

Academic freedom in the UK



Protecting viewpoint diversity

Remi Adekoya, Eric Kaufmann, and Thomas Simpson

Foreword by Ruth Smeeth



Academic freedom in the UK

Protecting viewpoint diversity

Remi Adekoya, Eric Kaufmann, and Thomas Simpson

Foreword by Ruth Smeeth



Policy Exchange is the UK's leading think tank. We are an independent, non-partisan educational charity whose mission is to develop and promote new policy ideas that will deliver better public services, a stronger society and a more dynamic economy.

Policy Exchange is committed to an evidence-based approach to policy development and retains copyright and full editorial control over all its written research. We work in partnership with academics and other experts and commission major studies involving thorough empirical research of alternative policy outcomes. We believe that the policy experience of other countries offers important lessons for government in the UK. We also believe that government has much to learn from business and the voluntary sector.

Registered charity no: 1096300.

Trustees

Diana Berry, Alexander Downer, Pamela Dow, Andrew Feldman, David Harding, Patricia Hodgson, Greta Jones, Edward Lee, Charlotte Metcalf, David Ord, Roger Orf, Andrew Roberts, George Robinson, Robert Rosenkranz, William Salomon, Peter Wall, Simon Wolfson, Nigel Wright.

About the Authors

Dr Remi Adekoya teaches Politics at the University of Sheffield. A writer and political scientist interested in identity and African development, he has written for the *Guardian*, *Spectator*, *Foreign Policy*, *Foreign Affairs*, *Washington Post* and *Politico* among others. He is a regular columnist for *Business Day*, a Nigerian daily. Adekoya is the author of the upcoming book *Biracial Britain: A Different Way of Looking at Race* (Little, Brown 2021), which explores race and identity from a mixed-race perspective.

Eric Kaufmann is a Senior Fellow at Policy Exchange and Professor of Politics at Birkbeck College, University of London. A political scientist, Kaufmann is the author of numerous books, examining the impact of ideological and population shifts on identity and politics. These include *Shall the Religious Inherit the Earth* (Profile 2010) and *Whiteshift: Populism, Immigration, and the Future of White Majorities* (Penguin 2018).

Thomas Simpson is an Associate Fellow at Policy Exchange, and an Associate Professor of Philosophy and Public Policy, at the Blavatnik School of Government, University of Oxford. A former officer with the Royal Marines Commandos, Simpson works on a variety of issues in moral and political philosophy. He co-edited *The Philosophy of Trust* (Oxford University Press 2017) and is concluding his first monograph, *Trust*.

© Policy Exchange 2020
Published by
Policy Exchange, 8 - 10 Great George Street, Westminster, London SW1P 3AE

www.policyexchange.org.uk

ISBN: 978-1-913459-36-9

Contents

About the Authors	2
Foreword	6
Executive summary	7
Chilling effects on academic research and teaching	8
Career progression, grant applications and discrimination	9
Outside the classroom	10
Wider context	10
The law and devolution	11
Summary of results	12
Summary of recommendations	13
Part I. What academic freedom requires	16
A brief history of academic freedom	18
A first lesson for today: academic freedom should be a cross-partisan concern	22
A second lesson for today: academic freedom requires that presumptions about intent must be rejected	23
A third lesson for today: the need for an institutional response	24
A new problem today: threats to academic freedom from within the university	26
Are incidents of no-platforming and academic dismissal actually a cause for concern?	31
Limits to freedom of association for public bodies	35
The boundaries of viewpoint diversity to be drawn by law	36
Does academic freedom protect racism?	38
Freedom in research and teaching is the central concern, not no-platforming	40
Is government regulation compatible with academic freedom?	41
Part II. Experience and views of faculty in the UK	44
Overview	44
Trends from existing work on UK- and US-based academics	45
Research questions	50
Methods	51
Political preferences of UK academics	52
Chilling effects	53
Political discrimination	59
Dismissal campaigns	65
Discussion	68

