

29 July 2025

Susan Lapworth  
Chief Executive  
Office for Students

Arif Ahmed  
Director for Freedom of Speech and Academic Freedom  
Office for Students

cc Professor Edward Peck CBE  
Chair  
Office for Students

Dear Susan and Arif,

**Regulatory advice 24: Guidance related to freedom of speech**

We are writing in relation to the OfS's recently published Regulatory advice 24: Guidance related to freedom of speech. We welcome the OfS's thoughtful engagement with the sector since publication of the guidance, including your engagement with UUK's freedom of speech and academic freedom advisory group. Attached to this letter is an annexe which summarises feedback received from members since the guidance's publication and which concerns the practical implementation of the duty. As sector organisations, we are committed to continuing to work with the OfS in a constructive way as the duties come into force and as the OfS develops its next steps on freedom of speech and academic freedom. We would welcome the chance to discuss this feedback with you to ensure shared understanding and address the challenges with effective implementation of the guidance, and would appreciate your response to these points.

In that spirit of constructive engagement, however, we are also writing to bring to your attention what we consider to be a more fundamental concern with the guidance as it is currently written. We consider this especially urgent to gain clarification on.

We welcome the OfS's efforts to provide additional support for universities and colleges in meeting the new duties via the inclusion of the three-step framework for assessment in the guidance. As we have previously discussed, decisions relating to freedom of speech are often complex and nuanced, and providing additional guidance to providers on how to navigate decision making processes could be helpful to the sector. We welcome that the three-step framework explicitly acknowledges that lawful speech can potentially be restricted, if done so proportionately.

However, we are concerned that the way in which the OfS has set out its framework for assessment could put universities and colleges at risk of making decisions which are incompatible with their duties under the European Convention of Human Rights, putting providers in difficult situations where they are not able to both meet the requirements of the guidance and to comply with the Convention.

As you know, universities are public authorities for the purposes of the Human Rights Act 1998 and are therefore bound by law to act compatibility with the European Convention on Human Rights. While we are not suggesting that the OfS's intent in framing the guidance was to mandate an approach which potentially puts universities in breach of these obligations, we believe there is urgent need for clarification to ensure that this impression is not mistakenly taken.

First, there is no mention of Article 17 of the Convention in the guidance. Under the Convention, this prevents abuse of rights and excludes certain types of speech from the scope of Article 10 protection (to which the statutory definition of free speech in the Act is expressly tied). Certain speech which falls foul of Article 17 is lawful under English law, but we do not think we would be acting compatibly with the Convention to secure such lawful speech, especially given the extreme and abusive nature of it as recognised by the Strasbourg court. We would be grateful if the OfS could expressly confirm that universities are not expected to secure such speech.

Second, the wording in the guidance with respect to the third step (proportionate interference) could reasonably be read as meaning a Convention-led proportionality approach can only be applied if speech has not been secured (paragraph 124: *"If indeed there are no reasonably practicable steps to secure speech, any restriction or*

*regulation must meet the conditions set down under Article 10 of the Convention”). If that were the case, a university would seemingly be precluded from balancing, for example, its positive and negative obligations with respect to Article 8 (which covers lawful bullying and harassment) with Article 10 as is required under the Convention. In other words, provided speech is secured, regard would not be had to other Convention rights and case law (contrary to the approach which Strasbourg articulated was expected of public authorities in the recent case of *Minasyan v Armenia*). Furthermore, some examples in the guidance give the impression that regard should not be had to a Convention-led proportionality analysis provided some speech is at least partially secured. For example, example 11 seems to give no credit to the Article 9, 10 or 11 rights of the protestors and the focus is exclusively on the nature of reasonably practicable steps. Again, without expressly balancing all relevant Convention rights in all cases where they are engaged, we are concerned that universities would be in breach of their Human Rights Act obligations.*

Notwithstanding the potentially confusing nature of the guidance with respect to Convention obligations, we note that the Human Rights Act and Article 8 are mentioned in the detailed consultation response document at paragraph 67. This suggests that the OfS would accept that if a university is obligated by the Human Rights Act to favour Article 8 over Article 10 that this would not be a breach of the secure duty. However, this is not particularly clear and does not appear in the guidance itself. The same is true of Article 17 in paragraph 93 of the consultation response.

With that in mind, alongside general comments on the concerns above, we would be grateful if the OfS could answer these specific questions:

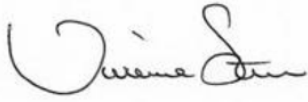
1. In light of the obligation on the OfS and universities to act compatibly with the Convention, can the OfS confirm that it will not expect universities to secure any speech which falls foul of Article 17 in any circumstances (even if lawful) and that there is no need to consider whether reasonably practicable steps are needed to secure it given such speech is outside the scope of the secure duty?

