

Catholic Union Briefing on the Higher Education (Freedom of Speech) Bill

20 July 2021

On 16 February 2021, the Department for Education published a policy paper entitled '[Higher Education: Free Speech and Academic Freedom](#)', setting out Government proposals to strengthen freedom of speech and academic freedom in England. On the same day, Gavin Williamson MP (Secretary of State for Education) wrote a [letter](#) explaining the proposals to 'Accountable Officers' in Higher Education Institutions (HEIs).

The policies outlined in the paper have since been introduced to Parliament in the [Higher Education \(Freedom of Speech\) Bill](#). The Bill was [read a Second time](#) on 12 July and is now at Committee Stage.

Why does the Government wish to strengthen and reinforce legislation in this area?

In its policy paper, the Government explains that is concerned about a "chilling effect" on students and staff across university campuses who feel unable to express their cultural, religious or political views without fear of repercussions. A rise of intolerance and 'cancel culture' has led to students being excluded from their courses and academics threatened or fired. The foreword cites the recent cases of [Felix Ngole](#), [Noah Carl](#) and [Professor Selina Todd](#) as examples of the implications of this culture. Emphasising the magnitude of the problem, the Secretary of State refers to a "shocking" finding of a King's College London [study](#) in which a quarter of students saw violence as an acceptable response to some forms of speech.

Within recent years, there have been several attempts to 'no-platform' speakers at university events. In 2020, [Amber Rudd](#) (former Home Secretary) had an invitation to speak at Oxford University withdrawn thirty minutes before the event began. The cancellation came after some students had criticised the invitation due to Ms Rudd's handling of the Windrush scandal. In another example, [Fiona Bruce MP](#) (Special Envoy for Freedom of Religion or Belief) described her own experience of a 'no-platform' attempt as she spoke about her campaign to outlaw sex-selective abortions by invitation of Oxford Students for Life. During the event, a "uniformed official" requested that the meeting be stopped as her views would "cause offence" to students sitting in another room. The students could see her but were not able to hear what she was saying. Eventually, a compromise was reached in which she could continue speaking if the curtains were drawn.

While the Government accepts that most speaking events are able to proceed, it is alarmed about the impact 'no-platforming' campaigns have on how free students and staff feel to express themselves. One of the Government's main concerns, therefore, is the level to which students and staff self-censor. The policy paper refers to an ADF International [study](#) which shows that 44% of students are fearful of expressing their opinions in front of lecturers. Almost 40% are anxious that articulating their stance could adversely impact their future career opportunities.

These fears became a reality for [Julia Rynkiewicz](#), a 25-year-old Catholic student, who faced suspension from midwifery studies and a four-month investigation for her beliefs. Concerns were raised about her fitness to practise as a midwife after she was seen at a pro-life stall as president of Nottingham Students for Life. The University of Nottingham's students' union had previously denied affiliation to the society, but [overturned](#) its decision in July 2019 following the threat of legal action. Following the dismissal of the allegations against her, the University apologised to Julia before reaching a settlement. Nottingham, however, is not the only institution where discrimination against pro-life students has occurred. Student bodies at [Aberdeen](#), [Glasgow](#), and [Strathclyde](#) have all tried to prevent the affiliation of pro-life groups at their universities. Students at the University of [Birmingham](#) also faced significant opposition in the formation of their society.

It is worth noting that HEIs already have a duty to "ensure that freedom of speech within the law is secured for members, students and employees... and for visiting speakers" under the Education (No. 2) Act 1986, s.43.

This section also includes a requirement to ensure that the use of HEI premises is not denied to any individual or body of persons due to their beliefs, views or policies. However, the Government has concluded that existing legislation is not working effectively because it lacks a clear means of enforcement. The policy paper explains that “recent incidents of concern have not led to enforcement of section 43, nor to regulatory action by the Office for Students” (OfS), leading some to consider the law “toothless”. It also points to a problematic gap in the legislation in that the section 43 duty does not currently apply to students’ unions.

How does the Bill address these issues?

In order to address the issues outlined above, the [Higher Education \(Freedom of Speech\) Bill](#) seeks to:

- Strengthen the duties regarding freedom of speech which are currently imposed by section 43 of the Education (No. 2) Act 1986 on higher education providers registered with the Office for Students (OfS), the higher education regulator in England.
- Create a new duty for registered higher education providers to promote lawful freedom of speech and academic freedom in higher education.
- Create new duties regarding freedom of speech for students' unions at approved (fee cap) providers.
- Create a new statutory tort for breach of specified freedom of speech duties, enabling individuals to seek legal redress for loss they have suffered as a result of breach of the duties.
- Enhance academic freedom protections by extending coverage to include recruitment and promotion and making clear it applies to speech within an academic's field of expertise.
- Introduce new registration conditions for registered higher education providers on freedom of speech and academic freedom.
- Introduce regulation by the OfS of students’ unions at approved (fee cap) providers in relation to their compliance with the new duties.
- Create a new role within the OfS of a Director for Freedom of Speech and Academic Freedom, with a remit to champion freedom of speech and academic freedom on campus, and responsibility for investigations of infringements of freedom of speech duties in higher education which may result in sanctions or individual redress via a new complaints scheme.