Part III. Existing legal and regulatory framework	71
Statutory obligations on freedom of speech and academic freedom from the 1980s	71
Recognition of Student Unions	73
Protections for academic freedom under the European Convention on Human Rights	73
Additional sources of law: the Equality Act 2010 and the Prevent duty	74
Higher Education and Research Act 2017	78
Subsequent reports and guidance: the JCHR enquiry and EHRC guidance	81
Summary	85
Part IV. Policies to protect academic freedom in the UK	86
How Parliament can protect academic freedom	88
How the Office for Students can protect academic freedom	97
How civil society can promote academic freedom	100
How the Department for Education can promote academic freedom	102
How universities can promote academic freedom	104
Annex 1— Statistical analysis	110

Foreword

Ruth Smeeth, CEO
Index on Censorship

It was recently suggested to me that I might have been a target of a little too much free speech in recent years, so it could be viewed as strange that I am so passionate about protecting our collective rights to free speech. But honestly, I have a romantic view of one of our most important human rights.

Free speech should be challenging; it should drive debate and ultimately force all of us to continually reflect on our own views. Free speech should manifest in different ways in different forums. In literature, it should drive our intellectual curiosity about the world around us. In journalism, it should shine a light on the powerful and ensure that the world is informed. And in academia, it should drive debate about the status quo demanding that we continually evolve as a society. It's only by the guarantee of this core human right that we can ensure that we are the best that we can be, that our arguments are robust and that they can sustain criticism. Simply put, debate makes us better as individuals and as a society, it also makes our arguments more rounded and demands of us the intellectual rigour that drives positive change.

That's why this publication is so important. Throughout our history, we've seen a cyclical approach towards academic freedom, but the reality is that only when our centres of learning are truly independent have we thrived as a society. This research isn't about determining who is right or wrong, or whose voice is more valuable on any given issue but rather the proposals are designed to ensure that there is still a free and fair debate on our campuses. That the academic freedom that we all should cherish is given the protections it needs. It does the country no good if our educators, our academics, our scholars and most importantly our students feel that they can't speak or engage without fear of retribution.

We all know that legislation is not a panacea to the chilling effect of what is happening in our public space for anyone that challenges the status quo. It can't and won't change the culture on campus but what it can do and what this document squarely aims to do is inform, engage and start a debate about what should be important to us. As a society, we need to have our own national conversation about our core human rights and how they should manifest in the twenty-first century. We need to decide collectively where the lines should be between hate speech and free speech, between academic inquiry and 'research' designed to incite, between journalism and purveyors of fake news. This research is an important part of that conversation.

Executive summary

Britain's universities are world-leading. Yet there is growing concern that academic freedom in these institutions is being undermined in a way that departs from the liberal traditions and democratic norms of British society. This paper uses one of the largest representative samples of UK-based academics carried out in recent years to explore the concern that strongly-held political attitudes are restricting the freedom of those who disagree to research and teach on contested subjects. The report sets out what might be done, in the form of legislation—specifically an Academic Freedom Bill—and other measures to ensure that a) universities support intellectual dissent, which drives progress and innovation and b) all lawful speech is protected on campus.

That fundamental principle—that all lawful speech should be protected in our universities—is the position of the Equality and Human Rights Commission, the Office for Students, and is affirmed by the statutory duty concerning freedom of speech in universities (the 'Section 43' duty; see Part III).

The research contains mixed findings relating to academic freedom. It shows (with more robust data than previously) that the distribution of political preferences among UK-based academics has changed in recent decades, and is significantly more left-leaning today than before, with fewer than 20% voting for right-leaning parties, and about 75% voting for the Labour/Liberal Democrat/Green parties in 2017 and 2019. Much of this is explained by the association of advanced education and political preferences.

There is, reassuringly, little support among most academics for dismissal campaigns against colleagues. For any given potential campaign, those who are opposed to a dismissal are likely to outnumber those in favour by 8 to 1. This understates the willingness to countenance a dismissal campaign, however. Across four hypothetical campaigns, against scholars undertaking controversial research, 1 in 4 current social science and humanities (SSH) academics were willing to support at least one. This minority may exert an outsized effect on the academic climate, restricting freedom.

Further, there is widespread support for discrimination on political grounds in publication, hiring and promotion. This threatens academic freedom, and likely results in self-censorship. Only 54% of academics said that they would feel comfortable sitting next to a known Leave supporter at lunch. Just 37% would feel comfortable sitting next to someone who, in relation to transgender rights, advocates gender-critical feminist views.

