

Our response to the Office for Students (OfS) consultation on the OfS' new free speech complaints scheme

Universities UK (UUK) is the collective voice of universities in England, Scotland, Wales, and Northern Ireland. Its mission is to create the conditions for UK universities to be the best in the world, maximising their positive impact locally, nationally, and globally. Universities UK acts on behalf of universities, represented by their heads of institution.

Association of Managers of Student Services in Higher Education (AMSSHE), the Committee of University Chairs (CUC), and with support from an independent panel of experts, with representation from across the sector.

Our response

Question A: Do you have any comments on Proposal A regarding free speech complaints?

We note that the OfS' proposals include that a complaint may be about more than one provider or students' union. In these cases, OfS must ensure that in any cases where multiple providers are considered as respondents they notify all respondents, to avoid duplication and unnecessary burden in dealing with the complaint. We suggest that it would be appropriate for a lead respondent to be identified, in consultation with all respondents, to coordinate activity.

Question B: Do you have any comments on Proposal B regarding who can complain?

We have concerns about the broad definition of 'student' set out in the proposals. In particular, the lack of parameters for this definition means that students beyond higher education students are able to use this scheme. For example, this could include students studying on further education courses at colleges that also offer higher education. It is not appropriate for the OfS to adjudicate on further education students' experiences of free speech on further education courses that are not regulated by the OfS in any other aspect. We also question how the OfS would be able to process these complaints from a practical perspective where they have less experience working with and contacts in further education.

Of further concern is that in the Act, 'student' is defined as a person who 'is or was' a student. This could arguably mean that any graduate of an OfS regulated provider is entitled to make a complaint, for example if they attend an event at the university several years after graduating. The OfS should identify a suitable time period after which graduates are not usually able to make a complaint, unless invited as a visiting speaker or being a member of staff.

The OfS must provide clarity on how this proposal relates to students studying on courses that are part of university partnerships, including franchised or validated provision. The OfS should also clarify whether students who are studying on transnational education courses (eg at overseas campuses) are able to complain under this scheme, as they will be subject to different laws regarding free speech. We strongly suggest that as part of guidance, the OfS should clarify that they will not consider complaints which concern the domestic legislation of other countries, ie if a country has free speech laws which conflict with the Higher Education (Freedom of Speech) Act 2023, providers should not be expected to breach those laws to uphold free speech as defined in the English context.

Providers have a broad range of corporate structures and partnership arrangements, and before the scheme is in place it needs to be made clear through further guidance which students are and are not able to submit a complaint to the OfS through this scheme, and where accountability lies for respondents (eg in franchise arrangements). We would welcome the opportunity to work with the OfS to consider this further.

The definition of 'visiting speaker' set out in the proposals is concerningly broad, as it does not limit a 'visiting speaker' to a person invited through the provider or students' union's formal processes for inviting speakers. Although we agree that the



before the OfS can investigate. To avoid duplication of effort between a provider and the OfS, it makes more sense to allow a provider time to unpack the elements of a complaint.

The 30day time limit also carries a significant risk of bringing additional cases to the OfS, increasing the resource burden on the OfS and causing unnecessary duplication of effort with a university's complaints process, where they may have been satisfactorily resolved within the provider's own processes given a reasonable timeframe for resolution. Allowing a 90 day period allows providers time to use their own robust complaints schemes to resolve issues before the OfS becomes involved, which also may reduce duplication of effort.

The proposals state that the OfS will only review claims relevant to freedom of speech. We urge the OfS to provide further clarity on this, as complaints will often contain multiple elements. In particular, free speech complaints may often include elements

where effects are only clear after more than 12 months has passed, which is unlikely to be common.

Question E: Do you have any comments on Proposal E regarding submitting a complaint?

We support the ability of a complainant to appoint a representative where appropriate, but it is essential that the complainant submits the original complaint themselves (unless being supported for accessibility reasons) and consents to the representative corresponding with the OfS on their behalf.

