



FSU
FREE SPEECH UNION

The Free Speech Union
85 Great Portland St.
London W1W 7LT
[FreeSpeechUnion.org](https://www.FreeSpeechUnion.org)

21st November 2022

Dear Secretary of State,

We are writing to express our support for the Higher Education (Freedom of Speech) Bill and to ask you not to neuter it in response to pressure being applied by the higher education lobby. In particular, we urge you not to scrap the Bill's new statutory tort, which will enable students and academics whose speech rights have been violated to seek remedy in the courts. Without this crucial enforcement mechanism, the new free speech duties created by the Bill will be more honoured in the breach than the observance, just as the duty to uphold free speech in the Education (No. 2) Act 1986 has been.

Many of the criticisms of the Bill that have been made in the House of Lords – and by professional higher education bodies like the Russell Group – are unfounded, and often reveal a dismaying lack of familiarity with the situation on the ground in English universities.

It has been repeatedly said by the Bill's critics that free speech and academic freedom are more than adequately protected in universities at present. They cite a [review by WONKHE](#) of 10,000 speaker events, only six of which were cancelled, as well as a [recent survey by the Office for Students](#), which found that English universities approved 99.8% of requests for external speakers in 2021/22.

But just looking at the number of speakers who have been cancelled or no-platformed is not a reliable way of assessing the state of free speech and academic freedom in Britain's universities. Consider the following:

- Thirty-five [percent](#) of UK academics self-censor in research, teaching and public discussion of their work, rising to [75%](#) among the small minority of conservative academics, while [seven in ten](#) conservative academics in the Social Sciences and Humanities in Britain say their departments are a hostile climate for their beliefs. Meanwhile, a [quarter](#) of students, rising to 59% of Conservative-supporting students, say they self-censor. Hundreds of thousands of students and tens of thousands of academics have had their academic freedom restricted in this way, distorting the research and teaching mission of our universities. This is not a small problem, but a large problem;

- Students and academics are being [increasingly monitored](#) to ensure they observe written and unwritten speech codes, with their peers and colleagues being encouraged to anonymously report them if they say something heretical or unorthodox;
- The roll out of ‘diversity training’ across the sector, which is predicated on a [narrow, ideological explanation](#) for the persistence of outcome discrepancies between different identity groups on campus, violates the principle that universities should not take sides on contentious political issues. Meanwhile, universities show no interest in the dwindling ideological diversity on campus;
- Supposedly independent charities funded by the sector, like [Advance HE](#) and the [Quality Assurance Agency](#), have put pressure on universities to ‘decolonise’ their courses, including [mathematics departments](#). This directly interferes with academics’ freedom to devise their course reading lists;
- Academic staff who have challenged prevailing campus orthodoxies, such as [Professor Selina Todd](#) and [Professor Kathleen Stock](#), have faced physical intimidation from student activists;
- The Free Speech Union has come to the aid of hundreds of students and academic staff who have been [placed under investigation](#) by their universities for exercising their lawful right to free speech, and even though most of these end with nothing more than a wrist slap, the process (which usually lasts for months) is the punishment;
- Universities have [sacked academics](#) for expressing lawful but controversial points of view;
- There have been several surveys of students and academics indicating they are engaging in more and more self-censorship (such as those by the [UCU](#), the [Legatum Institute](#) and [Policy Exchange](#));
- A recent report by the [Higher Education institute](#) found that 79% of students believe “students who feel threatened should always have their demands for safety respected”, with only 4% disagreeing.

It is also worth pointing out that even though the Office for Students found that the total number of speakers rejected by English universities in 2020-21 was only 193, that’s more than double the number in the previous year (94).

Given how precarious the state of free speech and academic freedom is in our higher education institutions, with hundreds of thousands of staff and students affected, we believe this Bill is badly needed. Not only is free speech a fundamental human right, but it is particularly important to uphold that right in our universities if they are to retain their world class reputation. However, unless the new legal duties in the Bill are accompanied by a statutory right for students and academics to pursue civil claims against universities if their speech rights are violated, the legislation is unlikely to have much impact.

Critics of the Bill have argued that the statutory tort will impose [burdensome and costly obligations](#) on universities, but we believe the magnitude of that risk has been exaggerated and it is a reasonable price to pay to uphold a fundamental human right. Do university vice-chancellors regard the bullying and intimidation of heterodox academics by student activists – particularly female academics – as insufficiently serious to do anything about? Universities did not object to

the inclusion of a statutory tort in the Equality Act 2010 to protect their staff from harassment; why are they now objecting to the creation of another statutory tort to protect a more fundamental right?

