Universities UK

The future of higher education today

Episode 4: Are universities protecting free speech? – Transcript

an [illegible] to [illegible]
sector.

My name is Harry Anderson, and I'm your
talking about free speech and academic freedo

Open the newspaper, scroll through Twitter, listen t
you'll be bound to come across a story ab
reportedly not doing enough to promote fre

Universities now find themselves in the
doing enough to promote, defend and prote

Free speech means you can say something
provided you're not breaking the law. O
hand, gives the freedom to universities to
question, test received views and wisdom,
forward new ideas and controversial, unpopula

Both are vital to a flourishing university e
the need to promote free speech and acade
real life. After all, universities must balan

On the show this week, we'll be hearing from David Ruebain, Pro-Vice-Chancellor for Culture, Equality and Inclusion at the University of Sussex, about some of the work that they've been doing to help create a climate in which people feel free and able to express themselves irrespective of their background or beliefs.

David Ruebain: We need to be able to bring people together to create spaces where challenging and difficult subjects and issues can be thought about.

Harry: We'll also be hearing from Ali Chambers, the Chief Executive of Exeter's Student Guild, about some of the issues and challenges facing students' unions who are often at the coalface of this debate.

Ali Chambers: Somebody needs to make the call about whether that event has been lawful or if there's any unlawful speech. And that places a really high burden to make a really complicated and nuanced judgment call.

Harry: And finally, we'll be hearing from Smita Jamdar, Partner at the law firm Shakespeare Martineau, who leads their education work, about what the law actually says about free speech and academic freedom.

Smita Jamdar: I that's why it's so sad sometimes that it's always seen that equality and diversity is in opposition to freedom of speech, because unless everybody feels able to participate, we don't really have free speech.

Harry: We're joined by Ali Chambers, who is Chief Executive of the University of Exeter's Student Guild. Ali, can I ask you just to introduce yourself and say a bit more about your role at Exeter Guild?

Ali: Hi, I'm Ali and I'm Chief Executive at Exeter Students' Guild, so I take delegated authority from the Board to deliver our strategy, and that includes running all of our student-facing services, and one of those services is our activities. And we have about 300 student societies and they conduct all sorts of different activities, including but not limited to inviting external speakers onto the campus.

Harry: That's great, and I think that's perhaps something we'll want to come to a bit when we tend to the discussion.

But one of the key arguments that we hear from the government is that there's been a chilling effect on university campuses. To what extent do you see that at Exeter?

Ali: We have about 200 external speakers events each year, and maybe one a year will be high risk, so that will be something that has created significant protest activity

or caused significant concern for our student community. It's very difficult to do a sort of longitudinal study of that in recent years because of things like Covid happening. But I certainly don't see anything dropping off, and the level of support that we offer for external speaker events has increased in recent years. So if anything, I see the activity going up.

Harry: And just sort of picking up on some of those challenges that students may face, can you talk a bit more about that in terms of, are there challenges, I suppose, in terms of organising events?

Ali: Yeah, I think there's quite a few challenges, really. One, in terms of, at the student union, our activities team is one manager and five coordinators overseeing the activity of over 300 societies. Some of those societies are organising external speaker events every week, sometimes inviting four or five speakers a week, and the capacity of our team to support and facilitate the event itself, but also any associated protest activity, and then also to handle any fallout in terms of complaints, referrals to wellbeing teams, etc, that's a huge volume of work.

There's also cost, the cost implications and just the burden on some key operational teams, like security teams. You know, when there's two or three of these a week, it's a significant workload, and we often bring in external security companies onto the campus to support. I think also, probably one of the emerging challenges is the knowledge and experience and expertise of the students that are leading these events in where to draw the line in a live event environment.

So, student societies are student-led. So those student societies are kind of organising these events, running these events, and the Guild, if you like, is facilitating, supporting, providing knowledge and expertise. Somebody needs to make a call whether that event has been lawful or if there's any unlawful speech. And that places a really high burden on the Guild, it places a really high burden on the student society that are running the event to make a really complicated and nuanced judgment call.

And then I think the final challenge that I'm seeing play out at Exeter in particular: we're a student union, we're a membership organisation, we've got over 30,000 members. And when a controversial speaker is invited by a society onto the campus, it's a really complicated message to land with our membership, half of whom might be in support of the speaker coming on campus, half of whom might be offended or feel threatened by the presence of that individual.

We want to do everything we can to facilitate and promote free speech and support that speaker coming to the university. But we also want to make sure that our

community feels supported by us as well. And that, again, creates a significant burden and a significant workload in looking after and supporting all of our students, so that the event can go ahead and cause the least harm possible in our community.

