

Alumni for **FREE SPEECH**

Monday 15th May 2023

(Sent by mail, and email to: enquiries@oxfordsu.ox.ac.uk)

Oxford University Student Union (“OUSU”)
4 Worcester Street
Oxford OX1 2BX

FAO: Michael-Akolade Ayodeji, Dominic Anderson, Kristy-Anne Field and Mel Duncan

Dear Officers

Re: Oxford Union Society

We are a campaign that exists to organise the energies of alumni to work with their universities to protect free speech better.

We understand from press reports that there is a significant chance that the Oxford Union will, following a vote by your members, be blocked by OUSU from having a stand at Oxford University Freshers Fair next year. We also understand that this vote has taken place and decision made, as a direct consequence of the Oxford Union inviting Prof. Kathleen Stock to speak later this month. It has further been reported that the Oxford Student Union has passed a motion to cut financial ties with the Oxford Union.

You will no doubt be aware that the law relating to free speech protection at universities is about to change, and indeed the Higher Education (Freedom of Speech) Act 2023 (“HEFOSA”) has just become law. This will require students' unions to take **all reasonably practicable steps to secure freedom of speech for students and visiting speakers**. OUSU will take a real risk (of claims and costs) if it excludes groups from the Fresher Fair because it does not agree with or like their speakers' viewpoints. (See the summary below for further information.)

To quote Oxford University, your “key” funder, from their website: “Free speech is one of the basic freedoms which we enjoy as part of our membership of a liberal democratic society. It enables diversity and equality, and it ensures that no one’s legitimate opinions may be silenced” and “It is therefore important that free expression is maintained, particularly at a university dedicated to increasing our understanding of the world. Free speech will include views which we may not respect, yet we must still ensure that the person expressing those views is not stripped of their right to freedom of expression. It may

also include “views or opinions [which] ‘offend, shock or disturb’ [...] as one of the ‘essential foundations of a democratic society’”. As you will appreciate both OUSU and its officers are bound by this statement, and are already in breach of it. We will not hesitate to bring further breaches to the University’s attention.

We will be monitoring to ensure that OUSU complies with its new legal obligations.

Yours sincerely

William Mackesy
Andrew Neish KC

Alumni for Free Speech

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Notes on effect of HEFOSA re Student Unions (“SUs”)

Under Section 3 of HEFOSA, new **Sections A5** and **A6** of the Higher Education and Research Act 2017 (“HERA”) contain requirements relating to SUs within universities that are eligible for financial support. These can be summarised as follows.

1. A relevant SU must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take to secure freedom of speech (within the law) for the members and staff of the SU, students of the university and staff and members of the relevant university (and its constituent institutions such as colleges) and visiting speakers.
2. Relevant SUs must take all reasonably practicable steps to secure that neither the use of any premises occupied by the SU nor affiliation to the SU is denied to any individual or body in relation to their ideas, beliefs or views (or, for a society, its policies or objectives or the ideas *etc* of its members). The terms on which use is agreed must not themselves be based to any extent on such grounds. The SU must secure that, save in exceptional circumstances, use of its premises by any individual or body is not on terms that require that individual or body to bear some or all of the costs of security relating to their use of the premises.
3. In order to facilitate their compliance with its own free speech obligations, a relevant SU must maintain a code of best practice and bring it to the attention of its members who are students at the relevant HEP (at least once of year, along with the terms of **Section A5** itself). The SU must itself take the steps that are reasonably practicable for it to take to secure compliance with that code, including where appropriate the initiation of disciplinary measures.
4. As in the case of universities themselves, any person may bring a complaint to the OfS about and/or a civil claim against SUs for breach of their duties to secure freedom of speech. Even a relatively small claim could have serious financial implications for an SU in terms of damages and legal costs.

It is also worth noting that Prof Stock’s relevant views are, following the landmark *Forstater* case, “protected characteristics” for the purposes of the Equality Act 2010, so discriminating against or harassing her or other people with similar views is likely to contravene that Act.

An employee or agent of a SU contravenes Section 110 of the Equality Act if he or she does something which is treated as having been done by the relevant SU and the doing of that thing amounts to a contravention of the Equality Act by the relevant SU. Under Section 111 of the Equality Act, a personal claim may be brought against anyone who has instructed, caused or induced a contravention of relevant parts of the Equality Act. Further, officers of organisations who, through default or negligence, cause their organisations to breach the law and thereby suffer loss can be at risk of personal liability for that loss. This issue will have particular relevance in the context of the new Sections A7 and 69C of HERA, which provide new rights to bring claims and complaints against SUs in respect of failings to comply with their obligations under HERA.

You would be well advised to take careful legal advice about these matters.