

Written evidence submitted by Sheffield Hallam University.

Executive Summary

- As a University we are absolutely committed to academic freedom and freedom of speech, as further detailed below, and agree with the government that freedom of speech within the law is precious. We contend, both on the basis of our existing legal duties and our practical experience of managing one of the largest and most diverse university communities in the country, that existing arrangements provide adequate legal and personal protection.
- The Office for Students has been directed to reduce the regulatory burden on higher education providers. However, the proposals will introduce significant additional regulation for universities;
- There is potential for significant conflict with other regulatory and statutory requirements, including protections for academic freedom and institutional autonomy, equality and employment legislation and requirements of PREVENT/anti-radicalisation policy;
- There is potential for disproportionate regulatory burden on Students' Unions who are already subject to regulation in this area by the Charity Commission;
- The Bill contains a substantial degree of ambiguity, making it difficult for providers to know how to prepare for the changes ahead;
- As a University our responsibilities already include securing academic freedom and freedom of speech within the law. We have statutory duties in relation to equality, diversity and inclusion and prevent and a commitment to our wider University values. The tension between of these responsibilities is often tested in specific cases, some of which can be controversial and require a delicate balancing act. We recognise that Universities have a critical role in providing space for difficult discussions to enable views which some may find controversial/unpopular to be shared and debated. There are concerns that a duty to 'promote' freedom of speech would introduce an element of ambiguity and potentially also give freedom of speech a perceived/actual 'primacy' over other statutory duties, which could be particularly problematic for Sheffield Hallam given our commitment to inclusivity.

Our Organisation

Sheffield Hallam University is one of the UK's largest and most diverse universities: a community of more than 30,000 students, 4,000 staff and more than 250,000 alumni around the globe.

Our mission is simple: we transform lives.

We provide people from all backgrounds with the opportunity to acquire the skills, knowledge and experience to succeed at whatever they choose to do.

As one of the UK's largest and most progressive universities, our teaching, research and partnerships are characterised by a focus on real world impact - addressing the health, economic and social challenges facing society today.

We are ambitious for our university, our students, our colleagues, our partners, our city and our region. Our vision is to be the world's leading applied university; showing what a university genuinely focused on transforming lives can achieve

Our Submission

1. Regulatory Burden

- 1.1 In its two most recent letters to the Office for Students, the Secretary of State has directed the regulator to reduce regulatory burden on higher education providers; the proposals, if introduced, will create significant additional regulation for universities and students' unions, which will in turn necessitate significant additional governance/resource in support. We would contend that the evidence to underpin the proposed intervention is weak and is based on very limited examples of impact/effect.
- 1.2 Freedom of Speech is already enshrined in the regulatory framework, being included within the public interest governance principles which apply to all providers registered with the OfS, which are reflected in Condition E1 of the Regulatory Framework, which requires that the governing documents of registered providers must uphold the public interest governance principles applicable to them.
- 1.3 Arguably, this already provides the OfS with the means to intervene in cases where there are matters of concern, or they are approached by individuals who feel that they have experienced a 'chilling effect'. Given that the evidence behind the proposals is limited, we would contend that a more proportionate approach would be to use the existing mechanisms within the framework to deal with specific concerns rather than introduce an additional regulatory burden across all providers.

2. Potential for conflict with other regulatory and statutory requirements

- 2.1 Universities already comply with a wide range of legislation relating to freedom of speech and academic freedom and often have to conduct a delicate balancing act where there are potentially competing duties, including for example the Prevent Duty/Equality Act considerations. The proposals in the Bill significantly shift the balance of regulatory and legal responsibilities. Specifically, the Bill would set a higher standard for freedom of speech expectations, with consequent potential difficulties in relation to the 1986 Education Act, the 1998 Human Rights Act and the 2010 Equality Act. These difficulties could make that balancing act more difficult in certain situations. These situations include, for example matters which would fall within the IHRA definition of Antisemitism, which this University has formally adopted.
- 2.2 Like many other Universities, the principles of freedom of speech and academic freedom are enshrined and protected in our constitution – the most recent version of which came into force in August 2021 (*Clauses 7.3 and 9 of our Articles of Government*). Whilst the proposals purport to 'strengthen' these existing arrangements we would suggest that they bring with them an unhelpful level of ambiguity/need for interpretation. The existing principles have been tested by case law and their application and reach are well. The introduction of new definitions/principles on the basis of limited evidence would invariably lead to civil litigation

to test the limits of the legislation, we would question whether the purported benefits of these proposals outweigh the legal uncertainty that will follow for institutions and individuals alike, on the basis of the weak evidence presented in support.