According to your own Department, the [cost](#) to English universities of complying with the Bill's new free speech duties is estimated at £4.7 million per annum. Compare that to spending by English universities on [access and participation plans](#), which is due to increase from £550 million to £565 million from 2020-21 to 2024-25.

And what reason do universities have for thinking the cost of complying with the new obligations will be higher than the costs associated with neglecting free speech? Disciplinary investigations and hearings produce thousands of pages of documentation and interrupt the work of academics and administrators alike. Ideological curriculum change requires lengthy consultation and monitoring of module content. Tolerance – simply letting people speak freely – is always less costly than suppression.

No doubt it is true that some higher education providers will be sued after the Bill is activated, but there is a simple solution to that problem: comply with the new free speech duties. Given the widespread neglect of free speech and academic freedom in the sector, the question the Bill's critics must answer is what alternative remedy they would recommend to deal with the problem?

The Education (No. 2) Act 1986 imposed a legal duty on universities to uphold free speech, but it has proved largely ineffective because the only way of forcing higher education providers to comply is to bring a judicial review in the High Court, a lengthy, costly and risky procedure. Because of that, universities have little incentive to observe the law. In the absence of a new statutory tort, making it easier for students and academics to bring suit, the new Bill will be as toothless as the previous one. Furthermore, the risk of vexatious litigation is no greater than the risk posed by any statutory right, including those the sector has not objected to. It is a minor risk to which the Bill's critics are giving disproportionate weight.

Some critics have objected that the Bill will leave universities facing liability in damages if they breach their obligations. But there should be a cost for interfering with a right that is fundamental both to our democracy and the world class reputation of our higher education institutions.

The Bill's critics also miss the point in predicting a welter of new disputes on campus as a result of the statutory tort. This is misconceived. The Bill does not create a new weapon with which to keep fighting the campus battles about free speech. Rather, the virtue of the Bill, and in particular the statutory tort, is that it will make disputes less likely because universities' duties will be clearer, and the risk of disregarding those duties costlier.

We have no doubt that the Bill's critics mean well and believe they have the best interests of the sector at heart. But they underestimate the scale of the free speech crisis in our universities because, for the most part, they are ideologically aligned with the enforcers of intellectual orthodoxy and therefore have not had to self-censor or contend with a prolonged investigation

merely for expressing their opinions, let alone the bullying and intimidation faced by academics who challenge the prevailing wisdom on campus about trans rights. But as academics who have swum against the tide, we know just how little tolerance there can be for genuinely dissenting points of view.

Universities have had almost 40 years to get their house in order since the Education (No. 2) Act was passed and in that time free speech and academic freedom have become more and more precarious. We welcome your government's determination to honour its manifesto commitment to do something about this problem and believe the Higher Education (Freedom of Speech) Bill will make a critical difference. Now is not the time for the government to lose its nerve.

Yours sincerely,

Professor Arif Ahmed

Professor Nigel Biggar

Professor Eric Kaufmann

Professor Matthew Goodwin

Dr James Orr

Professor Douglas Stokes

Professor Frank Furedi

Professor Ellie Lee

Professor Tim Luckhurst

Professor Robert Tombs

Dr Julius Grower

Professor Jeremy Jennings

Dr Gavin McCormick

Professor Sir Partha Dasgupta

Dr Heather Brunskell-Evans

Dr Sumantra Maitra

Professor Michael Rainsborough

Professor David Ibbetson

Professor Robert Plomin

Dr Edward Howell

Austin Williams

Professor David Betz

Professor Timothy C Bates

Professor Charles Pasternak
Professor David Feldman
Dr Michael Biggs
Professor Kathleen Stock
Dr Liron Shmilovits
Professor David Abulafia
Dr David Butterfield
Yuan Yi Zhu
Dr Jaspreet Singh Boparai
Professor Carl Heneghan
Professor Martyn Rady
Professor Andrew Tettenborn
Professor James Treadwell
Dr Simon Anglim
Professor Raymond Wacks
Professor Dario Maestriperi
Professor Stephen Guest
Professor Nigel Simmonds
Dr Alexander Morrison
Dr Edward Skidelsky
Dr Paul Yowell
Dr Beatrice Penati
Dr James Tooley
Professor John Finnis
Professor Simon Heffer
Dr Rebecca Haynes
Professor Martin Loughlin
Professor Paul Elbourne
Professor Jeff McMahan

Cc: The Rt Hon Robert Halfon MP, Minister of State for Higher Education
The Earl Howe, Deputy Leader, House of Lords

Claire Coutinho, Under Secretary of State for Children, Families and Wellbeing

Lord Wharton, Chair, Office For Students