A third of academics would seek to avoid hiring a known Leave supporter, and we estimate that between a third and a half of those reviewing a grant bid would mark it lower if it took a right-wing perspective. It is likely that academics do not discriminate more than other professions, nor does left discriminate more than right. The evidence, however, is that due to the small number of academics who identify as on the right, there is a structural discriminatory effect against them. Hostile or just uncomfortable attitudes signal to those subject to such discrimination that they should conceal their views and narrow their research questions to conform to prevailing norms, if they wish to progress and enjoy a positive workplace experience.

Importantly, this demonstrates that the ‘chilling effect’, whereby dissenting views are not stated publicly, occurs not just due to a fear of feeling uncomfortable. Rather, it is a rational response—particularly for younger academics—to a workplace in which expressing such views may have a negative impact on their careers.

On a positive note, dismissal campaigns, such as online open letters, should be seen as highly unrepresentative of the views of the academy as a whole. Although the strongest predictor of those who would support such dismissal campaigns is that someone identifies as ‘very left’, among this group a two-thirds majority still do not support such campaigns.

Chilling effects on academic research and teaching

Academics who do not share the prevailing political preferences of their colleagues report significant chilling effects on their speech.

1. The data reveals ‘softer’ forms of behaviour and attitudes which have a shaping effect on what individuals research and teach. Many academics report a hostile climate for their political beliefs in their department. This is most marked for those who identify as ‘fairly right’ (44%) or ‘very right’ (63%), compared to ‘fairly left’ (8%) and ‘very left’ (16%).
2. Many academics thus choose to self-censor. This is again most marked for those who identify as ‘fairly right’ or ‘right’, 32% of whom have refrained from airing views in teaching and research—although it is also true for those in the centre and on the left (around 15%).
3. Of SSH academics—where political views may be salient for one’s research—half of those who are currently working and are right-leaning, and 40% of all those who are Leave-supporting, reported in text comments that they refrained from publishing or airing views in research and teaching for ‘fear of consequences to your career’. This compares to 16% of those who identify as ‘fairly left’, and 26% who identify as ‘very left’. Gender-critical perspectives were the most frequent reason given for such self-censorship among left-leaning respondents.

Career progression, grant applications and discrimination

There may also be tangible consequences for academics' career progression and professional success due to their political beliefs:

1. Individual academics on both the right and the left discriminate against each others' applications for grants, for promotion, and manuscripts submitted for publication. Individual academics on both left and right engage in broadly similar levels of positive discrimination: 50% of those on the right would discriminate in favour of a Leaver over a supporter of Jeremy Corbyn in a job appointment when two candidates are equal, while in the same situation, 40% of those on the left would discriminate in favour of a Corbyn-supporter.
2. Academics also engage in negative discrimination. About a third of academics who voted Remain (37%) are likely to discriminate against a Leaver in job appointments. Though the data provides no direct comparison of the reverse, the proportion of Leave-voting academics who are likely to appoint a centrist with a weaker track-record over someone on the left, is probably in the range 15-23%. (There is some estimation involved in this figure).
3. Although individuals' levels of willingness to engage in political discrimination are relatively comparable across the political spectrum, the baseline rates of political affiliation among of faculty means that there is a disproportionate, structural effect on conservative academics. A known Leave supporter faces a 1 in 3 chance (32%) of being discriminated against by an academic for a job, rising to 80% on a four-person panel. By contrast, a left-wing job applicant faces a 1 in 20 chance (6%) of being discriminated against, in preference to a centrist, rising to 17% chance on a four-person panel.
4. Grant applications attract the strongest levels of discrimination, where around half of those reviewing a grant with a right-wing perspective are likely to rank it lower because of its political orientation. Approximately 1 in 5 of those reviewing a grant application would discriminate against it if it took a left-wing perspective.

It is a question for further work the extent to which academics are as likely to discriminate on political grounds or seek to dismiss colleagues as those professionals as in other sectors, including the arts and culture sector more broadly.

Outside the classroom

Outside teaching and research, many academics feel restricted from sharing their political views. This includes even informal contexts.

