

A Guide to Christian Beliefs  
on University Campuses

# Christianity on Campus



ADF UK

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ADF UK team with midwifery student Julia Rynkiewicz



With ADF International's help, the pro-life student group at the University of Regensburg overcame an accreditation denial and continued their campus advocacy



# Introduction

*Universities should be havens of free speech and debate, yet students in the UK are fearful that expressing their views on campus could adversely affect their future career opportunities.*

## **Freedom of speech is the foundation of every free and democratic society.**

Of all places, university is where students should be free to debate and explore ideas — especially those with which they disagree.

Too often, we have witnessed a Students' Union (SU) 'pick sides' on a social or moral issue and attempt to censor one side of the debate. **Universities should be committed to embracing a diversity of views** across the student body, and improved guidance and training is desperately needed.

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# UNIVERSITIES SHOULD BE HAVENS OF FREE SPEECH AND DEBATE

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## **UK students feel censored on campus, poll<sup>1</sup> finds:**

**25%** of students don't share their true opinions because they clash with those promoted by the university.

**50%** of students feel their peers will treat them differently if they express their true views about important issues.

As a society, we should not accept students facing either social exclusion or even elevated disciplinary action because other students or staff disagree with their views. Such a culture runs against the very purpose of campus life and the broader mission of a university.

What is the point of learning if you cannot speak your mind? What is the point of making new friends if you cannot be open and honest with them? What is the point of being part of a student society if that society is not allowed to host events based on the topic and the speakers?



The writer C.S. Lewis observed that friendship is born when one person says to another, **“What! You too? I thought that no one but myself...”** It should be the same with student societies and groups at universities. Joining a society focused on an issue you care about is a great way to express your views and meet people who share them.

**Freedom of speech is foundational in life, including on campus, because it enables us to discover what we share and why we disagree.** This is why universities have specific obligations to protect free speech for all their staff, students, and visiting speakers under **the Education (no. 2) Act 1986**.

*It is called their s.43 duty and requires them to:*

*Take “reasonably practicable steps to ensure freedom of speech within the law for their members, students, employees and visiting speakers.”<sup>2</sup>*

*Make sure, as far as possible, that no individual or group is stopped from using their premises for any reason connected with an individual’s beliefs or views, or the policy or objective of the group.<sup>3</sup> This includes any premises that the Students’ Union uses.<sup>4</sup>*

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## **THIS RESOURCE EXISTS TO PROVIDE A BRIEF AND ACCESSIBLE INTRODUCTION TO SOME OF THE FREE SPEECH ISSUES THAT STUDENTS AND STUDENT SOCIETIES MAY ENCOUNTER.**

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The basic principle of freedom of speech is that speech should not be curtailed except in specific, compelling circumstances in law. Freedom of speech in the UK includes the freedom for everyone to share their views, even if others think they are completely wrong, offensive, disturbing, or even shocking.<sup>5</sup>

This resource provides a brief and accessible introduction to some free speech issues that students and student societies may encounter. Academic freedom and free speech at universities should continue to be strengthened.

# 1. Working with the University & Its Free Speech Code of Practice

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It is because **freedom of speech** (including academic freedom) is such an essential part of the purpose of universities that the law provides strong protections for this freedom. Freedom of expression is what makes a university a centre of education instead of indoctrination.

To maintain high standards of intellectual rigour and diversity of thought, universities must embrace a culture that allows for and indeed encourages and protects unconventional lines of enquiry and viewpoints.

Key to cultivating this culture is the **duty** of universities to create, maintain, communicate and enforce a **Code of Practice** in relation to freedom of speech created by **s.43** of the Education (no. 2) Act 1986. The **Code** must describe how the university will ensure freedom of speech within the law is secured and requires the university to take action if the Code is not followed by the university's staff members, students or Students' Union.

Anytime the university is involved — directly or indirectly (through the Students' Union, for example) — with issues of free speech, this **Code** will be the university's (and your) first reference point for any questions or disagreements. That's why it's worth being familiar with it before any issues arise.

Any concerns or questions regarding the university's **Code** should be raised with the university in the first instance. Universities must ensure that all students have opportunities to engage with the governance of the provider, including influencing the content of the **Code of Practice**. Students should, therefore, proactively raise their concerns when the **Code** is either unclear, incorrect, incomplete or imbalanced.

## Unclear

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The **Code** should avoid vagueness or generalities that are unhelpful to students in understanding their rights, duties and expectations regarding protecting and upholding free speech at the university. For example, a **Code** limiting free speech in reference to terms like “hate,” “harm”, and causing “upset” without elaboration or clarification would likely not fulfil their **s.43 duty**.

This is because speech that is upsetting or claimed to be “harmful” can also be lawful (thereby attracting the full protection afforded to free speech rights). In the extreme event that this ‘harmful’ speech crosses the threshold into illegality, it will not need the additional sanction from the university for its prohibition.

## Incorrect

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Students should raise concerns where the **Code** includes incorrect statements or examples concerning the boundaries of free speech. For instance, if the **Code** states that insulting speech is unlawful without any further context, this is incorrect as the law has now changed.<sup>6</sup>

## Incomplete

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Students may think their university’s **Code** fails to provide practical examples or suggestions to assist them in routinely arising issues. For example, if a **Code** has no suggestions to students concerning how best to handle controversial speakers, a student may wish to ask the university for guidance, given that this is a common area where practical guidance from the university can legitimately be expected.