Parliamentary Debate

During the debate at Second Reading, Kate Green MP (Labour’s Shadow Secretary of State for Education) moved a [reasoned amendment](#) to reject the Bill. It described the Bill as a “hate speech protection bill which could provide legal protection and financial recompense to those seeking to engage in harmful and dangerous speech on university campuses, including Holocaust denial, racism, and anti-vaccination messages”. The Shadow Secretary of State also questioned the need for new legislation given that the OfS found that just 534 out of 59,574 events with external speakers were refused permission in 2017-18. Despite having the full support of opposition parties (excluding the DUP), the amendment was [rejected](#) by a significant majority.

Speaking in support of the Bill, [Fiona Bruce MP](#) addressed various freedom of speech issues faced by people of faith. She explained that a doctorate student had told her that they felt there was “no point” in striving for an academic career due to their political and religious views. Additionally, she stated that an individual working in academia conducted a poll of 69 Christian academics asking: “Do you feel your academic career would be adversely affected if you were to be public or more public about your faith?” 34 of those asked replied yes, and “not one of them asked was willing to be identified... for fear of the potential negative impact on their career.”

[Jim Shannon MP](#) also offered support to the Bill. He spoke passionately about his belief in the right of each person to be treated with respect, particularly when expressing an opinion that may differ from those held by others. Furthermore, Shannon criticised the “If you don’t agree with me, you shouldn’t speak” culture he feels

is prevalent in universities. Referring to his role as Chair of the APPG for International Freedom of Religion or Belief, he explained that the group often advocates for people of all faiths and none out of respect for their rights. Consequently, he drew parallels between the objectives of the APPG and those of the Bill.

Reaction to Bill

The Bill has received considerable comment from organisations in the Higher Education sector. Many are concerned that the Bill will duplicate existing legislation, resulting in increased bureaucracy and costs. In fact, the [Explanatory Notes](#) to the Bill state that there will be financial implications to the provisions. The Bill's [Impact Assessment](#) estimates that compliance will cost £48.1 million over 10 years.

[Universities UK](#) – *“Universities are rightly already required by law to protect free speech and academic freedom... It is important that the Higher Education (Freedom of Speech) Bill is proportionate – focusing on the small number of incidents – and does not duplicate existing legislation or create unnecessary bureaucracy for universities which could have unintended consequences.”*

[Russell Group](#) – *“We will always work constructively with Government to uphold the legal protections already in place and if it feels it is necessary to enhance them further. However, it is vital that any further changes or additions to an already complex system are proportionate, protect university autonomy and avoid creating unnecessary or burdensome bureaucracy.”*

Other organisations in the sector have been extremely critical of the proposals, arguing that there is no evidence to support the Government's plan.

[National Union of Students](#) – *“There is no evidence of a freedom of expression crisis on campus, and students' unions are constantly taking positive steps to help facilitate the thousands of events that take place each year... the government would be much better advised to focus on providing the practical support that students desperately need...rather than attacking the very institutions that have stepped up to fill the gaps in support being offered.”*

[University and College Union](#) – *“There are serious threats to freedom of speech and academic freedom on campus, but they come from the government and university managers, not staff and students. If this authoritarian government is serious about strengthening freedom of speech, then why is it cracking down on the right to protest freely via the policing and crime bill... This bill should be seen for what it is: the government using freedom of speech as a trojan horse for increasing its power and control over staff and students.”*

Academics have been [divided](#) over the new legislation. Professor Jonathan Grant, who authored the Kings' College London study cited in the policy paper, said that the legislation is “excessive and over the top” and has argued that his work has been misinterpreted by the Government. He went on to explain that there has been a “conflation between so-called cancel culture and issues around the chilling effect”. Despite the criticism of others, Dr Arif Ahmed of the University of Cambridge said that the legislation is “extremely welcome” as it “shows the government is taking this seriously”. He added that he hoped “imposing a positive duty on institutions” to ensure students and staff know they can speak out will “make a real change to higher education”.

Welcoming the proposals, The Christian Institute pointed out that the legislation will benefit Christian student groups and those who promote pro-life views on campus. In a [press release](#), the organisation said: “We've all heard stories of Christian groups having their event bookings cancelled, or pro-life groups being effectively voted off campus... Giving people the ability to enforce their free speech rights against universities and student unions will give a welcome boost to CUs and pro-life groups, as well as to individual students and staff.”