- 2.3 By way of example, the Bill defines “*freedom of speech*” as including “*the freedom to express ideas, beliefs and views without suffering adverse consequences*”. It is difficult to square this definition with existing anti-discrimination law. The Bill is also unclear on the extent of the obligation on HEIs, how far that new duty extends, and under what circumstances HEIs could be vulnerable to being sued under the proposed new right to compensation.
- 2.4 Whilst the proposals seek to extend academic freedom they arguably restrained it, because the Bill offers a restrictive definition of academic freedom in relation to ‘within their field of expertise’. Existing academic freedom protections, do not contain such a limitation. It is not clear how this restriction can be reconciled with the existing general duty? It could foreseeably create a degree of confusion as to the protection afforded to academic colleagues at any given time, given the obvious legal pitfalls in defining an ‘area of expertise’.
- 2.5 Universities already have a statutory duty under the 1986 Education Act to secure freedom of speech, the concept of ‘promotion’ will need to be very clearly defined. We understand the proposals include a requirement to set out ‘values relating to freedom of speech’ which could potentially exacerbate the difficult balancing act institutions must take when considering controversial viewpoints. There is significant concern that the proposals would inadvertently oblige institutions to provide a stage for those seeking to engage in hate speech and share extremist views on campus, which would directly conflict with our obligations under the Prevent Duty and possibly our legal duties in relation to equality, diversity and inclusion, health and safety and our wider commitment to our University values.
- 2.6 The proposal to extend the duty so that institutions are not only required to promote, but are also obliged to ensure that this happens ‘without adverse consequences’ for the individual or organisation – could equally bring with it unintended consequences. Securing freedom of speech can invariably reveal disparate viewpoints within the University community, a group would argue their right to peacefully demonstrate against the event, whilst the individual or organisation speaking may argue that they felt threatened by such a demonstration and hence the duty to protect them under the new proposals could be argued to have been breached. This feels like an impossible situation to navigate and such a predicament could well require external specialist legal support for institutions thereby creating an additional financial burden.
- 2.7 The Office of the Independent Adjudicator offers a comprehensive service to students in relation to complaints and matters of concern. The introduction of a separate track for FoS complaints may result in a dual-track process, which could be confusing for both students and providers. Providers have confidence in the OiA scheme, because it ensures that its internal procedures have been followed and exhausted before complaints are considered externally – would similar protections be built into this scheme, if not the OfS route could be perceived to be a fast-track route for complaints.

3 Impact on Students’ Unions – disproportionate/dual regulation

- 3.1 Students’ Unions are independent entities and by virtue of the Charities Act 2006, registered as charities in their own right and are therefore regulated by the Charity Commission (including external speakers and current freedom of speech legislation). The proposals to introduce a regulatory role for the OfS vis a vis Students Union activities will result in dual

regulation on this issue with two separate regulators. It is not clear how this would work in practice in relation to regulation of a singular topic/issue. Without clear guidance on what would be acceptable/not consistency between the two regulators would be difficult – for example the Universities Minister had suggested holocaust denial would be permitted, which is not a view we believe would be shared by the Charity Commission.

- 3.2 Often Students' Unions are unincorporated associations, it is not clear how the proposed penalties would apply in practice – for example, would these be imposed on individuals, universities, or students' unions (or a combination of these)? How would such liability be apportioned given the different regulation regimes?
- 3.3 The proposals do not recognise the somewhat devolved nature of Students' Union governance – for example, a Chair of a Society may not follow agreed procedure, which could result in an invited speaker needing to be disinvited once due process was followed – who would be at fault in such circumstances? The University/Union may not be aware of such an invitation despite appropriate procedures being in place and publicised etc.
- 3.4 If these proposals are adopted they would result in a significant regulatory burden for Students' Unions and introduce an increased financial and administrative burden also (e.g. insurance, increased Subject Access Requests, Freedom of Information requests) which would inevitably divert SU activity away from its primary charitable aims.

4. Concluding Submissions

- 4.1 Universities already comply with a statutory duty to secure freedom of speech and, in practice, do all they can to support events to take place. It is the absolute exception, rather than the norm, where events get cancelled – usually only after significant due diligence has been completed, numerous meetings have been held to discuss the delicate balance between the sector's various statutory and regulatory duties and a determination has been made, for reasons which would be shared with those involved. We really do believe the evidence on which these proposals have been presented overstate the prevalence of 'no platforming' and that, if there are concerns specifically related to this and the 'chilling effect' these could be addressed in updated guidance for the sector and its students' unions.
- 4.2 We agree with the government that freedom of speech within the law is precious. We agree with the government that dissenting and sometimes unpopular views need to be protected. We contend, both on the basis of our existing legal duties and our practical experience of managing one of the largest and most diverse university communities in the country, that existing arrangements provide adequate legal and personal protection.