## Imbalanced

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A **Code** should be as balanced as possible. For example, if a **Code** sets out to provide guidance on how to balance competing rights within the Equality Act (**EqA**) 2010, and where several examples are used, those examples should not inordinately focus on one protected characteristic at the exclusion of others, as this may give an incorrect impression that there is a hierarchy of characteristics – there is not.

A student in this position may encourage the university to update its guidance to reflect that competing rights are best resolved with a dialogue-focused approach rather than privileging one right or characteristic over another.

The **Code**, then, is the first reference point for issues of **freedom of speech**. If the university persists in implementing a defective Code despite concerns being raised to the appropriate decision-makers, then students may notify the *Office for Students (OfS)* or complain to the *Office of the Independent Adjudicator (OIA)*.

**SEE TOPIC 6 FOR FURTHER DETAILS**



## Case Study: Cambridge

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The Vice-Chancellor of Cambridge proposed a free speech policy requiring university members to show “respect” when exercising their free speech rights. Whilst potentially well-meaning, the policy risked allowing disciplinary proceedings against members who simply mocked ideas with which they disagreed. Noting the threat to freedom of speech, a group of university members proposed changes to the policy, including removing the requirement for “respect” and changing it to “tolerance”, making it more difficult for the university to cancel events and reject speakers. These changes were put to a vote and won by a landslide.

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**FREEDOM OF EXPRESSION IS  
WHAT MAKES A UNIVERSITY  
A CENTRE OF EDUCATION  
INSTEAD OF INDOCTRINATION.**

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## 2. Society Governance, Officers & Membership

### Your Society's Name and Purposes

Whether starting a new society or helping with an existing one, it is important to ensure that your society “does what it says on the tin”. The **EqA** under **s.10** protects religious and philosophical beliefs. As such, if your society has religious beliefs, it is important that you make those beliefs clear to all.

The more specific and upfront you are about what you believe (particularly as articulated in your governing documents) and any belief requirements for those joining the group, the stronger your position will likely be in any challenge.

This starts with your society's name, and while clarity is good, controversy for controversy's sake is generally not. A clear but also winsome name is helpful for attracting new members and, hopefully, avoiding unnecessary controversy.

It should also be clear how your society's objectives/purposes align with the charitable objectives of the university and, if you are affiliated with it, the Students' Union. This should not be too hard, as these purposes often include **“furthering students' education for the public benefit”** – but it is good to have thought this through.

Indeed, the clearer the link, the better, as it will then be harder for the university or SU to restrict your speech by claiming it does not **“further their charitable objectives”**<sup>7</sup> or breaches equality and criminal law – which otherwise can be given as reasons for limiting specific speech by a society (See Topic 4 below for further details).

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#### SEE TOPIC 4 FOR FURTHER DETAILS

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**THE EQUALITY ACT UNDER S10 PROTECTS RELIGIOUS AND PHILOSOPHICAL BELIEF. AS SUCH, IF YOUR SOCIETY HAS RELIGIOUS BELIEFS, IT IS IMPORTANT YOU MAKE THOSE BELIEFS CLEAR TO ALL.**

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## General Membership

Membership is the lifeblood of any student society, and how it works should be one of the first things you address when setting up a student society. Indeed, when it comes to your society and its members, the main issue to consider is whether you are likely to have or aim to have 25 or more members. If so, or at the point you do, your society would count as an “association” and be subject to the **EqA**.

The **EqA** is relevant because its provisions regarding discrimination and harassment could affect your society's membership policies and ethos, so you need to be aware of them.

In short, it is against the law if, due to a protected characteristic (such as sex, race, religion, disability or belief), a member or prospective member is treated worse than a member (or prospective member) without the same characteristic or to subject them to unwanted conduct which has the effect of violating their dignity or creating a hostile, intimidating or offensive environment.

The danger, of course, is that accusations of discrimination and harassment can (and have been) routinely weaponised and used to stifle opposition and minority viewpoints. Thankfully, the **EqA** recognises the importance of protecting diverse viewpoints. So, there is the recognition in the **EqA** that associations

can restrict membership to those who share a particular protected characteristic. “Religion and belief” are protected characteristics, so societies that restrict membership based on particulars are permitted to do so within the law.

But who defines “religion” and “belief”? The short answer is that you do. Your society can (and should) be clear on the specific religious or philosophical beliefs that your society holds. Indeed, the clearer you are in the beliefs needed for membership, the better. These can be specific religious beliefs, such as a particular tradition within Christianity or Judaism, or specific philosophical beliefs, such as the belief that sex is immutable and binary, or even, in some instances, political beliefs, such as democratic socialism or classical libertarianism.

The key thing to remember is to be clear about who your society says they are, in your particular beliefs, including for membership. And be open about those with people before they sign up.

