



Sent by email to:

Professor Chris Day, Vice-Chancellor

Dr Colin Campbell, Registrar

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19 December 2024

Dear Officers

Risk of legal and regulatory failures by your University to protect the free speech of Helen Adamson: need for rapid and firm action

Alumni For Free Speech (“AFFS”) is a non-partisan organisation to represent alumni of UK universities to encourage high standards of compliance with institutions’ obligations to protect the freedom of speech of their students, staff and visiting speakers. More information about AFFS can be found at www.affs.uk.

Our associated campaign, Best Free Speech Practice (“BFSP”) (www.bfsp.uk), is working to clarify and disseminate what the legal requirements and their implications in practice actually are at UK universities and other providers (“HEPs”). It is clear that there is widespread misunderstanding of how onerous their obligations already are and that, as a result, there are widespread compliance failures. BFSP has produced various detailed Statements for English HEPs [(which will effectively apply in respect of Welsh HEPs as well, in most material respects)] about the requirements and their implications in practice. These can be found at <https://bfsp.uk/universities-higher-education>, but the most relevant of them a general *Statement about the legal requirements and their implications in practice*.

Relevant events

We are writing about more than 100 students, staff, and alumni at Newcastle University being reported to have signed an open letter, urging the University to "take immediate action" against Helen Adamson, a lecturer at the School of Natural and Environmental Sciences for attending a rally they disapproved of and/or taking part in a social media interview in which she voiced concern over the decline in free speech in the UK. She also said that she was beginning to feel "persecuted" as a Christian, and worried about the "values" of other religions, particularly Islam.

Risk of failures to secure free speech at your University

Your University appears to be at risk of failing to comply with the following legal and other obligations.

- Section 43(1) of the Education (No 2) Act 1986 (“Section 43”), which requires it to use all reasonably practicable steps to secure the lawful free speech of its academics and students. This is a very demanding requirement. Merely subjecting someone to an inappropriate investigation on account of their lawful viewpoints is itself highly detrimental to them, and it is eminently practicable to take steps to not to so that, so a university is therefore required to avoid taking such actions.

The Office for Students (OfS) has produced draft guidance (“**Draft OfS Guidance**”) about the application in practice of the new free speech protection provisions to be inserted into in the Higher Education and Research Act 2017 (HERA) by the Higher Education (Freedom of Speech) Act 2023, which are not yet in effect. These provisions reflect requirements under the primary obligation to be inserted into HERA, i.e. to use all reasonably practical steps to secure free speech. This obligation is not materially different from the existing obligations on universities under Section 43. The OfS' draft Guidance is therefore, logically, equally applicable to the interpretation of the existing law.

The Draft OfS Guidance contains the following specific paragraphs.

[“50. [Universities] promptly reject public campaigns to discipline, expel or fire a student or member of staff for lawful expression of an idea or viewpoint. These may take the form of organised petitions or open letters, an accumulation of spontaneous or organised social media posts, or long-running focused media campaigns.

51. Depending on the circumstances, rather than publicly distancing itself, it may be more helpful for a [university] to reiterate the importance of free speech for all staff and students, including the person affected. It may also be especially important for the response to be timely.

52. [Universities] should not terminate employment for, or deny reappointment to, any member of staff because they have exercised free speech within the law to express a particular viewpoint.

53. [Universities] must take reasonably practicable steps to achieve the objective of securing that no member of academic staff is at risk of losing their job or any privileges because they have exercised their freedom within the law to question and test received wisdom, or to put forward new ideas and controversial or unpopular opinions.”

See also Examples 6-8.

- The obligations in the Equality Act 2010 not to discriminate against or harass people with the protected characteristic of philosophical belief. As is now well known, various

viewpoints on currently contested issues had been ruled to be protected philosophical beliefs under the Equality Act. These include "gender-critical" viewpoints and ones which contest aspects of "critical race theory". Employers and education providers need to avoid discrimination against and harassment of people with such viewpoints in certain specified contexts.

Employers are liable for discrimination and harassment committed by their employees in the course of their employment, unless they can show that they took all reasonable steps to prevent this happening. Of particular relevance to the subject at hand are various recent Tribunal judgements, under which employers have been held liable for actions of their employees, including personal attacks and online pile-ons: they have illustrated the demanding nature of the requirements to avoid liability. See our associated campaign Best Free Speech Practice's (www.bfsp.uk) statements (attached) on the *Open University/Phoenix* case, in which an employer was found guilty of discrimination and harassment as a result of failing to prevent attacks on an employee for expressing her views on a matter of controversy. See also BFSP's statement attached about the Dandridge Review of that case. Detailed statements on these cases can be found at <https://bfsp.uk/universities-and-free-speech>.

It appears that there is a high likelihood that Ms Adamson's views would be deemed protected if this came to a Tribunal hearing. So your University may already be acting unlawfully as a result of these attacks.

- Obligations under the Human Rights Act 1998 ("HRA") to respect Ms Adamson's right to freedom of speech [and academic freedom]. The free thought and speech rights of academics and students are protected under the European Convention on Human Rights, as enacted in the UK by the HRA. These freedoms include the freedom to offend, shock and disturb. Political expression (in a wide sense rather than a narrow party-political one) attracts the highest degree of protection, as does academic free expression. The HRA imposes positive obligations to act, and not just negative ones (to avoid infringements).
- Requirements as to governance: its condition of registration (E2) to have in place adequate and effective management and governance arrangements to deliver principles relating to free speech in practice. These include principles relating to securing freedom of speech and academic freedom. The OfS has publicly stated that, in considering whether a university complies with condition of registration E2, it may consider questions such as does the university have checks and balances to ensure that its policies and processes do not adversely affect free speech or academic freedom?
- Its own free speech code and rules regarding behaviour, enforcement, discipline.

Your University needs to take prompt and effective action to clarify whether what we say is correct, and then to act urgently and appropriately. We also urge that it takes external specialist legal advice about this.

Urgent steps to procure that your University complies with its obligations include:

- clearly and publicly acknowledging Ms Adamson's free speech rights and that she did nothing unlawful;
- stating that attacking Ms Adamson for her viewpoints, and in particular complaining about her expressing her viewpoints, will be contrary to the University's free speech code and other requirements and must stop; and that it may be subject to disciplinary action;
- investigating attacks and other actions, including calls for investigation of her and/or discipline, which have been made/taken, and taking disciplinary action against those who instigated and/or joined this, where appropriate; and
- checking that its requirements, training, systems and reactions are appropriate; if they malfunctioned, setting this right.

We will be observing developments with interest. We will be happy to recognise good free speech protection, if it occurs. Our alumni love their universities, and we are happier providing positive support than creating difficulties, although we will not shrink from the latter.

Finally, we ask that you confirm receipt.

Yours faithfully

Alumni for Free Speech

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