



Defend Academia. Confront Antisemitism.

RESEARCH • STRATEGY • IMPACT



**ICPG - Response to Office for Students
'Regulatory advice 24: Guidance related to
freedom of speech' (2025) - Policy Paper**

ICPG - Response to Office for Students 'Regulatory advice 24: Guidance related to freedom of speech' (2025) - Policy Paper

In June 2025, the Office for Students (OfS) published its regulatory guidance to registered higher education providers concerning their free speech duties under the Higher Education (Freedom of Speech) Act 2023 (HEFoSA), replacing the draft guidance published in 2024.¹ The Intra-Communal Professorial Group broadly welcomes the new guidance. The changes that have been made from the draft guidance represent a substantial improvement. The new guidance addresses many of the concerns raised by Jewish groups and others. This policy paper, alongside our longer report, sets out the ICPG position on this guidance and its impact on Jewish staff and students, and more broadly on antisemitism within the Higher Education sector.

The Higher Education (Freedom of Speech) Act 2023

HEFoSA is aimed at securing the rights of free expression on university campuses, and sets out the legal duties for universities and other higher education providers in this regard. The two main duties are:

1. The 'secure' duty: to take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to secure freedom of speech within the law for its students, staff and other members and for visiting speakers. This includes, in relation to academic staff, securing their academic freedom.
2. The 'code' duty: to maintain a code of practice setting out matters relating to freedom of speech (§12a, p4)

The key element of the 2025 OfS guidance is a three-step procedure for universities to assess compliance with the secure duty. When making any decision that might affect speech on campus, the university should first consider:

1. Is the speech 'within the law'? If yes, go to step 2. If no, the duty to 'secure' speech does not apply.
2. Are there any 'reasonably practicable steps' required to secure the speech? If yes, take those steps. Do not restrict the speech. If no, go to step 3.
3. Are any restrictions 'prescribed by law' and proportionate under the European Convention on Human Rights (the Convention)? (§24 p7)

1. Office for Students, 'Regulatory advice 24: Guidance related to freedom of speech,' June 2025, <https://www.officeforstudents.org.uk/publications/regulatory-advice-24-guidance-related-to-freedom-of-speech/>

Speech that the guidance makes clear is not ‘within the law,’ and so is not protected, includes:

- a. Threatening or abusive words or behaviour in a public place, or the distribution or display of visual material which is threatening or abusive within the hearing or sight of a person likely to be harassed or alarmed by it by it (Section 5, Public Order Act 1986) (§39-41 p11-12),
- b. Harassment targeted at an individual on two or more occasions which is ‘oppressive and unacceptable rather than just unattractive or unreasonable’ and of ‘sufficient seriousness to also amount to a criminal offence’ (Protection from Harassment Act 1997),
- c. Speech supporting or encouraging support for proscribed organisations (Terrorism Act 2020) (§15 p30).

The guidance then includes numerous examples of ‘reasonably practicable steps’ a provider could take to secure speech. In many cases the reasonably practical step is ensuring that something doesn’t happen, for example, ensuring that a student is not prevented from accessing a course due to their viewpoint, or that applicants are not obliged ‘to commit (or give evidence of commitment) to a particular viewpoint’ – such as a commitment to ‘Equality, Diversity and Inclusion’ or to ‘social justice’ - to stand a chance of appointment (§139 p38).

Other steps might include: (a) ensuring that research funders do not monitor or limit the positions expressed in research; (b) opposing campaigns against members of staff who have expressed lawful viewpoints; (c) ensuring that promotion prospects are not affected by viewpoints; (d) refraining from general bans on protests, posters or recruitment practices on the basis of their lawful viewpoints; (e) a complaints process that ‘promptly reject vexatious, frivolous or obviously unmeritorious complaints relating to speech’ (§164 p46).

HEFoSA gives powers to the OfS to investigate allegations of illegitimate restriction of lawful expression on campus, and to impose fines on those found to be in breach of the duties.

Aspects of the 2025 guidance that relate to antisemitism

The new duties around securing lawful free expression should make it easier for Jewish staff and students to express their Jewish identity on campus, and for a wider range of viewpoints on Israel, Zionism and the wider Middle East to be expressed at universities without undue hindrance. HEFoSA will be most effective in preventing policies which impose ‘blanket bans’ on speech, compel assent

to contested viewpoints or create a general ‘chilling effect’ which hinders the expression of alternative viewpoints.