## Choosing Society Officers

Your society may need a more comprehensive set of specific beliefs for its officers than for the membership (e.g. further particular beliefs and their necessity for being a society officer must be set out in your governing documents (e.g. constitution). This is to ensure that all potential members know about these additional requirements for officers before<sup>8</sup> becoming members. Writing a constitution is important to ensure consistent application of policies and subsequently avoid accusations of discrimination. The policy can also be scrutinised to ensure it complies with equality law.

### Case Study: Exeter

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Exeter Students' Guild suspended the Christian Union society for not complying with their Equal Opportunities standards in their constitution by requiring that new members sign up for their statement of faith. The Guild removed the society from the list of societies, suspended its bank account and banned free use of its premises. After legal action was threatened and after negotiations, the Guild voted to change its rules, allowing new members to sign up to the aims and beliefs of the Christian Union.



### 3. Working with Students' Unions

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One of the first decisions you must make is whether or not to affiliate with the Students' Union. **What are some of the free speech issues that your society and the SU ought to bear in mind?**

While every SU is different, some general principles related to freedom of speech are worth considering for both affiliation (or not) and in working with SU's more generally.

The first thing to do is to look at the SU policy, the criteria for affiliation, and the rules and regulations relating to the affiliated society. Ask yourself: 'Can the society I wish to establish operate within the rules of the SU whilst being true to its values?' Your answer to that question will inform whether you should seek affiliation or pursue other options.

#### **Choosing to be Affiliated**

Depending on the SU, the advantages of affiliation may include funding, the use of SU premises, publicity, and access to the Freshers' Fair and other events. When affiliated (or likely even when not), the SU cannot treat you differently just because your society is organised around a particular topic/issue – assuming that the topic/issue concerns a particular **protected characteristic** (e.g. religion and belief) and your members share that **protected characteristic**. If you are treated differently based on your protected characteristics, there would likely be **discrimination** contrary to the **EqA**.

If the SU is willing to grant affiliation without undermining your society's core values, membership rules and operational independence, then seeking affiliation is generally the preferable option in view of all the practical, financial and operational benefits.

## Choosing Not to be Affiliated

It is important to examine the Student Union and university's policies closely to ensure the law is represented accurately.

In circumstances where you are concerned that the policies are unfair or unclear, you may feel that your society should refrain from affiliation with the SU to maintain the values, beliefs and objectives of your society. Alternatively, you may wish to explore avenues to challenge the SU and or university policies legally.



Not being affiliated likely means your access to funding, SU staff support, bookable rooms, use of facilities, and publicity will be different or limited. Note that this will not affect your membership in and access to support from the SU as an individual, and it may be that some of the benefits of affiliation can be realised as a group of individuals.

However, as students, the university is still required to **s.43 duty**. This should include ensuring you have access to premises for events.<sup>9</sup>

Many universities also provide opportunities to apply for funding, and several community grants are available to apply for from local councils, national governing bodies and charities. And remember, you can, of course, always raise your own money via crowdfunding or other fundraising initiatives.

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**THE UNIVERSITY IS STILL REQUIRED TO S.43 DUTY. THIS SHOULD INCLUDE ENSURING YOU HAVE ACCESS TO PREMISES FOR EVENTS.**

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## Challenging Refusal of Affiliation & Disaffiliation Decisions

Some SU's have an internal appeals system for affiliation and disaffiliation decisions. This should always be your first port of call. If you have been refused affiliation due to your society's beliefs, then there is a possibility that the SU is discriminating against you contrary to the **EqA** and their own equality and diversity policies. Any issue that has not been resolved directly with the SU should be escalated to the university and, if necessary, to external regulatory bodies (see Topic 6 below for more details).

**SEE TOPIC 6 FOR FURTHER DETAILS**



### Case Study: Glasgow

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Glasgow Students for Life (GSL) society was refused affiliation by the Glasgow University Students' Representative Council (SRC) due to its opposition to abortion, which SRC claimed was contrary to its ethos. GSL challenged the SRC's decision, arguing that it had discriminated against its beliefs in breach of equality laws and SRC's own equal opportunities policy. After the threat of legal action, SRC overturned its initial decision to refuse affiliation.

## 4. **Publicity for your Society**

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**It is important to have a student society, but it is also important that people know about it!** But if your society is counter-cultural and your views/beliefs are not going to win a popularity contest, how do you build awareness and have your views heard (or seen)?

When you are thinking about your society's general publicity (i.e. not for a specific event – for that, see Topic 5), it is good to bear in mind that general publicity might be seen by lots of people who have not specifically 'opted-in' to see it – in contrast to an event where people have chosen to attend and hear the specific views being expressed.

Why does this matter? This is important because it might be the first time many students will encounter your society. So, using general publicity to invite people into a conversation, encouraging them to consider a question by choosing to attend an event, or learning about a variety of perspectives, are approaches that will be less likely to generate complaints and cause problems. This is because when people are invited into a discussion and engage with it, it becomes less credible for them to complain about the discussion, which they opted into, including speech that caused them to feel harassed, distressed or offended.

Speech or viewpoint-related complaints are often underpinned by an allegation of law-breaking. It is unlikely that those accused will be familiar with the relevant pieces of law that restrict speech, and it is often a misunderstanding of the law that leads to baseless accusations. It is, therefore, important to know the law and the high bar that must be met before your speech can legitimately be restricted, whether under criminal law or equality legislation.

