

**Written evidence submitted by Professor Eric Kaufmann, Professor of Politics,
Birkbeck College, University of London (HEFSB17)**

Why the Higher Education Freedom of Speech Bill Matters

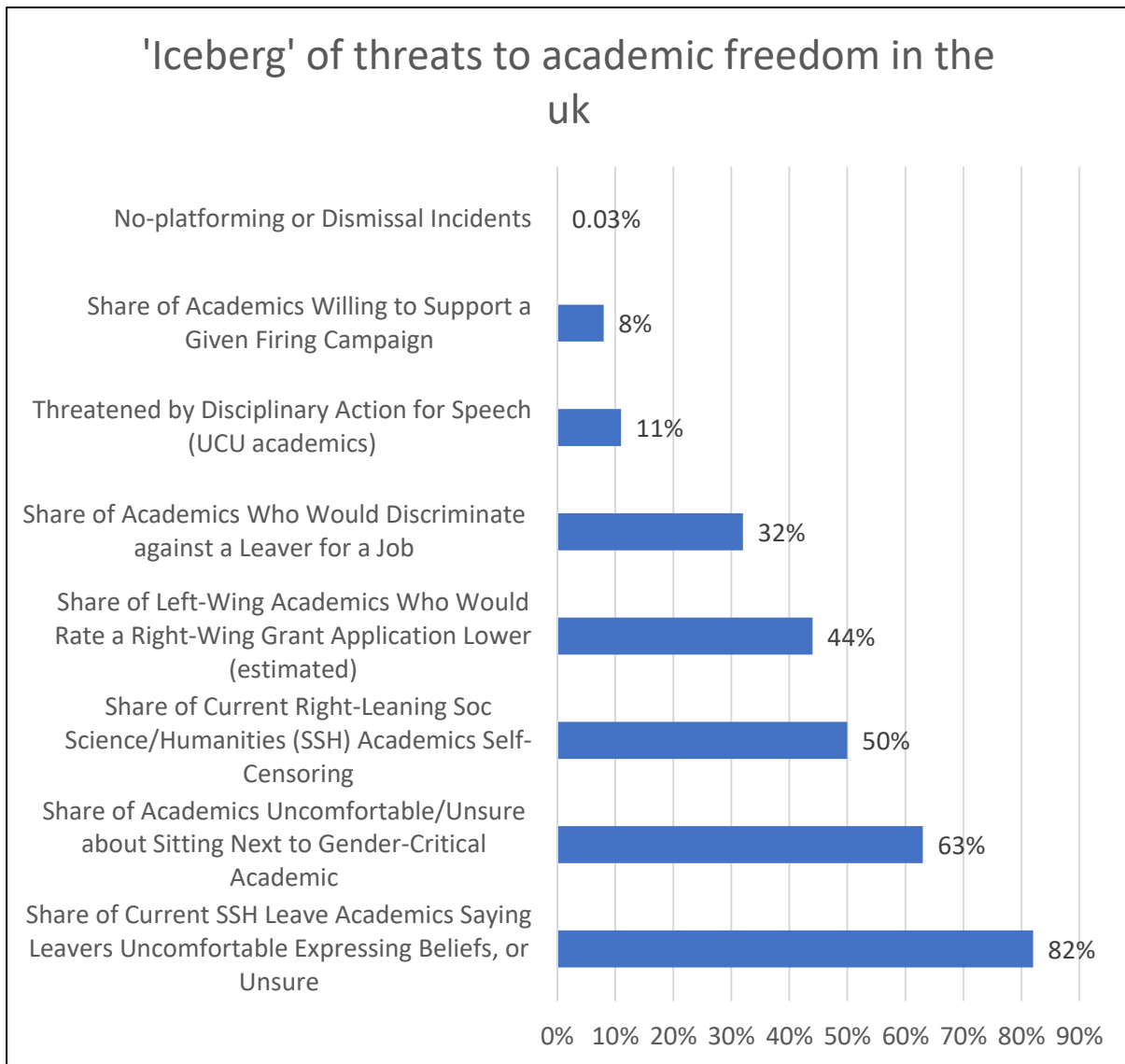
SYNOPSIS

The point is often made that the number of cancelled events is tiny, just a handful of cases among some 10,000 events.¹ Though there are few successful no-platformings or firings for speech, this represents but the visible symptom of a much deeper and more widespread crisis in our universities that affects a majority of political minorities such as Leave supporters or gender-critical feminists. I estimate that over 10,000 academics and 500,000 students are affected directly every year including a majority of political minorities such as Leave voters, conservatives and gender-critical feminists. A figure based on data from a YouGov survey conducted in 2020 appears in figure 1 below.²

¹ Higher Education (Freedom of Speech) Bill, *Hansard*, 12 July, 2021.

