



**FSU**  
FREE SPEECH UNION

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Professor K O'Brien  
Vice-Chancellor  
Durham University

1 October 2024

Dear Professor O'Brien,

Durham Union Society Freshers' Fair Stall

I am writing to you in my capacity as General Secretary of the Free Speech Union, a non-partisan, mass membership public interest body that stands up for the speech rights of its members and campaigns for free speech more widely.

Late last week, Durham Students' Union (the 'SU') made a final decision to deny a place at the Freshers' Fair this year to Durham's oldest student society, the Durham Union Society (the 'Society'), an organisation that exists to 'stimulate debate amongst its members, providing them with a forum in which to express their views', according to its charitable objects. It has a history of free debate spanning back nearly 200 years and has been an integral part of the university community for that period.

This action on the part of the Students' Union engages the University's legal duties under the Education (No. 2) Act 1986, as well as Durham's Policy Statement on Freedom of Expression. I am therefore asking if you would intervene so the Society is able to recruit new members this year. In the absence of being able to sign up new members at Freshers' Fair – which is the main way it recruits new members – the Society will face significant financial pressure.

Background

This incident is the latest in a long-running and acrimonious dispute between the SU and the Society. Matters initially came to a head in 2020, when the *Palatinate* published a number of allegations of wrongdoing at the Society, which was described as a 'safe haven for racists, demagogues and colonial apologists'.<sup>1</sup> Examples cited in support of this included statements such as 'the sun will rise on the British Empire again', and 'multilingual debating, ha, like we need more foreigners in this place'.

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<sup>1</sup> <https://www.palatinate.org.uk/the-durham-union-society-allegations-of-bigotry-bullying-and-malpractice/>

As a result of these revelations, in November 2020 the Assembly of the SU voted to ‘condemn the actions’ of the Society, and to ban it from participating in SU events.<sup>2</sup>

Subsequent to that, the SU has sought to impose on the Society a series of measures relating to Equality, Diversity and Inclusion (‘EDI’) on the basis that the problems the *Palatinate* had flagged up are systemic, and can only be addressed by wholesale organisational change. Readmittance to SU events, and access to SU facilities by the Society, was made conditional on meeting the requirements set out by the SU.

Even though the Society entered into negotiations with the SU in good faith in an attempt to meet these conditions, the SU appears not to have any real interest in allowing the Society to participate in SU events. Since the *Palatinate* article, there has only been one reported instance of a member of the Society using derogatory language, and the Society swiftly investigated the incident and suspended the member, who did not seek readmission. Nonetheless, despite the absence of any evidence of a problem, every year the SU has made additional demands of the Society as a condition of being allowed to participate in SU events, imposing obligations on the Society that are so onerous any student-run group would struggle to meet them.

The real attitude of the SU towards the Society may be gleaned from statements on its website. The current President of the SU is quoted saying that he ‘spoke in unambiguous terms about [his] dislike of DUS’.<sup>3</sup> A former Opportunities Officer, objecting to journalist Rod Liddle being invited to speak at the Society, complained of ‘parliamentary-style debates by tuxedo-clad provocateurs’.<sup>4</sup> The distaste for the Society, its members, the events it holds, and the guests it invites is plain to see, and this is likely the real motivation underlying the never-ending list of the SU’s EDI ‘concerns’.

### The refusal of a stall at this year’s Freshers’ Fair

Last year, the Society was allowed to have a commercial stall at the Fair, following lengthy negotiations between the Society, the SU and the University. There is no evidence that any students came to any harm as a result of the Society being allowed to have a stall.

This year, the Society was approached by the SU’s third-party events organiser and offered a stall on commercial terms. It accepted, but the SU’s executive interceded, citing the 2020 vote of condemnation, and the organiser withdrew the offer.

The President of the Society subsequently attempted to negotiate with both the SU and the University, but has been met with a litany of demands for ‘more work to be done’ on EDI, including the imposition of a task force involving representatives of the SU intervening in the Society’s internal affairs to ‘complete the work’. The Society was told that if it accepted these demands, the SU’s Trustees might be minded to grant a waiver to allow it a stall this year. It reluctantly agreed, but in the event, the Trustees decided against

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<sup>2</sup> [https://assets.prod.unioncloud-internal.com/document/documents/62997/4987b4ee41202f22fe0961b6c75360fd/Condemn\\_the\\_actions\\_of\\_Durham\\_Union\\_Society.pdf](https://assets.prod.unioncloud-internal.com/document/documents/62997/4987b4ee41202f22fe0961b6c75360fd/Condemn_the_actions_of_Durham_Union_Society.pdf)

<sup>3</sup> <https://www.durhamsu.com/articles/making-culture-better-our-position-on-dus>

<sup>4</sup> <https://www.durhamsu.com/articles/jack-good-debate-and-the-bad-judgement-of-durham-union-society>

the waiver, and the Society has therefore been excluded from the key recruitment event of the academic year.

### The duties of the University

The University is subject to a number of relevant duties. Foremost among them is the duty under s.43 of the Education (No. 2) Act 1986 ('E2A'), which requires it to take 'such steps as are reasonably practicable to ensure freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers'.

Subsection 2 specifically provides that reasonably practicable steps should be taken to ensure 'that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with... the policy or objectives of that body'.