## Criminal Speech

### **For speech to be criminal, it generally must be one of the following:**

Incite or provoke<sup>10</sup> terrorism.

'Terrorism' is an aggressive act designed to influence the government or intimidate the public.

Threatening or abusive and expressed within the hearing or sight of a person likely to be caused harassment, alarm or distress.<sup>11</sup> It is important to note that the harassment, alarm and distress must be by threatening or abusive words or behaviour to be criminal.

Words or written material which are threatening, where the person intends to stir up religious hatred or hatred on the grounds of sexual orientation.

However, it is very important to note that stirring up hatred offences relating to religion and sexual orientation cannot, according to the law itself:

*"be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system."*<sup>12</sup>

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**Viewpoints that are based on a belief or religion are protected by the Equality Act 2010 and Human Rights Act 1998.**

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#### 4. Publicity for your Society

### **Criminal Communication Online**

Where online communication in question is grossly offensive, indecent, obscene, or menacing character, criminal liability could occur.

**This is a high threshold, and most student communications online should not, in practice, reach the threshold to justify criminal liability.**

That is to say that there is a presumption in favour of allowing online communication unless it can be shown that the material is, for instance, deliberately designed to be grossly offensive or “repulsive”, “filthy”, “loathsome” or “lewd”, fails to contribute or inform a matter of public debate. It is necessary and proportionate to restrict the communication in the public interest.

So, for online communication, audience and context is key. Generally, online communication directed to members/supporters (e.g. an email to those who are society members or have opted-in) will have greater protection than those sent to a broader public (e.g. a public Tweet or social media post).

**When communicating on controversial matters to the broader public, the more you clarify your intent (e.g. to inform, contribute or initiate public debate), the fewer people can credibly raise a complaint.**

**For online communication, audience and context is key**

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**VIEWPOINTS THAT ARE BASED ON A BELIEF OR RELIGION ARE PROTECTED BY THE EQUALITY ACT 2010 AND HUMAN RIGHTS ACT 1998**

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## Unprotected Speech Under the Equality Act 2010

**Viewpoints based on a belief or religion are protected by the Equality Act 2010 and the Human Rights Act 1998.** For a philosophical belief (and viewpoints based on that belief) to be unworthy of legal protection, the courts have found that the belief must be *'not worthy of respect in a democratic society'*. In *Forestater vs CGD*, the court judgement determined that such a belief must be akin to Nazism or totalitarianism.<sup>13</sup>

In practice, this means very few categories of belief are not legally protected. Unlawful speech under the **EqA** will, therefore, depend on whether the speech in question was based on a belief supporting the destruction of other people's rights or unreasonably expressed in a way that is hostile, degrading, intimidating, humiliating, offensive, or in a manner which undermines the dignity of an individual.

If your university or SU allege that the content of your speech is unlawful without reference to a specific factual context (including evidence that the speech in question has sought to interfere with the rights of someone else or had the purpose or effect of undermining their dignity), they have likely misinterpreted the law.

### Case Study: Sussex

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Kathleen Stock, a professor of philosophy at the University of Sussex, attracted controversy due to her gender-critical views. An anonymous campaign from students labelled her views as "unsafe", "harmful", and "transphobic", asserting that they were "not up for debate [and] cannot be reasoned out of existence." Some of the professor's academic colleagues and the Sussex Students' Union supported the student campaign.

The University of Sussex expressed concern, noting the "harassment" towards their staff member and their deep commitment to "being a safe and inclusive university, which values and advances equality and diversity, seeks to resolve conflicts, advances good relations and upholds lawful free speech".

Kathleen Stock later resigned after receiving death threats. The Office for Students ("OfS") instigated an investigation into whether the University of Sussex met its obligations on academic freedom and freedom of speech and concluded that it did not. The university was fined £585,000.

# 5. Hosting Successful Events

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Once you have a society set up, a group of enthusiastic members, and an important cause to promote, congratulations! The next step is to hold meetings and events, which are a vital part of any group's existence and fundamental to exercising your freedom of speech. It is hard to be a student society if you can't even meet and share views together! **There are three questions to ask yourself when planning an event: What? Who? Where?**

## What?

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**You should first consider the type of event you are planning to host (e.g. talk with Q&A, debate, panel, etc.) and the audience. Is it just for existing student groups/society members, all students on campus, or external visitors? This matters for several reasons:**

The more contentious your event/topic is, the more you will want to make sure your **freedom of speech** will, in fact, be protected and supported by the university and SU in the face of any opposition. Generally, the clearer it is that your event/topic intends to further education/learning through the peaceful expression of a view (or various views), the better.

If the event is open to the public, it will likely engage the **EqA**, and there is likely to be greater sensitivity surrounding the event's impact on other students or staff members. This would mean, among other things, being both winsome and very clear (in all your publicity) on the subject matter, speakers and content of any talk/speech so anyone who chooses to attend knows what kind of views are likely to be expressed. It is harder for someone to claim they had been "harassed", discriminated against or otherwise subjected to a degrading environment when they have been well informed of the nature of the event and have voluntarily attended.