The guidance emphasises the duty to ‘secure’ lawful speech, and also introduces a ‘proportionality test’ into the process universities are advised to follow when faced with a dispute about speech. This enables education providers to interfere in the rights of free expression in cases where it is necessary to do so to protect other rights. In this, HEFoSA works in tandem with Article 10(2) of the European Convention on Human Rights, which permits restrictions on speech that are prescribed by law and necessary in a democratic society. This provides an important tool in the effort to combat antisemitism on campus. However, the effectiveness of the guidance in protecting Jewish staff and students from antisemitism will depend on whether its implementation does, in practice, fall in line with the European Convention on Human Rights.

The status of the International Holocaust Remembrance Alliance (IHRA) ‘working definition’ of antisemitism is not materially changed by HEFoSA. It remains one of the factors that should be taken into account when undertaking a proportionality test. IHRA was never meant to be a one-size-fits-all cast iron definition of antisemitism. The wording of the definition explicitly refers to the need to ‘take context into account,’ and qualifies its examples with terms like ‘may’ and ‘could.’ This emphasis on context brings IHRA close to the context-specificity of the law’s proportionality test on restrictions of Convention rights, including free expression.

IHRA is just one factor that should be taken into account when a university is assessing the proportionality of any potential interference with lawful yet allegedly antisemitic speech. IHRA – or any other definition of antisemitism – provides broad guidance to assist a university in determining whether speech or behaviour is antisemitic. It does not prescribe or rule out responses to that speech or behaviour, or override the university’s wider legal obligations and duties. Nor should it be expected to do so.

The new guidance asserts that Holocaust denial will not be protected speech, on the grounds that it constitutes harassment related to a protected characteristic. It states that ‘The OfS will not protect Holocaust denial (by visiting speakers or anyone else)’ (§204 p58). While this is an important statement, the OfS in its consultation response set out that this decision was made because ‘it is difficult to see how [Holocaust denial] could not amount to incitement to racial hatred and harassment’ on the basis of a protected characteristic (§445 p96). The OfS has failed to recognise that Article 17 of the European Convention on Human Rights excludes Holocaust denial from protection by human rights laws, and therefore there is no need for a proportionality test or references to hate crime or harassment to justify a ban on Holocaust denial on campus.

HEFoSA does not preclude antisemitism-awareness training, or any other form of training about racism or other forms of prejudice. But it does preclude training which compels assent – i.e. training that obliges attendees to agree with certain positions before the training is completed. The 2025 guidance emphasises that it is targeting ‘compelled speech within training: training that cannot be completed unless the user actively assents to a particular viewpoint or value-judgment that they may reject’ (§212 p60). It explicitly notes that the OfS does not ‘intend to discourage institutions from offering or requiring training on sensitive subjects, including training that itself asserts positions with which some users may disagree’ (§213 p60). In practice this implies that antisemitism awareness training should centre on discussion and debate, rather than requiring assent to a series of controversial propositions or agreement with a controversial point of view.

HEFoSA allows for the proportionate restriction of protests and encampments based on time, manner and place regulations. Restrictions based on the lawful viewpoints expressed in protests are not generally permitted. However, the content of a protest may be relevant to determining whether it qualifies as a harassment – such as an anti-Israel protest held outside a Jewish Student Society event. The guidance also explicitly recognises that anti-Israel protests may, in some contexts, chill the expression of opposing viewpoints.

The 2025 Guidance reiterates points made by the OfS in a letter to universities in May 2024 regarding management of anti-Israel encampments and protests.² That letter stated that universities should ‘uphold free speech within the law for students, staff and visiting speakers,’ but this ‘does not, and cannot, include discrimination against, or harassment of, Jewish students or staff.’ The letter advised universities that restrictions on encampments and protests were permissible when they ‘directly interfere[d] with others’ learning, teaching or research,’ but that these restrictions should be based on time, manner and place regulations rather than the lawful viewpoints expressed on the protests.

While emphasising again that the right to freely express lawful viewpoints during protests should be secured, the 2025 guidance states that ‘in certain circumstances (this will be a fact-sensitive assessment) it may be necessary and appropriate for providers or constituent institutions to regulate the time, place and manner of a protest or demonstration’ (§160 p45). But it underlines that ‘any regulation of the time, place and manner of speech should be viewpoint-neutral’. The basis of restriction should be the extent to which protests interfere with the ‘essential functions’ of the university, including teaching and research. Moreover that restriction should be proportionate, rather than ‘sweeping.’

2. The letter is available at: <https://www.officeforstudents.org.uk/media/ltcpsu1x/protests-on-campus-letter.pdf>



Defend Academia. Confront Antisemitism.

RESEARCH • STRATEGY • IMPACT

icpg.org.uk

Please find our full report, with additional recommendations, on our website at icpg.org.uk/freespeech © 2024. This work is openly licensed via CC BY-NC-ND 4.0.