

By email to:

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Dear colleagues

Regulatory advice 24: Guidance related to freedom of speech

Thank you for your 29 July letter to Susan Lapworth and me in which you include feedback on Regulatory advice 24 and raise some questions about its implications. We are grateful for the feedback and for your continued input and engagement.

In relation to Article 17 of the European Convention on Human Rights ('the Convention'), the Higher Education and Research Act 2017 (HERA) explicitly defines 'freedom of speech' with reference to Article 10(1). This is set out in para. 18 of Regulatory advice 24. I also note that para. 93 of our consultation analysis document states that, in the context of free speech at universities, Article 17 will be relevant to ensuring that Article 10 is not applied in a way that seeks to destroy other Convention rights.¹ Speech that meets that very high threshold is excluded from the ambit of Article 10(1) and therefore there is no duty to secure it. We would emphasise that Article 17 is only applied on an exceptional basis and in extreme cases.

Para. 64 of Regulatory advice 24 states that taking a step is not reasonably practicable if doing so is unlawful. This includes unlawfully acting incompatibly with a Convention right where the provider is subject to s.6 of the Human Rights Act 1998 (HRA), including, for instance, rights under Article 8 of the Convention. If no reasonably practicable steps can be taken to secure the speech in question without acting unlawfully under s.6 HRA then there will be no breach of s.A1 HERA in not securing the speech.

¹ [Consultation on proposed regulatory advice and other matters related to freedom of speech: Analysis of responses and decisions - Office for Students](#)

I'd like to thank you again for taking the trouble to write about these details of our Regulatory advice. I am sure that, like me, you are keen to focus on the real steps that universities and colleges can take to secure and promote the fundamental rights of free speech and academic freedom. I very much look forward to future engagement and collaboration on these crucial matters.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Arif Ahmed', written in a cursive style.

Arif Ahmed

Director for Freedom of Speech and Academic Freedom

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cc: Malcolm Press, President, UUK