## Who?

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**Next, you will want to think about speakers because the more contentious your speakers are, the more likely your rights and the speaker's free speech rights will be at risk of being targeted. So, you will want to think specifically about:**

How you communicate about the speaker(s) and topic in ways that show the intent is to further educate through the peaceful expression of a view or views.

Making clear that there is a requirement for speakers to commit to respectful discourse and mannerisms – even if the subject matter and the ideas shared are controversial, offensive, or even disturbing to some.

Engaging with the university's external speaker process or policy tactfully. Many such policies prohibit 'discrimination' and require 'dignity', 'respect' and 'inclusion' in a way that is targeted at restricting speech. Properly understood, these policies are served (rather than threatened) by exercising the right to free speech on campus since speech is the vehicle through which all other rights on campus are defended and where genuine inclusion is promoted by allowing diverse viewpoints to be heard and understood.

Universities' **s.43 duty** to "take reasonably practicable" steps to ensure **freedom of speech** specifically includes visiting speakers. In most circumstances, they should not stop a visiting speaker you have already invited from speaking. If they do or threaten to charge you with security costs, see topic 6 below, showing options for recourse.

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## Where?

### Finally, you will want to think about where you have your event.

This guide assumes you will have it on either university or SU premises. If you are an SU-affiliated society, then you should be provided space in the same way as all other groups. If you're not affiliated, the SU can decline the use of its premises but must not do so on the basis of your beliefs or the beliefs of any of your members. The **s.43 duty** of the university to ensure the use of premises is not denied due to the beliefs, views, or policies of students and student societies also applies to premises occupied by Student Unions.

However, it is normally possible to book events on the university campus instead, which is not under the auspices of the SU. Most universities have 'private hire' spaces for functions, which can be helpful to provide more protection from interferences or disruptive protestors since universities will make concerted efforts to protect their own property.

### Freshers' Fairs

The SU normally runs Freshers' Fairs, which are generally considered private events. If you are in an SU-affiliated society, you should be provided space like all other student groups. The SU can sometimes decline your participation in the Freshers' Fair if you are not affiliated. Still, it must ensure that in doing so, it does not discriminate against your society on the basis of a relevant **protected characteristic**. The university would also need to consider whether the SU refusing your student society requires their intervention in view of their **s.43 duty**.



The General Secretary of the Free Speech Union wrote that “the interaction between attendees and College members was a laudable example of free speech in action.”

## Case Study: Oxford

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The Provost of Worcester College (Oxford University) apologised to students after receiving complaints accusing delegates of Wilberforce Academy (a student training programme run by Christian advocacy group Christian Concern) of aggressive leafletting. The Provost cancelled Wilberforce Academy’s booking of the premises and banned future bookings.

An independent investigation carried out by a charity lawyer found no evidence to support the allegations, finding that the complaints arose due to discussions around the topic of conversion therapy.

The General Secretary of the Free Speech Union later wrote to the university that “the interaction between attendees and College members was not, as the college claimed, a ‘distressing’ episode meriting unreserved apologies. It was, in fact, a laudable example of free speech in action. Students and attendees showed mutual respect and curiosity about each other’s beliefs and engaged in civil discussion on a controversial topic. The college’s uncritical acceptance of claims that the conference harmed students was a serious error”.

## 6. Outside Help: the OIA, the OfS & Third Parties

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Student complaints against your university should be directed to the university in the first instance. But what should you do when those appeals within the university are exhausted, and you still think the university is unjustly limiting or inadequately protecting your freedom of speech?

### Enter the OIA.

The **Office of the Independent Adjudicator (OIA)** is an independent body established to address student complaints in England and Wales. Complaints can be about anything the university has done or failed to do, including complaints relating to discrimination, bullying and harassment, procedural irregularities and unfair practices insofar as the matter is not already subject to legal proceedings and the student has exhausted the university's internal complaints process.

Once the OIA receives a complaint, they will review it and decide if it is 'justified', 'partly justified' or 'not justified'. If the complaint is justified or partly justified, the OIA will proceed to make recommendations to provide you with a practical remedy or, alternatively, financial compensation. Universities' compliance with recommendations is monitored.

If you are not satisfied with the outcome, you can raise concerns directly with the **Office for Students (OfS)**, which is keen to receive information from students about their university or college when it is relevant to their regulatory remit and to take corrective action where necessary and in proportion to the nature of the breach. This is done through a "notification" process where students can inform the OfS of a university's failure to comply with its conditions of registration – including its duty to uphold freedom of speech. The OfS may decide to investigate the issue and consider taking regulatory action, which can include monetary penalties or deregistration of the university.

## 7. Case Studies on Potential Problems & Potential Solutions

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### Formation and Affiliation

*The Morality, Politics and Theology (MPT) society has applied to be affiliated with the SU. Still, the SU has told them they must change their beliefs, purposes or objectives to become affiliated. MPT uses thought-provoking images to start a debate about current moral and political issues. To be a member of MPT, students must sign up to its statement of faith. MPT has applied for affiliation to the SU but has been told that they cannot be affiliated due to concerns that the society would a) breach their 'non-discrimination' policy, b) cause offence to other students due to some of MPT's faith-based values, and c) breach the SU membership policy which prohibits any restrictions on membership for students in the interests of diversity and inclusion. The SU says that even if they allowed the MPT to affiliate, it would only be on the condition that certain controversial images seen on the MPT's website are removed and never again shared.*

Some Student Unions have an internal appeals system for affiliation and disaffiliation decisions. This should always be your first port of call. If members of your society share a **protected characteristic**, the SU's actions may constitute **discrimination**, and the **EqA** provisions would be applicable. Any policy requirement for affiliation stating that no society can restrict membership is likely to be discriminatory in and of itself, and the MPT should point out that the **EqA** permits societies to restrict membership and membership benefits to people who share a particular protected characteristic.