² Adekoya, R., et al. (2020). Academic Freedom in the UK. London, Policy Exchange; Kaufmann, E. (2021). "Academic Freedom in crisis: punishment, political discrimination, and self-censorship." Center for the Study of Partisanship and Ideology 2: 1-195.

Figure 1.



Source: Adekoya et al., Academic Freedom in the UK (Policy Exchange, August 2020).

SUBMISSION

Free Speech Events

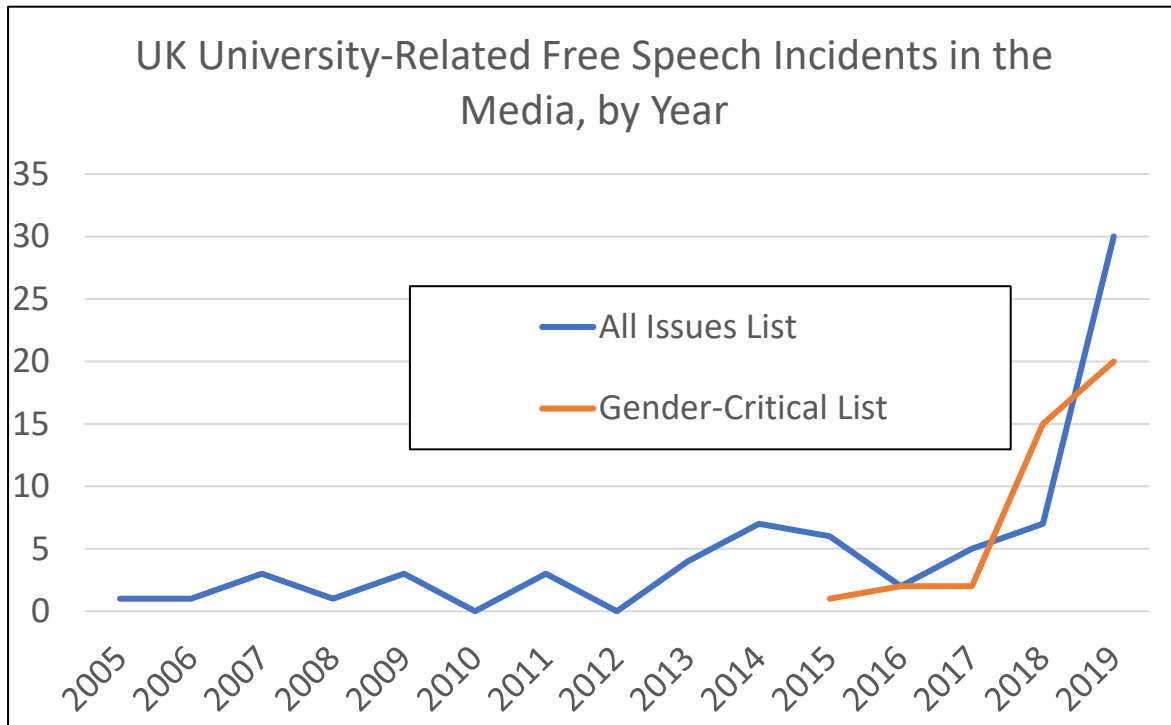
To begin with, we should not minimise the threats to academic freedom documented in the deplatforming and firing data. These show considerably more incidents than has been noted in parliamentary debates, and reveal a sharp rise since 2018 across two major indices (see figure 2). Such a change cannot be ascribed to methods of categorisation because it has occurred with the same measurement criteria over time.

Though only some of the incidents recorded below resulted in institutional punishment, even unsuccessful attempts help induce a chilling effect if not firmly countered by the institution in question. A report by Civitas in December 2020 discovered that over half (53 percent) of all 137 universities experienced demands for censoring speech around alleged ‘transphobic’ episodes during 2017-2020. Over half (55 percent) of UK universities had at least one open-letter campaign, 37 percent reported social media campaigns and nearly a quarter bore the brunt of campus pressure group activism seeking to curtail academic freedom or free speech. These forms of political intolerance therefore encompassed a majority of British universities.³ As one academic writes, when it comes to charges, even when there is no conviction, ‘the process is the punishment.’⁴ A climate of denunciation and accusation quickly produces self-censorship and chilling effects.