Subsection 8 provides that 'any reference in this section to the premises of the establishment shall be taken to include a reference to the premises occupied by the students' union', even where the premises belong to a students' union rather than the university to which it is connected. Durham is therefore under a duty to secure freedom of speech on the premises of the SU, notwithstanding its status as an independent entity.

These duties are incumbent on the governing body of the University both collectively and individually and therefore also apply to the President of the SU insofar as he is involved in decision-making about these matters.

We believe the University is under an obligation to take two parallel sets of steps to remedy this breach:

- a. first, it must use all available levers to ensure that the SU does not cause the use of the premises to be denied to the Society, insofar as this is reasonably practicable to do; and
- b. second, if it is not practicable for the Society to occupy the same space as that used by the SU, another space, at least as good, and with the same access for students and visitors, must be provided.

This also ties in with a second legal duty owed by the governing body of the University, under s.22(2)(i) of the Education Act 1994, namely to ensure that the SU's procedure for allocating resources to groups or clubs is fair, is set down in writing and is freely accessible to students. It would appear that no other club or society at Durham is subject to this level of scrutiny or intrusion in terms of their governance or approach to EDI issues, and nor is any of this EDI 'work' an explicit requirement brought to students' attention or otherwise 'freely accessible'.

The University is furthermore required, under s.43(3) E2A, to issue and keep up to date a code of practice setting out procedures to be followed in making determinations on meetings and other activities held on its premises.

Under its Policy on Freedom of Expression in Relation to Meetings or Other Activities, the University states it 'will only impose conditions where legitimate concerns regarding the

legality of the event and/or the safety of participants are justified'. That is manifestly not the case with the Society's stall.<sup>5</sup>

The only circumstance in which the University envisages denying the use of premises under its 'Policy Statement on Freedom of Expression' is where particular forms of expression might break the law. It makes specific reference to the Equality Act, but also mentions the criminal law.<sup>6</sup>

There is no suggestion that the Society's stall would be at any risk of falling foul of that particular code. Even if we take the complaints against the Society seriously – namely, that there may potentially have been isolated incidences of members using language that could cause offence – that would still not be a good reason to exclude the Society from Freshers' Fair, as there is no evidence to suggest that such would occur during the activity in question, namely the manning of a stall.

There is therefore no basis under these policies on which permission ought to have been refused. Those SU officers who are students are therefore in breach of the University's policies on freedom of expression. The SU's President is also in breach of the policies and, further, is in breach of his duty as a person concerned in the government of the University to secure freedom of speech within the law.

Indeed, this duty, under s.43(4) E2A, requires the University to ensure that the requirements in the code of practice on meetings are complied with, taking all reasonably practicable steps. This would include such interventions as the University is able to make, such as disciplinary action against those students who fail to adhere to it, and the consideration of sanctions against the SU such as withholding funds or other resources.

### Higher Education (Freedom of Speech) Act 2023

This incident is a good example of the need for the remaining provisions of the Higher Education (Freedom of Speech) Act 2023 ('HEFSA') to be brought into force. But for the actions of the Secretary of State in revoking their commencement, the following options would have been available to the Society:

- a. A fully-commenced HEFSA would impose certain free speech duties on SUs. As demonstrated above, there are serious gaps in accountability for the SU and the mechanisms currently available to hold the SU accountable are unsatisfactory. Moreover, if the SU adhered to the duties which HEFSA would impose, this would reduce the likelihood that this situation would have arisen in the first place.
- b. The free speech complaints scheme would have provided a free-to-access and informal means for the Society and the SU to settle their dispute, with adjudication via the OfS's Director for Freedom of Speech and Academic Freedom.

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<sup>5</sup> <https://www.dur.ac.uk/about-us/governance/governance-documentation/statutes-and-regulations/codes-of-practice/#d.en.1051903>

<sup>6</sup> <https://www.durham.ac.uk/media/durham-university/about-us/pdfs/DurhamUniversityPolicyStatementonFreedomofExpression.pdf>

- c. If no resolution could be found, the statutory tort would allow the Society to seek redress for the financial losses it anticipates as a result of being denied the ability to recruit, and/or to seek an injunction prohibiting the SU from taking unlawful action that would foreseeably cause such losses to arise.

### Next steps

As things stand, it is now incumbent on the University to ensure that the situation is rectified. We are given to understand that the Society is in active negotiations with senior University managers, and a number of options have been explored, including a gazebo on Palace Green during the matriculation period, and/or the use of different parts of the building where Freshers' Fair is held. These are the very minimum actions that could be taken so as to meet the University's s.43 duties, and we would expect any opposition from the SU to be dealt with robustly.

Moreover, I would ask for an explanation of:

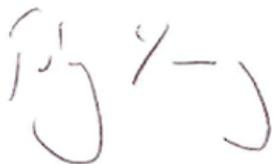
- a. what reasonably practicable steps the University has taken to get the SU to reverse its decision to deny the Society a stall;
- b. what reasonably practicable steps the University has undertaken more generally to ensure the SU is complying with its policies; and
- c. whether the University has taken any steps to ensure the allocation of resources to clubs and groups by the SU is fair.

The FSU's next steps will be based on the answers to the above, and what provision is made for the Society to recruit members, and we reserve all rights.

While the FSU does not act for the Society, they too reserve all rights for such claims as may arise from the handling of this matter.

I look forward to hearing from you.

Yours sincerely



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Cc: The Rt Hon Baroness Smith of Malvern, Minister of State for Skills  
Cc: Mr Dan Lonsdale, President, Durham Students' Union