It is important to determine on what grounds the SU seeks to refuse affiliation. It may be based on a loose reference to an internal SU criteria/policy or the law. You should ask for as much precision as possible when a policy is raised and an explanation from the Students' Union why they feel their interpretation and application of the policy to your society is necessary and proportionate. . It may be helpful to highlight that the restrictions have not been applied consistently to all societies and point to examples. "Discrimination", "diversity", and "inclusion" are words that can be easily used to restrict freedoms, but they are often misused and misapplied when scrutinised under a proper interpretation of the law.

7. Case Studies on Potential Problems & Potential Solutions

It is a very high threshold for a belief or viewpoint to qualify as unlawfully discriminatory under the Equality Act (EqA). It would normally be very difficult for an SU to lawfully justify a refusal of affiliation based on a society's religious or non-religious beliefs alone. In this scenario, the MPT should ask to see the non-discrimination policy and question the SU to ensure they are not interpreting and applying their policy in a way that contravenes or skews the **EqA**.

In relation to the SU's concern that the MPT society may cause some students to be offended, they should be reminded that offending is, of course, not in itself unlawful. To the extent that avoiding causing offence is a policy of the SU, MPT should seek more clarity on how and when this policy would be applied since the taking of offence is subjective.

Reference should also be made to the university's **Code of Practice**. SU's must follow the university's **s.43 Code of Practice**, so it may well be that the disaffiliation is in breach of the university's code – if so, this should be pointed out to the SU.

If the SU has not engaged positively with your concerns, you should seek a resolution from the university, highlighting their **s.43 duty**.<sup>14</sup>

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## Unlawful speech and events

*The MPT society resolves its issues with the SU and is now up and running as an affiliated society. They are planning to host their first event, “Sex: a biological reality, not a social construct”, with interesting and well-known speakers. The university is saying MPT’s publicity on the matter includes **unlawful speech** since it is upsetting, unpleasant, and marginalises the feelings, rights and dignity of transgender students and staff, who must also be treated with respect. The university has also pointed out that the event will not be able to be held on their premises because one of the proposed speakers is a well-known “hate” preacher and will cause “harm” to students. The university is concerned that if the event goes ahead, there will be protests in opposition, and action must be taken now in view of their Public Sector Equality Duty (PSED), Prevent duties and charitable objectives. During preparations for the event, the university received a complaint about one of MPT’s members who tweeted, “I think the Bible is pretty clear – God created them male and female – look it up!”. The university is now investigating the incident.*

The university’s **Code of Practice** should detail the process by which the university has decided that the specific content of the publicity constitutes prohibited speech and provide the reasoning behind the decision-making (preferably in writing) to the student society.

Some **Codes of Practice** will reference the need for safeguarding in the form of “freedom from harm”, “prevention of harassment” or “anti-discrimination”. If this means protecting students from **unlawful speech**, then that is both right and legal, but if it means not allowing any/or some controversial views and speakers, that could very well be unlawfully restricting **freedom of speech** and breaching the university’s own **s.43 duty**.

In this scenario, the MPT society should seek clarity on how the relevant publicity breaches the university’s policy or the law. If the policy misinterprets the law, then this should be pointed out.

In seeking to prevent publicity around the event, the university is likely arguing that the publicity would constitute “harassment” under the **EqA** or criminal law or that it contravenes their **public sector equality duty** or Prevent duties.<sup>15</sup>

## Harassment

- Universities are prohibited from harassment or failing to take appropriate action<sup>16</sup> in their role as education providers. “Harassment” in the **EqA** refers to “unwanted conduct” related to certain **protected characteristics** (see which ones directly below), which has the purpose or effect of “violating a person’s dignity” or “creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.”<sup>17</sup>
- It is important to note that “harassment” is not just based on the subjective view of the person saying they have been harassed. Courts need to consider other factors, including whether it was reasonable for the complainant to feel harassed considering the circumstances, including how the view was expressed, and the value of freedom of speech and academic freedom.
- Any reference to “harassment” may also refer to the criminal law. In which case, the university should be informed that this is a high bar to meet, requiring a course of conduct (not just a one-off<sup>18</sup>), and evidence of threatening or abusive behaviour.<sup>19</sup>
- Harassment law is not only a sword against controversial viewpoints; it can also be used as a shield. In this scenario, members of the MPT society may consider the university’s seemingly zero-tolerance policy against gender-critical viewpoints to be creating a hostile and degrading environment for them as students since they are unable to live by and express their core beliefs on campus without fear of penalty or restriction.