1. Self-censorship is even greater when it comes to sharing political beliefs with colleagues. For current SSH faculty (mainly Remain-supporting), only 3 in 10 think a Leave-supporter would be comfortable expressing their beliefs to colleagues, whereas 9 in 10 (86%) feel a Remain-supporter would be. Among current Leave-supporting academics, just 3 in 10 (28%) say a Leaver would be comfortable expressing their views to colleagues.
2. Dissenting academics also face problems with collegiality, a key aspect of most academic workplaces. While 86% of those surveyed reported that they would be comfortable sitting next to a Remain supporter, this falls to 54% for sitting next to a Leave supporter and just 37% for lunching with someone who opposes admitting transwomen to women's refuge centres. Gender-critical scholars may thus face more discrimination than conservatives and Leavers.

Wider context

Since our earlier report, and prior to the December 2019 General Election, the Conservative Party committed in its manifesto to strengthen academic freedom (*Conservative Party Manifesto*, November 2019, p. 37). We welcome this. This report seeks to contribute to the process of policy-design, to support the Government in delivering on this commitment.

Though academics are far more likely to encounter political discrimination than a dismissal campaign, there is likely to be a chill effect from every public incident, which magnifies its impact. The academic job market is fiercely competitive, with permanent jobs routinely attracting over 100 applicants. Posts are highly specialised, and job mobility very limited, to the point that losing a post in a given location may prove career-ending. Behind many high-profile incidents of no-platforming, or of academics losing their jobs, lies an online campaign.

University life is undoubtedly struggling to adapt to the intense glare created by social media. Social media creates a context in which individuals can be picked out and targeted, with many of those engaged in such targeting presuming bad faith on the part of their targets, as well as being willing to misrepresent what has been said, in order to smear someone's reputation. Social media is creating a form of permanent 'sousveillance'—'watching from below'. It is not difficult to see that sousveillance deters academics from working on issues which are potentially controversial.

This risk affects individuals who work in all areas of potential controversy. In particular, it affects those who work across the political spectrum—both left and right. Many other institutions in public life, as well as universities, are struggling to work out how to enable their members to do their jobs in a context in which, if an opposing political

movement targets an individual, that person's life can become extremely unpleasant very quickly.

The pattern we find in the axes of political discrimination is largely replicated in campaigns against academics, which come from both right and left. While academics in UK universities are vulnerable to online campaigns by activists from outside higher education, which may come from across the political spectrum, the situation is different when the political pressures within higher education are considered. Of the campaigns which target an individual academic in a British university and involve faculty members, virtually all of those we are aware of have been initiated from the left. However, student-led campaigns against individual academics also come from the right. The current evidence is that this is less frequent, but this may become more common as a result of Turning Point UK's 'Education Watch' campaign. All such surveillance is contrary to academic freedom, because of its powerful self-censoring effect.

The law and devolution

Our policy proposals focus largely on improving regulatory oversight of academic freedom, to ensure compliance with existing laws. We also seek to improve access to extra-university appeal mechanisms for academic staff and students who believe their academic freedom has been violated. In addition, we seek to establish a post which is responsible for promoting a norm of political non-discrimination, and tolerance for viewpoint diversity, within higher education. Pursuant to this, we recommend that an Academic Freedom Bill be passed which creates the position of Director for Academic Freedom, sitting on the Board of the Office for Students. This would provide for improved enforcement of existing statutory duties and investigatory powers, to better protect academic freedom.

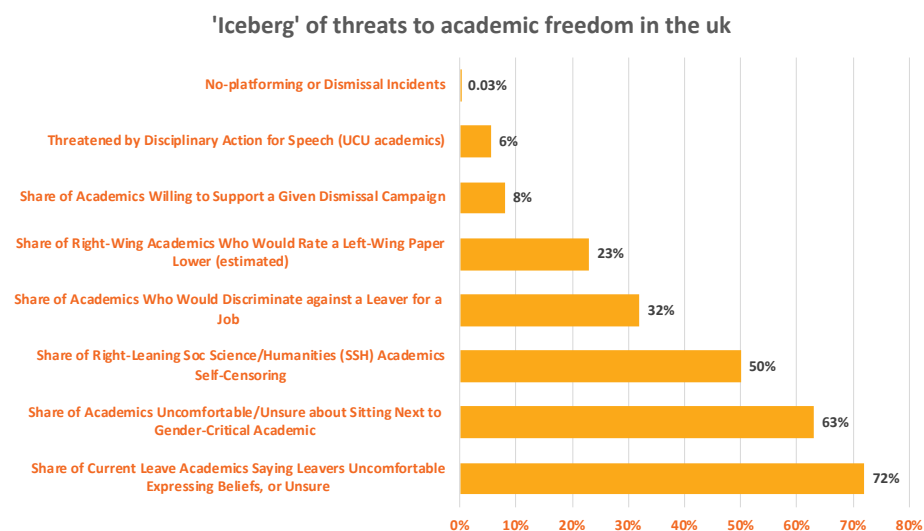
We also urge legislators to delimit more clearly the precise thresholds when equality duties may be invoked to limit free speech. These thresholds should be based on legal precedent, with reference to the liberal traditions and democratic norms of British society.

