



Higher Education (Freedom of Speech) Act 2023

2023 CHAPTER 16

Functions of the Office for Students

PROSPECTIVE

8 Complaints scheme

- (1) After section 69B of the Higher Education and Research Act 2017 (inserted by section 7) insert—

“69C Free speech complaints scheme

Schedule 6A contains provision for a scheme for the making and investigation of complaints relating to the duties of registered higher education providers, their constituent institutions and students’ unions in respect of freedom of speech and academic freedom.”

- (2) After Schedule 6 to that Act insert—

“SCHEDULE 6A

FREE SPEECH COMPLAINTS SCHEME

Introductory

- 1 (1) The OfS must provide a scheme under which the OfS is to review and determine free speech complaints (in this Schedule called “the scheme”).
- (2) In this Schedule “free speech complaint” means—
- (a) a HEP free speech complaint (see paragraph 2), or
 - (b) a students’ union free speech complaint (see paragraph 3).

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Higher Education (Freedom of Speech) Act 2023, Section 8. (See end of Document for details)

- 2 (1) A HEP free speech complaint is a complaint made by an eligible person to the OfS which—
- (a) claims that the person has suffered adverse consequences as a result of action or inaction of the governing body of a registered higher education provider or of a constituent institution of such a provider, and
 - (b) claims that, or gives rise to a question as to whether, the action or inaction was a breach of a duty of the governing body under section A1.
- (2) In sub-paragraph (1), “eligible person” means—
- (a) a person who is or was a student, member or member of staff of the provider or constituent institution (as the case may be),
 - (b) a person who has applied to become a member of academic staff of the provider or constituent institution (as the case may be), or
 - (c) a person who was, or was at any time invited to be, a visiting speaker.
- (3) A HEP free speech complaint may include claims other than those described in sub-paragraph (1).
- 3 (1) A students’ union free speech complaint is a complaint made by an eligible person to the OfS which—
- (a) claims that the person has suffered adverse consequences as a result of action or inaction of a students’ union for students at a registered higher education provider that is eligible for financial support, and
 - (b) claims that, or gives rise to a question as to whether, the action or inaction was a breach of a duty of the students’ union under section A5.
- (2) In sub-paragraph (1), “eligible person” means—
- (a) a person who is or was—
 - (i) a member or member of staff of the students’ union,
 - (ii) a student of the provider, or
 - (iii) a member or member of staff of the provider or of any of its constituent institutions, or
 - (b) a person who was, or was at any time invited to be, a visiting speaker.
- (3) A students’ union free speech complaint may include claims other than those described in sub-paragraph (1).
- 4 In this Schedule, references to the “parties” to a free speech complaint are to—
- (a) the person making the complaint (“the complainant”), and
 - (b) the governing body of a registered higher education provider or constituent institution or students’ union about which the complaint is made.

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Scope of scheme

- 5 (1) The scheme must provide that every free speech complaint is capable of being referred under the scheme.
- (2) But the scheme may include provision that—
 - (a) free speech complaints must be referred under the scheme within a time limit specified in, or determined in accordance with, the scheme;
 - (b) a free speech complaint is not to be referred under the scheme until the complainant has exhausted any internal procedure for the review of complaints which is provided by the registered higher education provider, constituent institution or students' union about which the complaint is made;
 - (c) a free speech complaint is not to be referred under the scheme if proceedings relating to the subject-matter of the complaint, to which the complainant is or was a party, are being, or have been, dealt with by a court or tribunal;
 - (d) a free speech complaint is not to be referred under the scheme if a complaint brought by the complainant and relating to the same subject-matter is being, or has been, dealt with under the student complaints scheme.
- (3) In sub-paragraph (2)(d), the “student complaints scheme” means the scheme for the review of qualifying complaints (within the meaning of section 12 of the Higher Education Act 2004) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act).

Decisions and recommendations

- 6 (1) The scheme must require the OfS—
 - (a) to make a decision as to the extent to which a free speech complaint which is referred under the scheme and not withdrawn is justified, and
 - (b) to make that decision as soon as reasonably practicable.
- (2) But the scheme may allow the OfS to dismiss a free speech complaint without consideration of the merits of it if the OfS considers the complaint to be frivolous or vexatious.
- 7 (1) The scheme must provide that, where the OfS considers a free speech complaint to be justified (wholly or partly), it may make a recommendation to the governing body or students' union about which the complaint is made.
- (2) A complaint may be partly justified if, for example, the OfS considers that the governing body or students' union has breached a duty under section [A1](#) or [A5](#) but the complainant did not suffer adverse consequences as a result of the breach.
- (3) A recommendation for which the scheme may provide is a recommendation—

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- (a) to do anything specified in the recommendation (which may include the payment of sums specified in the recommendation), or
 - (b) to refrain from doing anything specified in the recommendation.
- (4) But the scheme may not provide for recommendations arising from claims included in a free speech complaint which are not claims described in paragraphs 2(1) and 3(1).
- (5) The scheme may not authorise the OfS to require anyone to do or not do anything.
- (6) The powers of the OfS to make recommendations under the scheme do not affect any of its other powers.
- 8 The scheme must require the OfS to notify the parties to a free speech complaint in writing of—
- (a) its decision and its reasons for making it, and
 - (b) any recommendation it has made and its reasons for making it.

Fees

- 9 The scheme may not require complainants to pay any fees in connection with the operation of the scheme.

Publication

- 10 The OfS must publish the latest version of the scheme in such manner as it thinks fit.

Duty to comply

- 11 (1) The OfS, a registered higher education provider, a constituent institution of such a provider and a students' union must comply with any requirements that the scheme imposes on it.
- (2) If a registered higher education provider, a constituent institution or a students' union fails to comply with a requirement imposed by the scheme, and does not satisfy the OfS that it is unable to comply, the OfS may enforce the requirement in civil proceedings for an injunction.

Review

- 12 (1) This paragraph applies if the Secretary of State requests the OfS to—
- (a) conduct a review of the scheme or its operation (or any aspect of either of those matters), and
 - (b) report the results of the review to the Secretary of State.
- (2) The OfS must comply with the request within such time as may be specified by the Secretary of State.
- (3) In conducting the review, the OfS must comply with any particular requirements imposed by the Secretary of State.

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Changes to legislation: There are currently no known outstanding effects for the Higher Education (Freedom of Speech) Act 2023, Section 8. (See end of Document for details)

Defamation

- 13 For the purposes of the law of defamation, absolute privilege attaches to the publication under section 67A of—
- (a) any decision or recommendation made by the OfS under the scheme, and
 - (b) any report under paragraph 12(1)(b).”

Commencement Information

- II** S. 8 not in force at Royal Assent, see [s. 13\(3\)](#)

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