## Public Sector Equality Duty (PSED)

- The **PSED** is a duty in the **EqA** specifically for “public bodies” (which includes every regulated university) that, among other things, requires them to “encourage good relations between people who share a relevant protected characteristic and people who don’t.” Sometimes universities will incorrectly assume this means societies that might be controversial or opposed by individuals with another protected characteristic should not be allowed — <sup>20</sup> because that supposedly helps “good relations.” That is an incorrect understanding of the duty. In this scenario, MPT may wish to remind the university that encouraging an atmosphere of dialogue and peaceful exercise of free speech is the best way to improve good relations between people who share protected characteristics and those who do not, since free speech is the mechanism through which different perspectives can be heard and understanding promoted.

## Prevent

- The statutory ‘**Prevent duty**’ requires universities to have due regard to the need to prevent people from being drawn into terrorism. The MPT society should remind the university that the Prevent duty sets a high bar. Terrorism involves acts that constitute serious violence and endangerment of other people’s lives with the aim of advancing a political, religious, or ideological cause. It is unlikely that the ‘Prevent duty’ would apply in practice to a university student society, and it is very rare that the duty would stop a peaceful religious society from existing or using university and/or SU facilities for events.

## Hate Speech

- First, it is important to note that there is no agreed legal definition of what constitutes “hate speech”; neither, in fact, is “hate speech” a standalone criminal offence. The MPT society should ask the university to provide a more precise explanation of the specific behaviour that the university is concerned about and the law they rely on for the accusation of “hate”/“hate speech”.

## Protections for speech

*Duties to ensure that freedom of speech within the law is secured*

- The university in the scenario appears to have already made its mind up in relation to the MPT society. MPT should raise this non-collaborative response as a concern as the university still has to follow its **s.43 free speech** duties to take “reasonably practicable steps” even if the university thinks **unlawful speech** might occur. It is only if reasonably practicable steps cannot reduce the risk that the university can require the event to be cancelled. These steps could include, for example:
  - o Having a policy on respectful discourse, which speakers must follow.
  - o Re-structuring the event to challenge high-risk speakers with opposing views or ensuring an independent chair to ensure a range of views are heard.
  - o Requesting to see promotional materials before the event.
  
- The university has also raised concerns about opposition protests. The MPT society should remind the university that its **s.43 duty** to take “*reasonably practicable steps*” includes taking steps to reduce risks like opposition protests. This could include:
  - o Putting additional security in place and/or ticketing the event.
  - o Postponing, if necessary, to take take other steps that would then allow the event to proceed; and
  - o Providing a safe venue for the event that makes disruptive protests more difficult.



## 7. Case Studies on Potential Problems & Potential Solutions

### *The University's Charitable Objectives*

- The university has referenced its charitable objectives as a reason for preventing the MPT society's publicity and speech. Given that one of its objectives will inevitably include the "advancement of education", they should be reminded of the importance of various views, whether controversial, unusual or even offensive, in the interest of hearing, testing and scrutinising different ideas to advance and sharpen educational attainment. Unless the event is likely to promote or contain unlawful speech, it almost certainly furthers the universities charitable objectives.

### *Obligations under the Equality Act and Human Rights Act*

- When corresponding with your university or Students' Union, it is helpful to demonstrate that you confidently understand and can reference your rights in legislation as precisely as possible. In addition to **s.43** of the Education Act 1986, referenced through this resource (see the Introduction), key provisions protecting your rights are under the Equality Act 2010 and the Human Rights Act 1998.

## **Equality Act 2010**

- The **EqA** protects people from discrimination in the workplace and beyond. When it came into force on 1 October 2010, it consolidated all existing anti-discrimination laws into one Act of Parliament.
- The **EqA** safeguards nine 'protected characteristics' in law — one being 'religion or belief', which includes Christianity, gender-critical and pro-life beliefs. The Act prevents discrimination on the grounds of any protected characteristic and protects people associated with someone with a protected characteristic.
- In the university context, the four main forms of discrimination prohibited by the **EqA** are:
  - o **Direct discrimination:** When students with particular beliefs are treated less favourably (e.g., dismissed, pay, recruitment, redundancy) because of their beliefs, whether religious, philosophical, or political. Examples of direct discrimination might include suspending a student for respectfully expressing their opinion because it is derived from the text of the Bible.

- o **Indirect discrimination:** When the university or Students' Union implements a generally applicable policy, scheme, or practice that particularly disadvantages students with particular beliefs. Indirect discrimination can be justified if the proposed policy, scheme, or practice is proportionate and has a legitimate aim. Examples of indirect discrimination might include a requirement for all students to state their gender pronouns on their online student profile, as this may conflict with the beliefs of students who believe sex is a binary biological reality.
- o **Harassment:** Occurs when the university, SU or fellow student engages in 'unwanted conduct' relating to the beliefs of a student, and the conduct either 'violates [the student's] dignity' or it creates (or is intended to create) an 'intimidating, hostile, degrading, humiliating or offensive environment' for the student. Examples of harassment might be when a student repeatedly says to the Chair of the Students Vegan Society, "Vegans are stupid", despite repeated requests for the student to refrain from doing so.
- o **Victimisation:** Occurs when the university subjects the student to a disadvantage because they have raised a concern about discrimination. An example of victimisation might be when the university suspends a student for notifying the OfS that it is failing to carry out its **EqA** duties to prevent indirect discrimination based on some of its students' deeply held political beliefs.

