do so effectively
- + develop mechanisms to ensure effective horizon-scanning and the identification of freedom of speech-related risks.

### 3.8 Ensuring freedom of speech at campuses and for students studying at UK providers based in other countries

There was a view that an under-addressed issue through the roundtables and in some sector discussion has been that of autocracies' influence on academic freedom in the UK. The FCDO's recent focus on protecting HEIs from intellectual property theft and risks arising from joint research projects, was seen as being at the expense of not accounting for other types of financial, political or diplomatic interference which has been used to influence and shape HEIs' research agenda or curricula or other campus activities.<sup>10</sup>

For students and academics at UK institutions based abroad, delegates felt that agreement on which policies and practices on free speech apply, and where, remains a grey area. It was felt that with the internationalisation of HE, there is the additional dimension of managing tensions between different student communities which could emerge as a result of international conflicts, fault lines and other developments such as Israel/Palestine and Russia/Ukraine.

In response to this issue, institutions might:

- + establish horizon-scanning mechanisms to identify potential international issues that may impact on students and staff
- + ensure that appropriate support is available for students and staff in response to international incidents/tensions
- + support students and staff studying/working abroad to understand and navigate the local legislation, approach and attitudes to freedom of speech

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<sup>10</sup> See [Autocracies and UK Foreign Policy \(parliament.uk\)](https://www.parliament.uk/topics/foreign-policy/autocracies)

- + working with the students' union, support opportunities for all students to find their community and sense of belonging.

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