

The FSU Manifesto

A 10-point manifesto for this year's local elections



The Free Speech Union Manifesto

A 10-point manifesto for this year's local elections

The ten policies below would immediately improve the state of freedom of speech in the United Kingdom. The Free Speech Union would like to see these policies adopted by every party in this election and beyond, and we hope to see them in parties' manifestos soon. The Free Speech Union does not endorse any political party or candidates.

1. Abolish Non-Crime Hate Incidents.

Non-Crime Hate Incidents (NCHIs) can be recorded against a person's name whenever that person is accused of having done something motivated by hatred of another, particularly if the other person is a member of a 'protected' group, e.g. misgendering a trans woman on Twitter. As a result, people's names are being included on the police's national database, often without their knowledge, when the police know they've committed no crime. In the five years between 2014 and 2019, 120,000 NCHIs were investigated and recorded in England and Wales, an average of 66 a day.

This is in spite of the fact that the concept of NCHIs was created by the College of Policing – an unelected quango – and has not been referred to in any piece of legislation.

Knowing the police may record an NCHI against your name if you say something a member of a protected group disapproves of has a chilling effect on free speech.

To remedy this, the relevant police code of practice relating to police information, issued under s.39 of the Police Act 1996 should be amended so that if a force keeps a formal register of hate incidents, no record shall be entered in that register unless in the reasonable opinion of the person responsible for that register the conduct in question amounts to a crime.

In addition, where an accusation of "hate speech" is made to the police concerning speech that the police judge not to be criminal, the police should make no formal recording of the incident and carry out no questioning of the person accused. This does not include the informal recording of speech where police believe there is a risk of imminent violent or other serious crime. Where police genuinely need to question someone to ascertain whether something they've said or written is currently proscribed, no record should be kept if they decide no offence has been committed.

2. **Protect the free speech of workers.**

In order to protect the speech rights of employees, there needs to be a specific legislative protection against their penalisation for lawful political or social opinion expressed in a private capacity. This means workers should be protected for what they say: (a) in a purely private capacity, whether in person or on social media; (b) when what they've said does not refer to their employer, the business their employer is engaged in, or to other employees; and (c) the employer cannot prove that the expression of the opinion directly and substantially affects the employer's business or the employee's ability to carry out his or her job. Contracts of employment that try to restrict this protection should be legally unenforceable and if an employer wants to punish an employee for saying something lawful the burden should fall on them to prove the employee isn't deserving of the above protections.

3. **Protect the free speech of broadcasters.**

There is less freedom of speech in broadcasting than in newspapers or on the internet. The UK Government should amend the Communications Act 2003 so that the controls that apply to broadcasters are brought into line with those applicable to newspapers and hence provide a level playing field. This measure would remove the duty of impartiality imposed on broadcasters, which we consider outdated now that broadcasting can take place over the Internet, which has no such regulation. It would also remove the supervisory jurisdiction of Ofcom over the actual content of broadcasts (which in our view has not infrequently been abused in order to penalise the expression of specific political and social views of which those in charge of Ofcom disapprove).

In addition, Ofcom should scrap the prohibition on 'hate speech' defined as "all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, social origin, sex, gender, gender reassignment, nationality, race, religion or belief, sexual orientation, colour, genetic features, language, political or any other opinion, membership or a national minority, property, birth or age".

It is not the place of a state regulator to ban forms of expression beyond those already proscribed by the law.

4. **Restore freedom of speech in communications.**

Section 127(2) of the Communications Act 2003, making it a criminal offence to communicate anything that is "grossly offensive" over a telecommunications system (including the whole of the Internet), should be repealed. This section has repeatedly been abused by prosecutors; there is no equivalent in non-electronic speech; there is no reason for a special

rule for telecommunications systems; and seriously harmful matters can be dealt with using other laws.

