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Taylor Vinters LLP is a specialist law firm that works with innovative and entrepreneurially minded people and organisations.

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The Higher Education (Freedom of Speech) Bill 2011-2022 (the “Bill”)

PART 1: Overview of the current law

Introduction

In this submission, we will contend that the Bill is of fundamental importance for the proper protection of freedom of speech on campus, academic freedom and academic freedom of speech (“AFOS”) in the UK.

AFOS is often conflated with two closely related concepts – academic freedom more widely (which also includes institutional autonomy, etc.) and a more general freedom of expression on campus¹ - but it is distinct. The distinction is important – we will argue that AFOS is a specialist subset of the more general Article 10 of the European Convention on Human Rights (ECHR). Further, that AFOS is an enhanced form of Article 10 protection which reflects the special status in civil society of academics. It includes speech which touches on matters of an academic’s particular expertise, but also on matters more generally within their professional competence, such as the content of curricula, the governance and affiliations of their institutions and general pedagogical matters. This is all duly recognised by the European Court of Human Rights (ECtHR) in its jurisprudence, as well as by many in civil society in the UK.

¹ See distinction drawn on page 15 in Equality and Human Rights Commission’s [guide](#) to freedom of expression on campus.



In its manifesto, the Conservative party committed to update the Human Rights Act 1998 (“HRA”) but also to protect academic freedom (including AFOS)². We submit that Parliament must ensure that the Bill contains strong protections for academic freedom, free speech on campus and AFOS. In particular, the Bill must recognise academic freedom and AFOS as human rights of the utmost importance.

The current English law position

For a survey of the English law position regarding AFOS, please see our submission to the UN Special Rapporteur on academic freedom and freedom of expression³. In short, the key legislative protection on which academics can rely is the general duty on universities to take reasonably practicable steps to ensure freedom of speech within the law is secured on campus, which includes producing a code of practice in order to facilitate compliance with that duty (s43 Education (No2) Act 1986).

Aside from the s43 duty, universities often do include specific protections for AFOS in their governing statutes⁴, they must have particular regard to academic freedom when implementing the ‘Prevent’ duty⁵ and the Office for Students (which regulates most universities) also has a duty to protect academic freedom in exercising its functions⁶.

In a 2017 report⁷ prepared for the University and College Union (UCU), Professor Terence Karran and Lucy Mallinson examined the legal and normative protection for academic freedom in the UK, as compared with the EU27.

In terms of legal protection, they conclude that:

“in sharp contrast with the other 27 EU nations, the constitutional protection for academic freedom (either directly, or indirectly via freedom of speech) in the UK is negligible, as is the legislative protection for the substantive...and

² See page 37 of the Manifesto, available [here](#).

³ The [submission](#) and the report is found [here](#).

⁴ This usually broadly mirrors section 202(2)(a) of the Education Reform Act 1988, which imposed obligations on the now defunct University Commissioners.

⁵ See section 31 of the Counter-Terrorism and Security Act 2015.

⁶ See section 36 of the Higher Education and Research Act 2017. Note that this has a particular focus on institutional freedom, rather than an individual academic’s AFOS.

⁷ https://www.ucu.org.uk/media/8614/Academic-Freedom-in-the-UK-Legal-and-Normative-Protection-in-a-Comparative-Context-Report-for-UCU-Terence-Karran-and-Lucy-Mallinson-May-17/pdf/ucu_academicfreedomstudy_report_may17.pdf



supportive...elements of academic freedom. Additionally, the UK is similarly deficit in protecting academic freedom in line with international agreements”.

However, we note that the report does not undertake an extensive review of the ECtHR case law on AFOS in reaching that conclusion. As such, while we would agree with their conclusion in comparative terms (considering the wide application of the ECHR), we do submit that the Human Rights Act 1998 (“HRA”) and the ECtHR jurisprudence puts the UK in a better position in absolute *de iure* terms than the report may suggest.

Unfortunately, the domestic case law has not undertaken a systematic analysis of AFOS or freedom of expression in a university context⁸. The Bill is an opportunity to ‘bring home’ and ‘gold plate’ the strong protection for academic freedom / AFOS as elucidated in the ECtHR jurisprudence and clarify its application to English institutions and interactions with English law.

The ECtHR jurisprudence

Academic institutions tend to be public bodies which are directly bound (by virtue of the HRA) to act in a way which is compatible with Article 10. In that regard, the case law of the ECtHR is highly relevant.

