



**FSU**  
FREE SPEECH UNION

THE FREE SPEECH UNION  
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Jake Verity  
President  
University of Sheffield Students' Union  
Western Bank  
Sheffield S10 2TG

2<sup>nd</sup> April 2020

By email and by post

Dear Mr Verity,

### **The Free Speech Society at Sheffield University**

I'm writing on behalf of Thomas Woollard and Ewan Somerville, who are both third year students at the University of Sheffield (the "University") and members of the Free Speech Union (the "FSU"). In particular, I write in relation to the Free Speech Society (the "Society") at the University recently set up by among others Thomas and Ewan.

I should say at the outset that given the outbreak of SARS-CoV-2, I quite appreciate that the activities of both the University and the Society are likely to be extremely curtailed for the immediate future. Nonetheless, the issues which have arisen in respect of the Society which I address below are matters of great concern for the FSU and I wanted to take the opportunity during this period to engage with you about them.

The background to these issues is as follows.

On setting up the Society, Thomas and Ewan applied to the Student's Union (the "Union") for recognition of the Society under Rule 10(2) of the Bye-laws of the Union.

I understand that the Union responded by indicating that recognition of the Society would be granted only on the basis that it would have "red-risk status". In an email to Thomas dated 27th February 2020, Tim Bowell, the Student Groups Coordinator (Societies) of the Union, stated that "red-risk status" is granted to those groups "whose aims and objectives indicate activities that will require regular risk assessment".

In addition, Thomas and Ewan were provided with a document from the Union headed "Sheffield Students' Union Activities Risk Assessment" which purported to identify "significant hazards", "risks" and "control measures" for the Society. These included:

<b>Significant hazards</b>	<b>Control measures</b>
External Speakers	Event organisers to submit an External Speaker form within the relevant time limits for approval by the SU

	or UofS (depending on the location of the event). Event organisers to follow SU guidance and risk management advice if applicable to the event (e.g. security presence, student-only access etc.)
Managing the Order of Debate	Event Chair will be competent to manage the order of debates and discussions.

In light of this response, I am concerned that:

1. the Society having to seek approval from the Union for any external speaker or any other event may allow the Union to interfere with the Society's freedom of expression;
2. any delay in processing an application for approval may in itself constitute an impediment to freedom of expression; and
3. the Union apparently proposes to assess the "competence of the chair" nominated by the Society for any event. The competence of the chair is entirely a matter for the Society and not for the Union. For the Union to interpose its assessment of the competence of the chair would in itself be an impermissible infringement on the Society's freedom of expression.

### **The legal background**

As you may be aware, section 43 of the Education (No. 2) Act 1986 includes the following provisions:

43. Freedom of speech in universities, polytechnics and colleges.

- (1) Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.
- (2) The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with –
  - (a) the beliefs or views of that individual or of any member of that body; or
  - (b) the policy or objectives of that body.

For the avoidance of doubt, for the purposes of these provisions:

1. the University constitutes an "establishment to which this section applies"; and
2. the Union and the individuals within its leadership each constitute an "individual and body of persons concerned in the government" of the University.

The importance conferred on freedom of expression by these provisions reflects the wording of Article 10 of the European Convention on Human Rights which states as follows:

## Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The European Court of Human Rights (the “**Court**”) has attached particular importance to the rights conferred under Article 10, requiring not only that state entities do not improperly interfere with the right to freedom of expression themselves but also holding that state entities must take positive steps to uphold the right to freedom of expression where that is required.

For example, in *Dink v. Turkey* (2010) the Court stated:

[The Court] considers that the positive obligations in this area imply, among other things, that States are required to create, while establishing an effective system for the protection of authors or journalists, an environment favourable to the participation in public debates of all those concerned, allowing them to express their opinions and ideas without fear, even if these go against those defended by the official authorities or by a significant part of public opinion, or even are irritating or shocking for the latter.

Moreover, for the purposes of section 3 of the Human Rights Act 1998, both the University and the Union constitute public authorities and the responsibility falls on each of them to uphold the right to freedom of expression including that of students and this includes the duty to take positive steps to uphold that right.

### **My request**

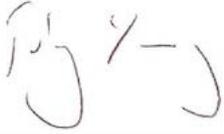
In light of the legal duty of the Union to uphold freedom of expression and the concerns I have highlighted above, I ask that you respond confirming the following:

1. The Union recognises the importance of freedom of expression and the legal duty imposed on it in that regard as set out above.
2. When it comes to considering granting approval to any speaker or to any event organised by the Society, no regard whatsoever will be given to the extent to which the views of the speaker or the views likely to be aired at the event align with those of the Union or other students at the University or the extent to which it is thought that any such views may be liable to cause offence. Those would not be proper reasons to inhibit freedom of expression.
3. Any such approval will be withheld (if at all) only in truly exceptional circumstances and when permitted and prescribed by law as set out above.
4. The consideration by the Union of any application for approval of any speaker will be undertaken with due expedition.
5. No approval will be withheld on the basis of any assessment undertaken by the Union that the event chair is not competent to manage the order of debates and discussions.

If you provide this reassurance and if the Union proceeds in this way, I believe that it will properly uphold the right to freedom of expression, as it is required to by law. I look forward to receiving your response.

I am copying this letter to Tim Bowell, Student Groups Coordinator, Sheffield University Students Union; Professor Koen Lamberts, President and Vice-Chancellor of the University of Sheffield; the Rt Hon Gavin Williamson, Secretary of State for Education; and Michael Barber, Chair, Office for Students.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Toby Young'.

Toby Young  
General Secretary  
The Free Speech Union  
[toby@freespeechunion.org](mailto:toby@freespeechunion.org)