5. Defend freedom of speech on the Internet.

The UK Government's proposed Online Harms Bill is a serious threat to free speech. No internet company should be censured by a state regulator for failing to remove lawful content, regardless of how 'harmful' it is considered to be by a state regulator or social and political activists. (This applies to information considered by the same bodies to be 'misinformation' or 'disinformation'.) If a social media company like YouTube, Facebook and Twitter removes content, there should be a right of appeal and if the company cannot show that the content is unlawful it should restore it on pain of being fined by the regulator.

6. Stop creating more and more 'protected' categories which has the effect of making some ideas and beliefs immune from criticism.

No additional protected categories should be added to race, religion and sexual orientation in connection to crimes relating to the stirring-up of hatred under the Public Order Act 1986. With the exception of stirring up racial hatred, no one should be prosecuted for a 'stirring up' offence unless it can be shown beyond a reasonable doubt that they intended to stir up hatred. No one should be prosecuted for stirring up hatred in their own home.

There should also be a defence included in the Public Order Act 1986 and the Prevention of Harassment Act 1997 applicable to any article in a newspaper or other media outlet to allow for robust campaigning and reporting without fear of falling foul of 'hate speech' laws.

7. End perception-based policing.

The UK Government should begin to reform the concept of 'hate crime' by working with Chief Constables and the CPS to amend their working definition of 'hate crime', which reads: "Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity."

This should be amended so it becomes: "Any criminal offence which is believed on reasonable legal grounds by the victim to be motivated by hostility based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation; or transgender identity or perceived transgender identity."

Allowing that a ‘hate crime’ has been committed if the crime in question is *perceived* by the victim or any other person as having been motivated by hatred towards the victim’s identity group encourages people to effectively denounce each other based on mere suspicion and without proper evidence, and makes it extremely difficult for the police to dismiss vexatious complaints.

8. Amend the Equality Act 2010 so it cannot be used to stifle free speech.

Any reforms of the Equality Act must be tied in to s.26, which provides for a general prohibition of work-connected conduct (including words) that, for example, creates an “intimidating, hostile, degrading, humiliating or offensive environment”. To make sure that the protections provided for in Parts 5, 6 and 7 of the Equality Act cannot be circumvented, it should be amended so that speech protected by those Parts is not actionable as “harassment” under s.26.

In addition, we propose an amendment to s.149 of the Equality Act (the “public sector equality duty”) which says public authorities must “have due regard to the need [to] eliminate discrimination, harassment, victimisation and any other conduct [and] advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it [and] foster good relations between persons who share a relevant protected characteristic and persons who do not share it.” This should be amended to read: “have due regard to the need [to] eliminate all discrimination and harassment”, with the rest of the sentence being deleted. This would modify a state duty that has come to mean favouring certain groups above others and helped generate state-sanctioned speech codes, both of which are inimical to democracy and equality before the law.

9. Defend freedom of speech within professional bodies.

Part 7 of the Equality Act imposes limits on employers’ right to restrict the private speech of their employees. There needs to be a similar protection with respect to the rules of professional bodies such as the Association of Chartered Certified Accountants (ACCA), the Bar Council and the General Teaching Council (GTC), preventing them from censuring their members for the exercise of their lawful right to free speech in a private capacity. This is particularly important since such bodies have the power to prevent a person working anywhere in the sector they regulate, rather than simply working for one employer.

10. Teach children about freedom of speech.

Freedom of speech is the most important value of any democracy. As Lord Bingham noted, “Democratic government means government of the people, by the people, for the people. But there can be no government by

the people if they are ignorant of the issues to be resolved, the arguments for and against different solutions... government is not an activity about which only those professionally engaged are entitled to receive information and express opinions.”

Unfortunately, few schoolchildren are being taught to value free speech. Instead, many of them are being taught that certain viewpoints, while perfectly lawful, endanger the emotional safety of minorities and historically disadvantaged groups and, for that reason, should be suppressed. Children need to learn how to listen to and contest difficult ideas, not to run away from them.

We would like to see the guidance on promoting British values in schools published by the Department for Education in 2014 to be amended so schools have an active duty to promote free speech as one of the fundamental values of democracy.