In essence, the ECtHR has repeatedly underlined the importance of academic freedom⁹ and academic works¹⁰. It has held that AFOS deserves “*the highest level of protection under Article 10*”¹¹ and that “*any restrictions on the freedom of academics to carry out research and to publish their findings*” must be submitted to “*careful scrutiny*” and “*the need for any restrictions must therefore be established convincingly*”¹².

Indeed, the presence of an academic element in a work may be decisive in affording Article 10 protection to speech which would otherwise constitute a breach of competing rights of others, such as the Article 8 right to respect for private and family life¹³.

⁸ Although note the positive obiter comments of Mr Justice Knowles concerning AFOS in *R(Miller) v The College of Policing* [2020] EWHC 225 (Admin)

⁹ For example, *Sorguç v. Turkey* (no. 17089/03)

¹⁰ See *Aksu v. Turkey* (nos. 4149/04 and 41029/04)

¹¹ *Erdoğan v. Turkey* (nos. 346/04 and 39779/04)

¹² All quotes from *Aksu*

¹³ *Erdoğan*



It is also worth repeating that these principles apply not just to ideas which are regarded as inoffensive but also those that offend, shock or disturb¹⁴. That concept is not unlimited, however. For example, it is unlikely that racist speech (in particular claims based on racial superiority) will be afforded any protection whatsoever¹⁵.

It is important to also note that this high level of Article 10 protection does not just apply to academic or scientific research, teaching and/or formal publication (e.g. in an academic book or a peer-reviewed journal), but also to the freedom to freely express views and opinions more widely “*in the areas of their research, professional expertise and competence*”.

Furthermore, as part of that, high protection also potentially applies to a wide range of extramural speech, including academics’ “*addresses to the general public*”, speech outside of academia and even appearances on television shows¹⁶. This could include social media.

However, the ECtHR has suggested a test to determine whether extramural speech has a sufficient academic element to be covered by the high level Article 10 protection, namely it is necessary to establish:

1. whether the individual concerned can be considered an academic;
2. whether their public comments fall within the sphere of their research; and
3. whether such comments amount to conclusions or opinions based on their professional expertise and competence.

If those conditions are satisfied, the academic’s speech will be entitled to the “*utmost protection*” under Article 10 – where and how the impugned speech is made is a “*secondary, auxiliary and often not decisive factor*”.¹⁷ We believe this can apply notwithstanding an employee’s generally understood obligations to their employer, including loyalty and not bringing them into disrepute¹⁸.

The ECtHR has also recognised that AFoS comprises the freedom for academics to express themselves openly about the institution or system in which they work without restriction¹⁹.

¹⁴ *Handyside v. UK* and repeated with approval in an academic context by the ECtHR Grand Chamber in *Aksu*; see also *Baskaya and Okcuoglu v Turkey* (nos. 23536/94 and 24408/94)

¹⁵ Consider *Aksu*; *Kosiek v. Germany* (1984) 6 E.H.R.R. CD59

¹⁶ *Kula v Turkey* (no. 20233/06)

¹⁷ Previous three paragraphs – see *Erdoğan*

¹⁸ See *Wojtas-Kaletka v Poland* (no. 20436/02).

¹⁹ *Sorguç v. Turkey* (no. 17089/03); *Kula*



Indeed, the ECtHR's most recent guidance on Article 10 notes that the limits of permissible criticism are wider in an academic context, even if the criticism in question has a negative impact on the reputation of the institution / employer²⁰.

On top of that, the guidance suggests that academics have a “public watchdog” role similar to that of the press, which contributes to the high protection afforded to them, considering their role in disseminating information on matters of public interest. In the same context, the guidance cites bloggers and popular users of social media as also having such a role.

In the right circumstances, therefore, the ECHR grants the utmost protection under Article 10 to AFOS and the need for restrictions must be convincingly established. We expand on that general discussion with two more detailed examples below.

Consider, for example, the case of *Aksu v Turkey*²¹. Mr Aksu complained about the book, *The Gypsies of Turkey*, which was published by the Turkish Government and authored by an academic. He said the book contained offensive remarks about his Roma identity and perpetuated negative stereotypes about the community.

This led to a clash between Aksu's Article 8 rights and the AFOS rights of the academic author. In dismissing Mr Aksu's claim, the court emphasised that the book was an academic study based on scientific research. Of relevance was the fact that the impugned passages appeared within a book whose conclusions were based on a solid research methodology. The court cited two earlier cases²² in confirming that the ECtHR case law established that it “*must submit to careful scrutiny any restrictions on the freedom of academics to carry out research and to publish their findings*”.