2. Does paragraph 64 of the guidance mean that, if a university is obliged by the Human Rights Act to not secure speech (e.g. because an Article 8 or 11 right has prevailed over an Article 10 right in a Convention-led balancing exercise) the OfS considers the secure duty to have been complied with?
3. In order to ensure that all Convention rights and the Human Rights Act have been complied with, where Convention rights are engaged, does the OfS consider (in line with paragraph 64) that a university (and the OfS) must first carry out a Convention-led balancing exercise to ensure there is no breach of any Convention right before proceeding to consider the issue of what reasonably practicable steps are required to secure speech?
4. If the answer to any of these questions is “no”, please can the OfS explain in detail what its position is and what precisely is expected with regards to Convention compliance in light of the concerns sketched out above?

Given the uncertainty and risk that this presents for OfS-registered providers, we would ask that the OfS, as a matter of urgency, takes steps to provide greater clarity and to ensure that complying with the guidance does not leave universities and colleges in a position that risks them breaching Convention rights. We note that the 1 August date for the duties and guidance coming into force is rapidly approaching, and therefore ask that the OfS makes clear to the sector its intention to look into rectifying this issue.

On a separate note, we would also ask that the OfS clearly communicates with providers about its expectations about compliance with the guidance between 1 August and when the remaining aspects of the Higher Education (Freedom of Speech) Act 2023 come into force, including the complaints scheme and the condition of registration. The guidance is wide-ranging with much for universities and colleges to consider, and it would be very helpful if the OfS could through written communication share how it intends to use this interim period. We would very much welcome the OfS taking a pragmatic approach to compliance during this period, given the short window between publication of the guidance and the duties coming into force.

Yours sincerely,



**Vivienne Stern**

Chief Executive

Universities UK



**Alison Johns**

Chief Executive

Advance HE



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**Nicola Owen**

Chair

Association of Heads of  
University Administration



**Alex Hall**

Chair

Association of University  
Legal Practitioners



**Brooke Storer-Church**

Chief Executive

GuildHE

## Annexe A: Key points of feedback on Regulatory advice 24

- On finely balanced cases, it is possible for institutions to have appropriately considered relevant duties, legislation and commitments, and reach a reasonable decision that may not be the decision the OfS would have reached. It would be helpful to understand more about how the OfS will handle this to avoid the unintended consequence of the OfS's decisions on cases representing an evolving interpretation of the law.
- Additional information, including examples, on the cumulative effect of speech that is legitimate but could have a negative impact on certain groups would be helpful. For example, if there is a widely held view on a particular topic amongst a university community, this could have a chilling effect for those who disagree with that viewpoint. Further consideration of how universities should manage this would be helpful, to ensure space for both widely held and minority viewpoints within the law are able to be articulated on campuses.
- It would be helpful to further understand the limits of the restriction on universities taking into account reputational concerns in relation to free speech. The guidance states that is 'very unlikely' that reputational interests will outweigh freedom of speech considerations. We ask that the OfS clarify this further – not just in relation to controversial topics but in relation to negative comments about the university itself.
- Further clarification on the relationship between institutional impartiality, institutional values and institutional commitments to supporting marginalised groups would be welcome. For example, it would be helpful if the OfS could articulate how institutions can adopt a position of institutional impartiality whilst also supporting values of equality and supporting marginalised groups (eg through Athena Swan, Race Equality Charter or access and participation activity).
- The scale of the impact that the guidance may pose for international activity (eg for student scholarships, joint institutes, partnerships and research agreements) cannot be known until providers have had reasonable time to analyse and identify any conflict with existing arrangements. Appropriate time must be allowed for providers to review international partnership arrangements, to assess and the scale of impact on their activity.

- It would be helpful for OfS to clarify the boundaries around what it considers acceptable and "reasonably practicable" in relation to working with foreign partners and foreign governments, since there is a risk that the regulatory guidance will otherwise negatively stifle international activity. Globally, higher education providers will enter arrangements that contain wording from foreign governments that could be interpreted as patriotic and/or directive. For example, some foreign-state funded scholarships may prohibit student recipients from insulting the foreign state. Similarly, some scholarships may place demands on student recipients to uphold moral character and maintain a positive sentiment towards their home state whilst abroad or contain clauses where students must agree to return to their home country for national service. Where standard practice, it may not be possible to amend such agreements. Moreover, it may not be appropriate to mandate that providers approach foreign partners to direct their amendment of wording that the OfS considers non-compliant, without risk of causing relational offence, termination to collaboration, and provoking retaliation.