We would also like the OfS to clarify that a representative should not normally include legal representation. It is completely appropriate for a complainant to be supported, such as by a family member, fellow student, or staff member, but as this is not a legal process we do not think it is appropriate for representations to be made by lawyers.

Question F: Do you have any comments on Proposal F regarding reviewing a free speech complaint?

We welcome the flexible approach to reviewing complaints set out in the proposals. However, it is essential that the OfS provides additional detail on how it will

integral to deeming whether a complaint is partially or fully justified. We note that adverse consequences are not limited to financial consequences and could include a wide-ranging variety of consequences, so would welcome further information on how the OfS will consider and assess this. We also note that the OfS' view is that a 'justified' decision should be reserved for more serious cases, and ask the OfS to provide further information on what constitutes a more serious case.

The OfS must also provide information on the appeals process for respondents on decisions. It is essential that there is an appeals process for respondents to appeal decisions, and we suggest that the OfS set out an internal appeals process that would include review by an appropriate panel of experts.

Given that this is a new area for the OfS, the OfS should commit to a review of the complaints scheme after 12 months, including engaging with students and providers on their views about how it is working. Our view is that the OfS' commitment to evaluations should be reflected in this work, and that a review of the effectiveness of the scheme is appropriate due to the novelty of this area of work for the OfS. This review should include a genuine openness to making change where elements of the scheme are found not to be working as effectively as hoped or having negative or unintended impacts, and should also consider regulatory burden. We also suggest that the OfS considers setting key performance indicators (KPIs) in relation to the running of the scheme, for example on time taken to review complaints.

Question H: Do you have any comments on Proposal H regarding recommendations and suggestions?

We would welcome the OfS providing further information on recommendations and suggestions, including examples of what they may include and the process for determining them. Our view is that recommendations and suggestions should not be overly prescriptive and should respect institutional autonomy. For example, in a recommendation that a respondent should review its processes, it would not be appropriate for this recommendation to include prescribing what changes should be made as a result of the review. This is in line with the OfS' outcomes based regulation.

We note rule 48, which states that the operation of the scheme does not affect OfS' ability to investigate and/or take regulatory or enforcement action in respect of non compliance with the OfS' conditions of registration or other regulatory requirements. Further clarity on how the complaints received under the scheme will interact with and feed into regulatory requirements such as on harassment and sexual misconduct and quality would be welcome.

Question I: Do you have any comments on Proposal I regarding suspension and withdrawal?

No.

Question J: Do you have any comments on Proposal J regarding group complaints?

Question N: Do you have any comments on Proposal N regarding advertising the scheme?

We support the expectation that providers will be raising awareness of the existence of the scheme. In particular, it is essential that students are supported to understand the scheme and the differences between it and the OIA's student complaints scheme, and the OfS should take steps to support this through proactive communications.

Question O: Do you have any comments on Proposal O regarding charges, costs and fees?

We understand that the OfS intends to set out proposals in relation to recovering costs from respondents in a future consultation. The OfS should provide further information on the timeline for this future consultation as soon as possible. We support the scheme being free to use for the complainant, but it is vital that the costs of the scheme to the sector are kept under control, as if costs are excessive there could be a knock-on impact on the wider student experience.

Question P: Do you have any comments on Proposal P regarding the publication of information relating to the free speech complaints scheme?

We are supportive of the publication of information relating to the free speech complaints scheme, and understand it is an important mechanism for building understanding and sharing learning on free speech complaints. However, the proposal to publish specific information on a complaint even where a complaint is found not to be justified seems to be disproportionate.

In particular, publishing the respondent's name where complaints are not justified could pose a reputational risk in that it allows the number of complaints against a particular provider or students' union to be tallied, despite the fact that the OfS processing a higher number of complaints relating to a particular provider or students' union mayts s(ro)6 (c (n)1 (ts)-2 0522dh4305 Tb (o)J6)1 (s)1 1Bu)11 (d)1 (e430)3 (p)

to undertake and publish an equality impact assessment on the complaints scheme