However, note that the *Aksu* case also illustrates the limits to AFOS. It was relevant that the book did not make blanket, negative statements about all Romas. It seems likely that, had the book strayed into denigrating an entire racial group, the court would have afforded it little or no protection under Article 10²³.

²⁰ In *Kharmalov v Russia* (no. 27447/07), it was noted that a university's authority is a mere institutional interest and so did not carry the same weight as the protection of the rights of others.

²¹ Case no. nos. 4149/04 and 41029/04.

²² See *Sorguç v. Turkey*, no. 17089/03, §§ 21-35, and *Sapan v. Turkey*, no. 44102/04, § 34

²³ See the dissenting opinion in *Aksu*



Consider, also, the case of *Kula v Turkey*²⁴. Professor Kula, an expert in the German language, was reprimanded by his institution after he participated in a debate on the EU and Turkey which his supervisors considered inappropriate. The court concluded that this was a breach of Article 10 and said “*this issue unquestionably concerns his academic freedom, which should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction*”. It also remarked that “*however minimal the sanction*”, it was liable to have an impact on his right to free expression and have a “*chilling effect in that regard*”.

As the above shows, the ECtHR jurisprudence provides a protection for AFOS which is stronger and more coherently developed than any other current English law. However, while the ECtHR jurisprudence is an invaluable source of protection for AFOS in the UK, it is still an area of the law which is developing and is yet to provide a comprehensive and fully defined set of protections for AFOS. There are still significant gaps and points of uncertainty. In Part 2, we discuss how the Bill can be improved to ensure that protection.

²⁴ Case no. 20233/06



PART 2: Critique of the Bill

Introduction

The stated aim of the Bill is to strengthen existing legislation on freedom of speech and academic freedom in universities, but does it achieve that aim? Only in a narrow sense. As we set out below, there are a number of fundamental concerns which mean that the aim is only superficially achieved.

In this submission we will consider how the Bill could be amended to make a more meaningful contribution to achieving its aim.

The core duties on universities

The core duties on universities are set out in sections A1 to A3 and are the most important parts of the Bill.

The Office for Students and the (new) Director of Free Speech and Academic Freedom have been given new powers to ensure compliance with these duties, and there is a new complaints scheme where issues can be brought to their attention. Further, individuals will be able to bring legal claims for compensation in relation to breaches of the A1 duty (though, note not A2 or A3). As such, these provisions must be scrutinised particularly closely.

A1 mirrors the existing s43(1) duty under the Education (No 2) Act 1986, but with some additions. The Government's white paper had led commentators to think that the duty would be materially strengthened.

In reality, we believe the correct characterisation of the Bill is that this duty has been widened rather than strengthened. The most significant area of "widening" is with regard to academic freedom. As we touch on below, that "widening" does not expand the duty as much as commentators had expected.

The A1 duty requires the institution's governing body to take steps that are "reasonably practicable" to ensure freedom of speech within the law for its staff, members, students and visiting speakers.



At its core, for those who are not academic staff, the A1 duty hasn't changed all that much as compared to the existing s43(1) duty. We note a couple of key issues:

- The scope of the people responsible for the duty has been narrowed from “every individual and body of persons concerned in the government” of an institution to “the governing body” – would a court therefore, in contrasting the two provisions (s43 survives on the statute books, though not in England), only consider decisions or actions of the governing body acting in a united or official capacity, rather than a decision maker further down the chain of command at an institution or a member of the governing body acting alone? A governing body tends to be a defined group of people, whereas an individual concerned in government is feasibly a wider group of relatively senior people within an organisation who take management decisions.
- One addition is that, in exercising the duty, an institution must have “particular regard to the importance of freedom of speech”. It is difficult to see what this really adds in the context of the overall duty – perhaps that additional importance must be put on free speech rather than, e.g., security costs – but it is hard to anticipate how a court will interpret that or whether it will have that effect. More importantly, it doesn't say “to the importance of freedom of speech and academic freedom”.

Without that addition, it is arguable that freedom of speech would take primacy over academic freedom when the duty is balanced in practice (i.e. you can read the duty as follows: take particular regard to the importance of freedom of speech when taking reasonably practicable steps to achieve the objective of securing academic freedom). We do not think this emphasis is correct: academic freedom (and as part of that academic freedom of speech) should have primacy in the university context. Presumably, one would not want the situation where the free speech of a large group of vociferous protestors is weighed as having more importance than the freedom of an academic (on that issue, see more below).