Higher education is a devolved matter, to differing degrees, across the constituent nations of the United Kingdom. The details of the policy proposals in this report are discussed in relation to the existing statutory and regulatory framework as it applies in England and Wales. Further work would be required to consider how differences in the existing framework in Scotland and Northern Ireland affect the recommendations we make. Nonetheless, the same guiding principles apply.

Summary of results

Figure 1 offers an overview of empirical findings, providing a graphic illustration of the threats to academic freedom. Reported dismissals and no-platforming incidents are the visible evidence of infringed academic freedom, but number at most 50 per year in the UK. Nonetheless, they are the ‘tip of the iceberg’, with much larger effects being hidden.

Figure 1



Notes. ‘SSH’ refers to Social Sciences and Humanities, excluding Economics. See Part II for details on data and methods. Sources (from top): 1) Ratio of public controversies to number of UK-based academics; from, respectively, *Academics for Academic Freedom (7/2020) 2019 total* and <https://www.hesa.ac.uk/data-and-analysis/sb256/figure-2>; 2) Terrence Karran and Lucy Mallinson, ‘Academic freedom in the UK: Legal and normative protection in comparative context. Report for the University and College Union’, 7 May 2017; 3) YouGov (2020), with N=820, 4) N=820, 5) N=74, 6) N=30, 7) N=820, 8) N=67.

Summary of recommendations

Parliament should, in statute:

1. Establish the position of a Director for Academic Freedom, as a member of the senior team of the Office for Students, reporting to the Board of the OfS, and appointed by the Secretary of State, as per the other members of the OfS. The Director to have particular responsibility for ensuring Higher Education Providers' (HEPs) compliance with the public interest governance conditions concerning academic freedom and freedom of speech, and to promote a norm of political non-discrimination and tolerance for viewpoint diversity in the sector. In exercising this responsibility, the Director also have the power to investigate allegations that academic freedom and freedom of speech has been violated in a HEP. This power to investigate may be exercised either in relation to individual cases, or patterns of cases, and to support this role, the Director for Academic Freedom should have ombudsman powers.
2. Establish that universities and other HEPs have a direct duty to protect academic freedom: that academic staff have freedom within the law to question and test received wisdom.
3. Establish that breaches of the duty of freedom of speech or of academic freedom are a tort in breach of a statutory duty, with HEPs being liable for damages for violating these duties.
4. Expand the scope of activities which are protected beyond those specified by existing academic freedom legislation. Academic staff should have the freedom within the law to question and test received wisdom, *in their research, teaching, and public engagement*, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges that they may have at their institutions, *or having a detriment imposed, or failing to be appointed, promoted, or otherwise have a benefit conferred*.
5. Make it explicit in law that, in fulfilling both the public sector equality duty and the harassment provisions of the Equality Act 2010, HEPs are to have particular regard to the need to ensure academic freedom and freedom of speech.
6. Extend the existing statutory duty to ensure freedom of speech to include Student Unions.

The Office for Students should:

7. Be willing to exercise its existing powers to fine HEPs, for breaches of academic freedom and freedom of speech.
8. Establish an annual reporting obligation for HEPs on academic freedom and freedom of speech.
9. Expand the National Student Survey to include questions designed to elicit students' experience of political discrimination, and of a climate of free expression in the classroom.

The Department for Education should:

10. Establish a team to review the performance of the OfS in championing academic freedom and freedom of speech in the sector, subsequent to legislative reforms being enacted. In subsequent years, this work could fall to the Education Select Committee.
11. In collaboration with UKRI and the Department for Business, Energy and Industrial Strategy, review UKRI's commitment to academic freedom and viewpoint diversity, and work with UKRI to establish procedures which embed political non-discrimination in its operations.
12. Support and catalyse opportunities for civil society to protect academic freedom, as per (13) and (14) below.