³ Academic Freedom in Our Universities: the Best and the Worst, Civitas, December 17, 2020

⁴ Caplan, Bryan, ‘The Office of Free Speech: A Not-So-Modest Proposal for Academia,’ Library of Economics and Liberty, January 26, 2021

Figure 2.



Source: Wanstall, Mark, 'The Banned List,' *Academics for Academic Freedom*, accessed 20 July 2020; Biggs, Michael, 'Academics and others at British universities targeted for questioning transgender Orthodoxy,' <http://users.ox.ac.uk/~sfos0060/GCtargets.shtml> (limited to cases reported in the media), accessed 21 July 2020.

The Bigger Problem

Events are important, as each act of censorship is a tragedy for academic freedom. But they are not the main problem. The big issue is the widespread chilling effects and self-censorship caused by fears of punishment and political discrimination for dissenting speech.

In a recent paper in the journal *Political Studies* entitled 'Cancel Culture: Myth or Reality?', leading Harvard political scientist Pippa Norris examined three survey questions which asked

a large multi-country sample of academics whether they thought the following had gotten worse in the last 5 years: ‘Academic freedom to teach and research’, ‘Respect for open debate from diverse perspectives’, and ‘Pressures to be politically correct.’⁵

The mean answer among academics on *both left and right* was that these problems had become worse. Compiling the three questions into an index score such that a 50 indicates things had not changed, 0 is that they had improved a lot and 100 that they had deteriorated a lot, British right-leaning academics scored an 80 out of a maximum 100. This was just as negative a result as reported by American respondents. Even the leftist majority of British academics reported scored a 65 out of 100, indicating that most academics felt the problem had become worse rather than better in the past five years. Conservatives, men and younger academics reported the most severe restrictions on academic freedom.

Punishment and Political Discrimination: the Two Sources of Repression

In 2017, UCU (Britain’s main academic union) sponsored a survey of 2300 members of the UCU. 11 percent said they had been ‘subjected to informal or formal disciplinary action, or the threat of disciplinary action (up to, and including, dismissal)’ because of views expressed in teaching, research, meetings, public fora, or other venues. 13 percent of all those surveyed reported being punished by being given worse teaching duties and 23 percent faced bullying from colleagues. The report closed by noting that the UK had the weakest protections for academic freedom in Europe and recommended this framework by strengthened.⁶

While no breakdown by faculty ideology was provided, my survey of US and Canadian academics and graduate students would suggest that conservative academics experience twice

⁵ Norris, P. (2021). "Cancel Culture: Myth or Reality?" Political Studies.

⁶ Karran, T. and L. Mallinson (2017). "Academic freedom in the UK: legal and normative protection in a comparative context [Report for the University and College Union]."

as much punishment as the left-wing majority.⁷ This problem therefore encompasses at least 10,000 British academics out of a total of 110,000 in the sector. This is not small problem consisting of a handful of incidents.

Academics themselves generally support free speech and oppose threats to academic freedom. In a YouGov survey in 2020, just 1 in 10 academics polled backed campaigns to fire hypothetical controversial academics who report dissenting findings on diversity, empire, and gender. The less positive news is that this share is closer to 1 in 4 among academics under 30 working in the social sciences and humanities. The pattern of younger academics being twice as likely to support firing campaigns as those over 50 holds also in the United States and Canada. PhD students are even more likely to support such efforts, suggesting the problem is likely to get worse in the future.⁸

These studies also show a significant level of discrimination against Leave voters and conservatives that would be shocking if applied to historically disadvantaged groups. A third of UK academics would not hire a known Leave supporter for a job, and an even higher share would discriminate against a right-leaning grant application. About a quarter would discriminate against a right-leaning journal article or promotion application. The level of political discrimination is not as high as in the US and Canada, where 40-45 percent of academics I polled would not hire a known Trump supporter, but it is nevertheless highly concerning. These results comport with an established range of previous studies that show

⁷ Kaufmann, E. (2021). "Academic Freedom in crisis: punishment, political discrimination, and self-censorship." Center for the Study of Partisanship and Ideology 2: 1-195.