Overall, for non-academic staff, it is difficult to read the new A1 duty as meaningfully enhancing the existing s43(1) duty.

More importantly, although there is limited English case law on the s43 duty, it may not amount to a particularly strong duty at all. It is a positive duty, but it may be that only perverse or irrational steps by an institution will amount to a breach which the courts will uphold – there is



not enough existing case law to understand how the courts might interpret the duty in the scenarios (e.g. a dismissal of an academic) which the Government clearly intends it to cover. In addition, case law does permit institutions to impose cost requirements on organisers as a condition on holding the event.

As such, Parliament needs to more clearly elucidate the strong duty which it intends to impose on institutions and not simply mirror this existing – potentially weak – duty and ensure that a costs burden imposed by institutions cannot be used as a *de facto* block on events going ahead.

Further, note that what follows in relation to academics only covers “academic staff” of the institution in question. That does not cover visiting academics to an institution – they have no additional protection for their academic freedom under the new Bill and their rights are the same under the Bill as any other visiting speaker (although when considering “within the law”, one must keep in mind the ECtHR’s jurisprudence on academic freedom of speech).

Additional protection for academics

The Bill seems to be intended to give additional protection to academics who might otherwise be at risk of losing their jobs. However, the employment protections for academics in the Bill are currently weak.

We do think it is likely that dismissed academics will be relying on the Bill to bring claims (perhaps supported by campaigning bodies or crowd funding), but we think their chances of success are generally going to be limited. On top of that, claims cannot be pursued in the employment tribunal, which is a problem for the reasons below.

Under section A6 of the new Bill, a person may bring a civil claim in respect of a breach by the governing body of the provider of any of its duties under A1. The intention seems to be that this means an academic can claim a decision to dismiss, which is in breach of A1, has caused them loss of earnings (etc.) and they are entitled to recoup those from the institution.

The problem is that the A1 duty (i.e. to take reasonably practicable steps to secure free speech) is unlikely to be strong enough, or indeed well suited at all, for this sort of claim. Even if an academic was clearly dismissed because of an exercise of their academic freedom, we do not think it is axiomatic that such a dismissal would always be a breach of a duty to take



reasonably practicable steps to secure freedom of speech. It would be open for the institution to legitimately take into account wider circumstances and the effect of the dismissal on others at the institution.

For example, an institution might seek to justify a dismissal on the basis that what the individual was saying was inimical to free speech generally (e.g. advocating that certain groups should speak less) or that what they were saying was oppressive to certain groups such that their freedom to speech freely was being impugned. In either case, there may be enough grounds to say that the institution had taken reasonably practicable steps to secure free speech overall, at the expense of a particular individual's academic freedom.

In short, what does "reasonably practicable" steps mean and is it suited to considering an individual's dismissal? It probably means that the institution needs to take multiple factors into account and not just consider what the individual has done or said – i.e. a particularly vociferous / rowdy campaign by students or protestors (e.g. Evergreen College in the US), which damages an institution's reputation, impedes its operation or causes it significant costs, could shift the balance such that not firing the academic is no longer a reasonably practicable step the institution is required to take to uphold freedom of speech or academic freedom. Furthermore, how exactly would it interact with the institution's duties under the Equality Act 2010? Any potential for conflict there needs to be clarified in the Bill.

You can see, therefore, that this is very far from a situation where an academic has genuine employment protection against dismissal for exercising their academic freedom. In other words, provided their opponents cause enough mayhem the protection can effectively fall away.

The Employment Tribunal

The employment tribunal will not have jurisdiction to hear claims under the Bill.

The tribunal regime is much more favorable to an individual than the High Court. The simplicity and cost of access to an employment tribunal is significantly lower than a court. For example, there is no issue fee (e.g. this is £10,000 in the High Court for a claim of more than £200,000) and paying the other side's costs is the exception rather than the rule.



While it may be possible to obtain insurance policies and/or engagement terms with solicitors which mitigate the impact of these costs, there is no guarantee that any particular claimant will do so. While the complaints scheme will not determine rights and obligations, it is reasonable to suggest that this will be easier if the claimant has a positive recommendation from the OfS.

However, the converse is also true. It is also reasonable to suggest that it is commensurately harder for the claimant to do so if there is a finding in favour of the institution (e.g. the Director is not ideologically aligned, either now or in the future). It does not seem right to us that the practical ability to bring a claim should be predicated on the prevailing political climate.