Civil society has the opportunity to:

13. Establish an academic freedom charter organisation, awarding kitemarks to HEPs for their demonstrated commitment to political anti-discrimination and viewpoint diversity. This organisation should be a charitable corporation, and be independent of government.
14. Incorporate academic freedom as a criterion in the international rankings of universities.

Universities should:

15. Adopt an academic freedom commitment, such as the Chicago Principles, where they have not already done so.
16. Undertake training in and promote the visibility of academic freedom as a concern for the university.
17. Identify how those involved in their leadership can best promote a work environment in which diverse viewpoints are welcomed, and that those who advocate or discuss unpopular views are assured of their freedom to do so.
18. Consider adopting a version of the 'Chatham House Rule' as an institutional code of practice for teaching and research seminars.

19. Appoint an Academic Freedom Champion, who would report directly to the Vice-Chancellor, and be responsible for championing academic freedom and freedom of speech in the HEP.
20. Amend disciplinary and dismissal procedures so that panels are expressly compelled take academic freedom and freedom of speech considerations into account.

Part I. What academic freedom requires

Britain's universities are world-leading. They are in the international front-rank in terms of their academics' research, and in the quality of the education they offer to students. They make major contributions to the national economy, to local growth in their cities and regions, and to social mobility. They enhance and support the creative, intellectual and cultural life of the country. Their flourishing is an issue of vital public concern.

One of the central principles which ensures that universities flourish is that of academic freedom. Academic freedom, as applied to individuals, is the principle that individual scholars and scientists should be free to research, teach, and contribute to public debate without restriction. More specifically, they should be able to choose the issues and questions that they research for themselves, and in particular, should not be prohibited from working on a given topic. They should be free to publish the results of their work. They should be free to deliver their teaching as they see fit, choosing what and how they teach. And they should be able to engage in public debate, contributing as experts in their field, and exercising their freedom as citizens. In all of this, in an older phrase, academics should be able to work 'without fear or favour'.

While primarily a concern for individuals, academic freedom also applies to institutions. A component of academic freedom is the principle of institutional autonomy, namely the condition that universities and colleges should be self-governing entities. As we explore later, the institutional and the individual dimensions of academic freedom conflict in some cases.

The principle of academic freedom does not mean that individual academics' speech should be free from consequences. Academics' work is properly subject to scrutiny, in which it is evaluated for how well it displays relevant intellectual virtues such as methodological rigour, insight, creativity, importance, and so forth. This scrutiny includes debate among peers and with students, and often also with the public. But the principle requires that academics should not be directly subject to practical consequences for stating and defending their judgment. Most obviously, you should be immune from the risk of losing your job.

The older phrase succinctly expresses the distinction between intellectual scrutiny and practical consequences. For an academic to work 'without fear or favour' means that they do not need to curry favour with the powerful. Intellectual considerations alone can guide their contribution. If someone needs to worry about whether people in positions of influence

and control will like what they say, independently of whether it is true or there is a good argument for it, then that person's public statements become suspect. He or she must hide their disagreement, and perhaps also their questions. As a result, there is no way to tell if agreement is merely flattery. His or her statements cannot be trusted to express that person's intellectual judgment.

Academic freedom is thus a core requirement for a healthy university. Universities' most central purpose is of enabling robust, probing enquiry. Such enquiry is a feature of successful research and education. Without academic freedom, universities fail to support robust, probing enquiry; with it, it becomes possible. A culture in which disagreement is not perceived as dangerous is a necessary condition for a healthy university.

As we noted in an earlier report, *Academic Freedom in the UK* (11 November 2019, Policy Exchange), there is widespread concern that, instead of being places of robust debate and free discovery, Britain's universities are being stifled by a politically-homogenous culture. High-profile incidents in which events are cancelled because a speaker is considered too controversial, or research is forbidden because the conclusions may be detrimental to the reputation of the university, or individual academics lose their jobs, raise the concern that academic freedom is being significantly infringed.

A cultural pressure to conform is by no means the only possible current threat to academic freedom. Indeed, there are a number of other possible threats.