## The Higher Education Free Speech Act 2023

- In 2023, the then-government passed the Higher Education Act 2023, which codified and strengthened the rights of student societies to invite speakers to universities. It imposed additional duties on Students' Unions to take steps to ensure freedom of speech for staff, students, and visiting speakers so far as is reasonably practicable.
  - o Universities will be forced to write codes of practice ensuring the protection of freedom of speech which will be enforced by the Office for Students. The act also creates a new position as 'Director for Freedom of Speech and Academic Freedom at the OfS to ensure these measures are upheld'.

## 7. Case Studies on Potential Problems & Potential Solutions

- o The act imposed a duty on the OfS to create a complaints scheme, to which students may complain in the event their university has failed to comply with their obligations to protect freedom of speech. The scheme may award compensation or make recommendations which universities must comply with. Raising a complaint is an inexpensive way of compensation if universities fail to comply with their obligations.
- o The act introduces a civil tort in the event their desired outcome is not reached by the internal complaint. The idea was to make the duty more substantial and enforceable, ensuring universities complied with their duties and also ensuring victims of censorship could be adequately compensated.
- o It was announced on the 26th of July 2024 by Bridget Philipson that the government would not be commencing the bill. Following threats of Judicial Review by the Free Speech Union, the government has retreated somewhat and announced on the 15th of January 2025 that parts of the act would be commenced. They have directly stated, however, that the Tort will not be commenced.
- o The FSU are proceeding with judicial review over the parts of the legislation which have not been commenced. The legal proceedings remain ongoing and as of yet undetermined.

### **Article 9: Freedom of Thought, Conscience and Religion**

- o Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.
- o Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

## Article 10: Freedom of Expression

- o Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises.
- o The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial disorder, or crime, for the protection of health, or morals, for the protection of the reputation, or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.



### Case Study: Nottingham

Julia Rynkiewicz was a midwifery student that served as president of “Nottingham Students for Life”, a pro-life student society that was initially denied affiliation by the University of Nottingham’s Students’ Union.

Concerns about Rynkiewicz’s fitness to practise centred on material available at the society’s Freshers’ Fair stall, as well as her public association with the society. She faced a suspension and four-month fitness-to-practise investigation, disrupting her education. In the wake of the Fitness to Practise panel dismissing all allegations against her, she knew that she had been unfairly targeted for her beliefs.

ADF UK was able to support Julia in securing justice, with the university issuing an apology and a settlement as a result of the way it had treated her.

## Additional Resources

**Equality and Human Rights Commission**, the national equality body providing information and guidance on the Equality Act. More information available at [equalityhumanrights.com](http://equalityhumanrights.com)

**Free Speech Union**, a non-partisan, mass-membership public interest body that stands up for the speech rights of its members. [freespeechunion.org](http://freespeechunion.org)

**Office for Students**, an independent body established by the Higher Education and Research Act 2017 which acts as the independent regulator for higher education in England and Wales. [officeforstudents.org.uk](http://officeforstudents.org.uk)

**Office of the Independent Adjudicator**, an independent body set up to review student complaints about higher education providers in England and Wales. Their service is free for students. [oiahe.org.uk](http://oiahe.org.uk)

## Notes

<sup>1</sup> [protectfreespeech.uk/national-poll](http://protectfreespeech.uk/national-poll)

<sup>2</sup> Education (no. 2) Act 1986, s.43(1)

<sup>3</sup> Education (no. 2) Act 1986, s.43(2)

<sup>4</sup> Education (no. 2) Act 1986, s.43(8)

<sup>5</sup> *Handyside v United Kingdom* [1976] ECHR 5

<sup>6</sup> The government decriminalised 'insulting' speech in 2014. To the extent that insulting speech can be unlawful it must be intended to cause harassment, alarm or distress.

<sup>7</sup> You can check the charitable objectives of any charity by going to the Charity Commission's website: [register-of-charities.charitycommission.gov.uk/charity-search](http://register-of-charities.charitycommission.gov.uk/charity-search)

<sup>8</sup> You may then, for example, want to have new members read signify they have seen/read the governing document.

<sup>9</sup> s. 43(8) Education Act 1986

<sup>10</sup> E.g. offences under the Terrorism Act 2000 (TA 2000) and Terrorism Act 2006

<sup>11</sup> POA, s.5

<sup>12</sup> See POA, s. 29J and JA

<sup>13</sup> *Maya Forstater v CGD Europe and Others*: UKEAT/0105/20/JOJ

<sup>14</sup> Generally, the first stage of a challenge on these grounds would be to the university itself. Then depending on the particular issues, to the OIA or OfS (see Topic 7 for more.)

<sup>15</sup> Legal duties under Part 5 of the Counter-Terrorism and Security Act 2015

<sup>16</sup> Part 6, Equality Act 2010

<sup>17</sup> s.26, Equality Act 2010

<sup>18</sup> s.1 Protection from Harassment Act 1997, s.5 Public Order Act (POA) 1986

<sup>19</sup> s.1 Protection from Harassment Act 1997, s.5 Public Order Act (POA) 1986

<sup>20</sup> s.149, Equality Act 2010



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