As such, the enforcement mechanism of a statutory tort under the new Bill could be prohibitively expensive for academics without third party support and will disincline many people to bring a claim. There is a simple mechanism available to mitigate this issue, namely giving jurisdiction to the tribunal.

Furthermore, if the tribunal is not given jurisdiction to hear claims under the Bill then dismissed employees will be denied a key legal right, namely the right to a re-employment order (either re-instatement or re-engagement) which can only be granted by the tribunal. The High Court can grant injunctions, but there is a strong common law rule that it will not grant an injunction for personal performance (i.e. an employment contract).

This is a well-established rule with which lawyers for institutions would be familiar and so we fear the lack of any legal enforcement mechanism will essentially neuter any OfS recommendation in this regard. If one considers the importance of the concept of tenure for the protection of academic freedom historically (and in, e.g., the US today) then the importance of having a right to a re-employment order (its functional equivalent) becomes apparent. Also note that the tribunal can be empowered to give interim relief (either re-employment or continuation of employment) pending any final hearing (cf. whistleblowing claims).

There is also a real risk that a dismissed academic will not also be able to claim dismissal-related losses in the High Court. In *Johnson v Unisys Limited* [2001] UKHL 13, the House of Lords made it clear that the courts will not develop the common law such that they have the power to deal with claims and award compensation on matters which are usually the preserve of the tribunal and the statutory rights relating to dismissal with which it predominantly deals. This would “defeat the intention of Parliament that claims of this nature should be decided by specialist tribunals, not the ordinary courts of law”.



As such, there would need to be **very clear** wording in the Bill to make it explicit that Parliament intends to take the unusual step of creating a parallel employment regime, which sits alongside the tribunal's jurisdiction and dismissal protections in the Employment Rights Act 1996 and the Equality Act 2010 (etc.), in respect of academics who lose their jobs following a breach of the Bill. The effect of *Johnson* is that the courts will not 'fill in the gaps' of the Bill and take up jurisdiction for dismissal related claims which otherwise sit within the '*Johnson exclusion zone*', i.e. claims which need to be heard in the specialist tribunal which Parliament has set up explicitly for these purposes.

The current Bill does **not** have such clear wording. To paraphrase, the Bill requires institutions to take reasonably practicable steps to secure an academic's right to academic freedom within the law without placing themselves at risk of being adversely affected by the loss of their job. This is not an explicit prohibition on dismissing an academic in breach of the institution's duties under the Bill and can plausibly be read as a procedural duty and/or governing the HEI's conduct **up to but not including dismissal**. Contrast section 39(2) of the Equality Act 2010 "An employer (A) must not discriminate against an employee of A's (B) by dismissing B".

Indeed, when new statutory protections around dismissal are introduced, e.g. in the Equality Act 2010, Parliament usually gives exclusive jurisdiction to the tribunal. It would therefore be an unusual step for the Bill to give such jurisdiction to the "*ordinary court*" rather than the specialist tribunal. The reasonable inference then follows that Parliament deliberately excluded the actual dismissal (and losses flowing from it) from the High Court's jurisdiction because it has already established the tribunal system and other statutory protections (e.g. unfair dismissal, etc.). Even if that does not follow, the key point is that the courts will not 'fill in the gaps' to give themselves jurisdiction over dismissal claims because of the *Johnson* case.

Further, given the precedent set by the very clear wording of the Equality Act 2010 and the clear guidance in *Johnson*, we fear that even an amendment to the Bill's section A1(6) along the lines of "without placing themselves at risk of, **or in fact being,** adversely affected" would **still** not be sufficient to mitigate this danger because of the way the duty is structured around a duty to take reasonably practicable steps to secure, which can be plausibly be read as a procedural duty (e.g. to merely enhance the procedural protections against dismissal in internal statutes and ordinances, which was the mechanism used by Parliament in the



Education Reform Act 1988 when tenure was abolished) rather than any definitive prohibition on dismissal. That could be a crucial distinction which frustrates the Bill's aim.

What is the solution? As a starting point, if the intention is to give more meaningful employment protection for academics, we recommend a dismissal in breach of the A1 duty should be specifically included as an automatically unfair dismissal, within the jurisdiction of the employment tribunal, without the need for qualifying service, without a cap on potential compensation and with the ability to claim interim relief.