Harry: Thanks, Ali. That's really helpful to get your insight into some of those kind of real, practical, day-to-day challenges.

We're also joined today by David Ruebain, the Pro-Vice-Chancellor for Culture, Equality and Inclusion at the University of Sussex.

David, many thanks for joining us. Can you just talk a little bit more about your role at Sussex?

David: So I'm, as you mentioned, the Pro-Vice-Chancellor for Culture, Equality and Inclusion. And my role is to think about and take a strategic lead in anything to do with the culture of the community and specifically equality, diversity and inclusion.

Harry: That sounds like a mammoth task! Could you talk about what that means in practice?

David: It is complicated, because they are not necessarily level playing fields that we're coming from. So particularly for marginalised staff or students, they will be coming into a community where they are seeking to find a space of safety and

David: I think it's about engagement with the community, because to my mind, the conversation is essentially as important as the teaching. When you're trying to engage with difficult and challenging subjects, a sij0.95 5J-23.45-1.3-(l) -(l)alle.4 Tmn -(gi) 2 .4 Tmin -(l).4 Tm f.4 Tmc

And we just really work together, because it's something that's affecting the whole community. And I was just going to suggest that, we took an approach where we looked at three different work strands.

The first was making sure that the Guild – that we know what we're doing – so making sure that we've got our code of practice and our framework and our processes all set out, and that our staff training is adequate, and then that students know what they're doing, so the students running the societies – particularly societies that frequently invite external speakers – making sure that the training for them is in place so that they understand the current duties, but also the duties that will be coming within the Bill.

And I think what we need to be really careful of here is that we don't do a sort of box-ticking training session for all students in Freshers' Week, because that isn't ensuring that our community understands something that's actually quite complicated. But we need to make it part of the culture that students come to university knowing and expecting that they're going to hear challenging views, and that the way to fight ideas that they don't agree with is to have better ideas and bring those ideas forward as well.

And for the Guild, that's really about positioning ourselves alongside our student community so that students understand they can come to us and get the support, and if they want a platform, or want to elevate a point of view, that we'll help them to do that, whether that's the original event that comes through or the protest activity. We support all students to have their voice heard.

Harry: Ali, you were talking a bit about the new legislation, which we're expecting in this space, which obviously at time of recording isn't in place, but it sounds as if you are pretty well prepared for that coming into effect.

And again, after Ali, perhaps if we turn to David and ask to what extent Sussex feel like you are prepared for the new Bill coming into place.

Ali: For the purposes of this podcast, we're assuming that the Bill is a solution to a problem that requires legislation to fix. So, you know, we're vaulting over my personal feelings about the Bill in any case.

I think really, we're ready

And I'm inclined to think that is a simpler solution. It would be very difficult to decipher, you know, was it was it the Guild or was it the university that breached the new regulations? So I think I think that's an area that is really unclear. I'm very unclear on how that would actually play out.

David: I think that our commitment to freedom of speech and academic freedom alongside equality, diversity and inclusion is not in any way dependent on this new Bill. Like many universities, we've had some difficulties over the years and in the past, but we are absolutely committed to the foundation stone of university life and the ability of a healthy community to debate difficult issues. And so it's not so much the Bill that will change that.

Harry: I think one of the conversations that we have had with officials in government is that the legislation is really a means through which they can effect cultural change, and this is a culture wars issue.

Are there any initiatives that you are looking at doing either of your institutions to really try and shift the culture within campus so that people do feel able to have

Could you just talk briefly about actually what the current landscape talks about when it comes to free speech and academic freedom?

Smita: So the current landscape, as you say, is complicated. The starting point has to be the European Convention on Human Rights, actionable into our legislation through the Human Rights Act, and the right to freedom of expression, which is obviously, on the face of it, broader than the rights of free speech and includes things like academic freedom. It's a qualified right, so it can be interfered with in certain circumstances.

And I think that's where the complexity comes, that you have a very broad right to receive information, impart information, however unpopular or controversial it might be. And then there are some limited rights to interfere with that.

When you then come into our domestic law, obviously universities are subject to the statutory duty to take reasonable steps to ensure freedom of speech on campus for staff, students and visiting speakers. And you have some protections, separate protections for academic freedom.

But both of those are also defined as being within the law. So you then have to work out: are there grounds to interfere with it? And I think that's where a lot of the anxiety comes from. As always with the law, there's a big grey area in the middle and that's where the kind of turf wars that we sometimes see are happening. So I can understand why the sector and why institutions are finding it difficult to navigate.

Harry: Is there anything specifically about 'reasonably practicable' in terms of how important that is when institutions are having to weigh up these balances and what duties they need to consider?