Concerns about the impact on academic freedom have been raised, most notably, on the basis of: the marketisation of higher education, which puts students in the position of consumers and universities in that of businesses; increasing dependence on fee income from Chinese students, giving leverage to the Chinese Communist Party to suppress British academics' study and scrutiny of its actions; the Prevent duty, which seeks to counter radicalisation; and the 'impact agenda' in the Research Excellence Framework, which makes funding in part contingent on the instrumental benefits of research.

What is common to these possible threats is that direct practical consequences may be imposed on academics because of the content of their research and teaching. These practical consequences exert pressure to avoid given topics or viewpoints in one's intellectual work. When so, academics' ability to work without fear or favour is compromised.

This report is not an exhaustive treatment of academic freedom. With the exception of the Prevent duty, we do not pursue the above issues further. Although doing so would be tricky, a fuller treatment might also seek to identify which threats were most serious. Instead, this report focuses only on those threats which may arise from potential hostility to someone on the basis of their viewpoint, particularly its assumed political significance, and considers what policies may address them.

While the principle of academic freedom is now widely agreed to, it has not always been so. A brief history of the idea contains lessons for today.

A brief history of academic freedom

1915 was a key point in the evolution of academic freedom, with long-standing trends in Germany and the UK being formally articulated and further developed in the US. Under the leadership of John Dewey, America's pragmatist philosopher and public intellectual, some prominent faculty from across the US founded the American Association of University Professors (AAUP). The AAUP was formed by concerned faculty in response to a series of cases, in which individual academics had lost their jobs at universities and colleges across the US. In the AAUP's first year, for instance, it investigated cases of dismissal at the universities of Utah, Pennsylvania, Montana, Colorado, and at Wesleyan.¹

One of the catalytic cases was that of Edward Ross. Ross was a prominent advocate of progressive politics and also a eugenicist. Dismissed from Stanford University in 1900 for some inflammatory speeches in the context of an industrial dispute, his case became a cause célèbre both in public, attracting the attention of the trade-union movement, as well as among other academics. Over a decade previously, Stanford University had informally adopted the motto, *Die Luft der Freiheit weht*, 'let the winds of freedom blow', expressing the faculty's commitment to a liberal education. (The motto was a loose quotation from Ulrich von Hutten, a Reformer who was contemporary with Martin Luther). From our standpoint, Ross is not a sympathetic figure. But his colleagues drew an important lesson from the controversy, which was that an expectation among academics, but which was no more than informal, granted little protection. However much the faculty members were committed to academic freedom, Ross still lost his job. His colleagues drew the conclusion that, regardless of how other academics may conduct themselves, if a sole trustee is able to have you fired—as Jane Stanford could—you do not enjoy academic freedom.²

They set out to change this. Within a year of its founding, the AAUP issued a *General Declaration of Principles*, stating its reason for existence. The central concern of this was to assert the necessity of academic freedom. The *Declaration* affirms that academic freedom is composed of three elements: freedom of research; of teaching; and of 'extra-mural utterance and action'—that is, of intellectual and civic engagement outside of the university. It argues that academic freedom is an answer to an enduring problem faced by democracies.

This brings us to the most serious difficulty of this problem. . . . Any departure from conventional standards is apt to be regarded with suspicion. Public opinion is at once the chief safeguard of a democracy, and the chief menace to the real liberty of an individual. It almost seems as if the danger of despotism cannot be wholly averted under any form of government. In a political autocracy there is no effective public opinion, and all are subject to tyranny of the ruler; in a democracy, there is political freedom, but there is likely to be a tyranny of public opinion.

1. Hans-Joerg Tiede, *University Reform: The Founding of the American Association of University Professors*, Baltimore, MD: Johns Hopkins University Press, 2015.
2. A full account of the Ross controversy is contained in O. L. Elliot, *Stanford University: The First Twenty-Five Years*, Stanford, CA: Stanford University Press, 1937. Jane Stanford denied exercising influence in this way, but her denials have been largely rejected. See Jane Stanford, *Address on the Right of Free Speech*, 25 April 1903, p. 14, and (e.g.) James C. Mohr, 'Academic Turmoil and Public Opinion: The Ross Case at Stanford', *Pacific Historical Review* 39/1 (1970): 39-61.