Ideally, a new ground of automatic unfair dismissal would be introduced which tightly defines protected academic expression (perhaps using the ECtHR jurisprudence as a starting point) and makes any dismissal on the grounds of such an expression irrespective of wider context automatically unfair (with the associated benefits above).

Academic freedom

The definition of academic freedom is another area of significant weakness. We do not think the Bill properly reflects the distinction between free speech and academic freedom, presents the concept of academic freedom properly, or gives sufficient primacy to academic freedom.

There are several key issues:

- Section A1(5) extends the protection to the academic freedom of “academic staff”. This needs to be “academic members”. Not all academics are engaged as staff – i.e. employees or workers of an institution. Many relationships (e.g. honorary, visiting, associate, life or emeritus honours) are not formalised such that they are included by the term “staff”.

There is no sensible basis on which to exclude such individuals, who continue to be engaged in academic work. Contrast this (as a court probably would) to A1(9) where “member” is used – a court could read this as Parliament deliberately narrowing A1(5) to only those with a “staff” relationship. Further, as noted above, it is not clear in principle why this duty only extends to staff academics of the host institution, rather than a visiting academic or one in an emeritus position.

- Section A1(6) defines academic freedom (cf. section A1(9)).



- There is an inherent problem with the phrase “within the law”, which we set out in detail in this [article](#). In essence, it needs a more precise definition of its scope given the importance and unique qualities of academic freedom of speech.
- There is a new qualification “within their field of expertise”. This seems to be taken from the case law of the European Court (in particular *Erdogan v Turkey*), but it appears to be a misreading of that case.

First, it misses off a crucial limb of work within their professional competence. This is wider than just a field of expertise – a Professor in Maths could use statistical training and understanding to comment in quantitative sociology for example, which would be within their professional competence but not strictly within their field of expertise (which could be construed narrowly by a court).

Second, it excludes other key aspects of the academy, such as pedagogical techniques – a Maths professor isn’t an expert on the theory of teaching, but commenting on teaching is surely within their professional competence. General philosophical questions about epistemology or the scientific / liberal method are not strictly within the field of expertise of a History professor, but surely within their professional competence.

Third, that test from *Erdogan* strictly pertained to extra-mural speech, it did not necessarily relate to an academic journal piece, which would derive the required academic element from other characteristics (e.g. being in a peer reviewed journal) – see *Aksu v Turkey*. It is surely not the intention that a History professor, who produced a piece on philosophy in a peer reviewed journal, would be excluded from this protection?

- The definition focuses on questioning wisdom and putting forward ideas, but there are other aspects of academic freedom. For example, governance of the university or system (e.g. on decolonising the curriculum) or institutional affiliations (e.g. to Stonewall), or professional or representative academic bodies (e.g. trade unions). This definition falls short of accepted international standards regarding what academic freedom is, which undermines the Bill’s aim to set a global high water mark.



- There is no clear delineation of when this protection applies – is it just in academic work or does it also include extra-mural speech (e.g. Twitter)?

- A1(6) requires institutions to secure an academic’s freedom without “placing themselves at risk of being adversely affected...[by] loss of their jobs”. This is problematic because it is not an express prohibition on actually dismissing an individual. A narrow interpretation would be that the institution is required to put in place structural safeguards to prevent dismissal (e.g. an enhanced disciplinary policy), but has no specific duty against dismissal. This is problematic for the reasons discussed above.

In addition to the above, there are also various places through the Bill where freedom of speech is mentioned but academic freedom is not. It is not clear whether this is deliberate, or an omission that overlooks the important differences between them.

Last, the Bill is not drafted in such a way to cover the colleges of Oxford and Cambridge (which do not appear on the Office for Students' register) and this needs to be remedied.

Conclusion

Overall, the Bill is clearly going to have a significant impact on the sector. The new regulatory regime and enforcement mechanisms certainly do raise the level of legal risk to a material extent, and universities will have to take great care to ensure they are compliant with the new rules. In particular, there are also new duties around hiring and managing academic employees which merit very serious consideration, especially when disciplining and dismissing academics.

However, when one looks at the core duties on universities as set out in the Bill, we do not think the Bill lives up to the grand aims of the Government. It depends on one’s perspective as to whether that is a good thing, but we strongly recommend that all parties work together to ensure the wording of the Bill is updated to deliver the stated policy goals, to reduce the legal complexity and potential for costly disputes as and when the Bill becomes law.

Please contact James Murray with any questions: james.murray@taylorvinters.com.

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