Smita: Yeah, 'reasonably practicable' is one of those phrases that lawyers, you know, rolls off our tongue. Obviously, you have to try and work out what that means in practice. I think the important thing to remember is, although it sounds like a relatively low threshold – 'oh we only have to do what's reasonably practicable' – actually, from a legal perspective, it is quite a high threshold, because what it's saying is that if something is physically possible, provided it's reasonable for you to do it, you should do it.

It's not the same as only doing what's reasonable, because that leaves a lot of discretion on the part of the person who holds the duty, whereas this is really saying you have to justify why you haven't implemented measures that are practicable in order to enforce this duty. It's a balancing act between the expense, the difficulty of implementing the measure and the fact that it could help to achieve the statutory objective of ensuring freedom of speech.

I think, in reality, one of the problems we have is there has been very little case law about how this actually plays out when perhaps the discussion is not just about something which is purely to do with a matter of public or academic interest, but when it goes to the very existence of a person's identity, and so on. And I think there will be more refinement of that if cases do get to court, but it will always start from the premise that freedom of speech and academic freedom have to allow matters to be discussed, however difficult that might be for particular individuals.

Harry: And I think that's a really salient point given the government, at the time of recording, are currently working on a new piece of legislation that will be looking to change what the law says in this regard. Could you briefly talk about what your understanding of the government's intention is behind the Higher Education Freedom of Speech Bill?

Smita: I think what the government is trying to do is address a problem that it believes is quite significant. There is obviously a lively debate, ironically, about the extent to the extent to which this is a significant issue! But we may as well, for the moment, park that debate because we've got the legislation coming.

And so what they are trying to do, I think, is to make it easier for individuals whose views are perhaps not the dominant views on campus to exercise their rights to freedom of speech and academic freedom, and that's really what this legislation is about.

I think there's a challenge there, though, because if this is to work, it has to be in the concept of a universal right to freedom of speech and academic freedom. And if too much time is spent on presenting it as a way to address certain minority viewpoints, it makes it (n1 (d1 BDC 0.0010.001tif th (emv0.9fr1 (en1 (o2.1 d (2 (ews2.1 (m2.1 (m2.1 (m2.0 -1e(a2 (2 eh1 (toe

members could be doing at this stage to prepare for that Bill and to make sure that they are fully ready for when the new duties come into force?

Smita: Well, the first thing I would say is don't wait for the Bill, because even in the unlikely event that it wasn't passed, and I don't really see a route by which that happens, these are issues that are currently taking up people's time, they're taking up resources, they're causing conflict. So we have got to deal with them.

And what are the sorts of things that I would recommend institutions do? The first is, I think, make sure that those commitments that I think every institution has to freedom of speech and academic freedom are really clearly stated. And I think the work that UUK has done and GuildHE have done in publishing statements and supporting guidance is absolutely vital.

But publishing the commitments is only really the start of it. We have to make it clear to people that these are meaningful commitments and that they are operationalised. So I think there's a lot more work that could be done ensuring that everybody on campus understands the kind of balancing act that I've tried to outline that the law requires. So we need to work, I think, quite hard at making sure that people are able to exercise their rights in a confident and secure way.

And I think that's why it's so sad sometimes that it's almost seen that equality and diversity is in opposition to freedom of speech, because unless everybody feels able to participate, we don't really have free speech. So we can't just kind of dismiss the kind of equality and diversity initiatives as an infringement of free speech. We have to look at how do they support and, in a way, empower people to exercise their right to free speech.

And I guess the final, much more sort of human level thing is, I've talked to you about the law and whether the law confers rights on people to stop speech happening or to assert that they have a right to say things. None of that changes the human reaction to things. So we do need to, in a way, be confident about supporting people and saying: we know you're going to find this upsetting. No one's suggesting for a minute that it's wrong for you to feel upset by it. But you have to understand we can't stop this conversation happening. So what we want to do is find a way to make it easier for you.

And I think institutions are probably quite good at all that, and we just have to cut through the noise and let them do it. But maybe a bit of institutional leadership, some focus on it governance level as well, and making sure that there's plenty of practical support for people as they navigate this quite difficult legal area.

Harry: Well, I think there's some really great advice there for our members to be taking forward in the meantime. And I think the message not to wait is a is a really important one too. So, Smita, thanks ever so much for joining us. We really appreciate your time. So thanks very much.

Smita: Thank you!

Harry: You've been listening to The future of higher education today. If you'd like to find out more about our work on free speech and academic freedom at universities, then take a look at our website which can be found at universitiesuk.ac.uk. Thanks so much to our guests today, and thanks to yourself for listening.