⁸ Adekoya, R., et al. (2020). Academic Freedom in the UK. London, Policy Exchange; Kaufmann, E. (2021). "Academic Freedom in crisis: punishment, political discrimination, and self-censorship." Center for the Study of Partisanship and Ideology 2: 1-195.

political discrimination and substantial chilling effects are experienced far more by the conservative minority of academics.⁹

Since academia is a collegial profession where peers largely determine hiring, promotion, grant and journal acceptance, task allocation and workplace quality of life, political discrimination contributes greatly to chilling effects. Dissenters can be pressured to not ask certain questions, hide their views or only deliver acceptable answers to highly-charged questions, such as those around race, immigration, gender, the role of heritability, approaches to crime, views on the environment and much else. In Britain, my YouGov/Policy Exchange survey found that barely 1 in 3 academics say they would be comfortable sitting next to a gender-critical feminist who opposes admitting transwomen to women's shelters. This creates a powerful chilling effect on women who hold dissenting views on this issue.¹⁰

Chilling Effects

The combination of punishment and discrimination, both institutionally and professionally, leads many to keep their views to themselves, and not to pursue certain research and teaching agendas. The problem is especially severe among political minorities such as conservatives, gender-critical feminists, or scholars of Middle East politics and the Israel-Palestine conflict.

For instance, 32 percent of right-leaning academics in the YouGov data self-censored. When restricting the sample to currently active (as opposed to retired) academics teaching in the social sciences and humanities, the share rises to 50 percent. Thus, in the politicised

⁹ Yancey, G. A. (2011). *Compromising scholarship: Religious and political bias in American higher education*, Baylor University Press; Yoel Inbar and Joris Lammers, 'Political diversity in social and personality psychology', *Perspectives on Psychological Science* 7:5 (2012) 496-503; Nathan Honeycutt and Laura Freberg, 'The liberal and conservative experience across academic disciplines', *Social Psychological and Personality Science* 8:2 (2017) 115-123; Uwe Peters, Nathan Honeycutt, Andreas De Block and Lee Jussim, 'Ideological diversity, hostility, and discrimination in philosophy', *Philosophical Psychology* 33:4 (2020) 511-548

¹⁰ Kaufmann, *Academic Freedom in Crisis*, p. 159.

disciplines, 1 in 2 conservative academics is self-censoring. 10-15 percent of those on the left and in the political centre also self-censor.

Half of conservative academics said their departments were a hostile climate for their political beliefs, rising to 75 percent among currently active academics teaching in the social sciences and humanities (SSH).

Among current SSH academics in the YouGov survey, just 3 in 10 said a Leave-supporting academic would share their views with colleagues compared to close to 9 in 10 for a Remain-supporter. Among Leave-supporting SSH academics, fewer than 2 in 10 said a Leaver would share their views with colleagues. This indicates a powerful degree of self-censorship of views, preventing the kind of productive academic exchanges that might lead to greater self-understanding and an overcoming of ideological divisions in society.

As one Leave-voting academic reported in the survey, ‘I voted leave but was scared to reveal this as my colleagues were so aggressive in their attitude.’ When institutions lend their voice to these prejudices, this reinforces the hostile atmosphere. As another academic related, ‘Given the derogatory views regularly expressed by my colleagues about Leave supporters, including the VC sending a University-wide email referring to us as ‘Little Englanders’, I have no doubt that if my views were known then it would negatively affect the attitude of my colleagues towards me significantly. It probably wouldn’t be career-ending, but it would reduce my influence, make it harder for me to deliver my teaching and leadership responsibilities, and quite likely force me into a position where I would have to move institutions.’¹¹

¹¹ Adekoya et al., Academic Freedom in the UK, *Policy Exchange*, August 2020

Left-wing academics also experience chilling effects, albeit at a lesser frequency.

Importantly, protection for academic freedom is therefore likely to help them as well. As one left-wing Labour voter related: ‘Prevent makes me very uncomfortable, particularly when discussing urban uprisings and armed resistance during one of my modules.’ Another wrote that, ‘As a supporter of rights for Palestinians and an arranger of placements in the West Bank for students over the summer vacation (linked with their course/career choices) I am mindful that it causes considerable angst.’

Chilling effects extends to graduate students, who pick up on academia’s hostile environment. Another survey showed that over half of conservative UK graduate students in SSH disciplines said their political beliefs would make a difficult fit with academia compared with just 4 percent of those on the left. This discourages conservative students at the master’s level from pursuing PhDs, thereby reproducing a highly unrepresentative professoriate. The UCU study, for example, shows 80 percent of members on the left and 6 percent on the right, for a 13:1 ratio. The UCU numbers will naturally omit many conservatives, but the YouGov data for social science and humanities disciplines in the UK show that about 62 percent of currently active SSH academics are on the left, with 7 percent on the right, a 9:1 ratio. This is not as skewed as the 14:1 recorded in the US and Canada, but is still extremely unrepresentative of British society.

Unless we are able to tackle the pervasive chilling effects in academia, we will be powerless to confront the lack of ideological diversity among the professoriate in SSH disciplines.

Failure to do so will reproduce the conformist pressures that have been proven to distort the research that academics choose to pursue. One study of law researchers suggests conservatives are ‘avoiding controversial topics, taking refuge in fields that have little ideological valence, focusing on empirical or analytical work, or simply writing things they

don't believe.'¹² This greatly impairs the truth-seeking mission of the university, which is to discover new facts and perspectives – something which can only occur when people are free to air competing theories and pursue dissenting research and teaching.

These pressures also limit the range of discussions that take place in the classroom. A King's study found that a quarter of students were reluctant to express their political views. The study also found that 6 in 10 Conservative-supporting students agreed that "Students with conservative views are reluctant to express them at my university" with just a quarter disagreeing. In a 2019 survey I conducted for a Policy Exchange report, under 4 in 10 Leave-supporting students said they would be comfortable expressing their views in class. While not as repressed as the 2 in 10 Leave-supporting academics who would share this view with a colleague, this indicates a substantial chilling effect which impacts on a majority of political minorities on campus. Overall, a quarter of the country's more than 2 million students are affected by chilling effects, amounting to 500,000 individuals. This affects a *majority* of political minorities such as Leave and Conservative supporters and, almost certainly, gender critical feminists. This is not a small problem.

Legislation

The Higher Education Freedom of Speech Bill creates the position of Director of Academic Freedom. It is vital that legislation has an enforcement mechanism. Only in this manner can academics have the confidence that they are protected from ideological opponents who wish to punish them for their views. The Bill as constituted does not go far enough because it appears to limit protection to an academic's narrow range of expertise rather than public commentary – a role that academics have long had as critics of society and their universities

¹² Chilton, Adam S. and Eric A. Posner. 2015. "An Empirical Study of Political Bias in Legal Scholarship." *The Journal of Legal Studies* 44(2): 277-314.

more generally. The Bill also needs to grant academics the right to have their cases heard at an employment tribunal because in the tight world of academia, dissenters who lose their jobs are often unable to secure another position – thus a modest payment cannot compensate for the loss of a lifetime career.

The current situation, in which there is no institutional mechanism for protecting academic freedom and free speech, provides no assurance to academics, leading to maximal chilling effects and toleration for political punishment. High-sounding statements are not sufficient in this regard. For example, in the Canadian provinces of Alberta and Ontario, universities are required to have free speech policies, and an ombudsman can hear complaints. However, without an independent enforcement mechanism from an office committed to proactively upholding the law on academic freedom, the result is that, in the words of Canadian professor William McNally, ‘Ontario's campus free speech policy is worthless.’

Writing in an editorial in the *National Post* in July, 2021, McNally says that ‘Under the [Doug] Ford government’s policy, universities are required to create free speech codes and submit annual free speech reports. Universities that don’t comply risk losing operating funds.’ There is an ombudsman to hear complaints, a formal position. However, there is no oversight or active commitment to upholding free speech or challenging university policies. At Wilfrid Laurier, McNally’s university, the administration announced a new security fee policy, under which hosts of “controversial” speakers would be on the hook for security costs. McNally’s group submitted a complaint to the ombudsman. After hearing nothing for 6 months, they were told to resubmit it to the university because it was not formal enough.

In their final decision, the ombudsman stymied McNally, writing: ‘The ombudsman does not normally investigate broader public policy decisions, rather, the ombudsman can address complaints about administrative issues.’

In effect, the toothless policy determined that Wilfried Laurier had followed its own booking and security fee policies correctly. Whether those policies violated the Ford government's speech code did not enter into their evaluation. The security fee policy was deemed a 'broader policy decision' that was beyond the ombudsman's purview.'

McNally ended with a plea for an enforcement mechanism like that of the proposed UK legislation:

'In the United Kingdom, the Conservative government has proposed a "higher education bill," which would impose upon universities a duty to free speech and creates a tort whereby individuals can sue universities for failure to uphold their duty. The bill would also create an office for free speech that specifically monitors universities. These ideas are worth considering here at home.'¹³

September 2021

¹³ 'William McNally: Canadian universities are not safe places ... for ideas,' [National Post](#), July 21, 2021