An inviolable refuge from such tyranny should be found in the university. It should be an intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become part of the accepted intellectual food of the nation or of the world. Not less is it a distinctive duty of the university to be the conservator of all genuine elements of value in the past thought and life of mankind which are not in the fashion of the moment.

The Declaration here repeats a point which John Stuart Mill had already made, in his famous advocacy of freedom of speech in *On Liberty* (1859). Mill's paean to individual freedom sought to identify the proper limits of the power which society may exercise over an individual. While such power is exerted most obviously through the law, Mill observed that it is also exercised through 'the prevailing opinion and feeling' of society. Contrary to Mill, the Declaration thinks that settled public opinion can have positive effects, being needed to safeguard democracy against the abuse of power by the executive. But the authors agree with Mill that the same public opinion can be powerfully destructive of individual freedom. Indeed, on Mill's view, such social consensus could be worse in its effects than law. It could lead to 'a social tyranny more formidable than many kinds of political oppression ... penetrating much more deeply into the details of life, and enslaving the soul itself'.³

In considering the particular role of universities, however, the Declaration goes beyond Mill. Whatever the merits or otherwise of a settled social consensus, universities have a specific responsibility to enable ideas that run counter to public opinion to be openly and freely discussed. This appeal for a protected space for ideas was framed by the authors in bipartisan terms, and no doubt consciously so. As an 'intellectual experiment station', the university allows novel ideas to develop while they are still distasteful to the public. Likewise, when the fashion of thought and life has degraded from past standards, the university is a place where those 'genuine elements of value' may be preserved. Both the progressive and conservative—who may agree that history has a teleology, but disagree on its direction—have a stake in a free university.

This idea that universities have specific public responsibilities is further developed in the Declaration. By enabling researchers and scholars to pursue their vocation, so they also serve society generally, in the following three ways.

The first function of the university is that of enquiry. Through research, universities are the pre-eminent place where the sum of human knowledge is advanced. Although the Declaration does not make the point, universities' research can be independent of commercial priorities, unlike corporate facilities. The second function is that of education, in which universities provide specialised instruction to students, so preparing them for employment and general social contributions after graduation. The third is that of developing and providing experts for public service specifically. In an increasingly complex society, the Declaration observes that professors of the social sciences, in particular, have a significant role to play, assisting

3. John Stuart Mill, *On Liberty*, Oxford: Oxford University Press, 1991, p. 9. Mill is not unique in this concern. He cites Wilhelm von Humboldt, *The Sphere and Duties of Government*, trans. J. Coulthard, London: John Chapman, 1854 [1792]. It is also a key theme in Alexis de Tocqueville's discussion of democracy; e.g. *Democracy in America*, trans. G. Bevan, London: Penguin, 2003 [2 Vols., 1835, 1840], Vol. 1, Pt 2, Ch 7.

legislators in solving ‘problems of technical adjustment’ with ‘technical knowledge’.

The functions of universities are thus both intellectual and social. All three functions were of vital individual, cultural and economic importance a century ago already. They are only the more so now. Moreover, the latter two functions are directly public, in the sense that education and the provision of experts for public service do not serve the good of those at the university alone, but serve society at large.

The central lesson drawn from cases like that of Ross, which prompted the AAUP’s formation, is that universities cannot fulfil these functions unless individual academics are free to research, teach, and engage in extra-mural activity without worrying that they will lose their jobs.

To the degree that professional scholars, in the formation and promulgation of their opinions, are, or by the character of their tenure appear to be, subject to any motive other than their own scientific conscience and a desire for the respect of their fellow experts, to that degree the university teaching profession is corrupted; its proper influence upon public opinion is diminished and vitiated; and society at large fails to get from its scholars, in an unadulterated form, the peculiar and necessary service which it is the office of the professional scholar to furnish.

The conclusion drawn by the AAUP was that there should be a clear separation between the terms of an academic’s employment, and the content of what he or she says.

The need to separate the terms of an academic’s employment from the content of what he or she says is formalised in the institutional innovation that the AAUP campaigned for, namely tenure. Formulated in the AAUP’s 1940 *Statement of Principles on Academic Freedom and Tenure*, academics granted tenure are appointed until retirement, and can be dismissed only under exceptional circumstances, such as financial emergency for the institution. Tenure is granted if and only if an academic successfully completes a probationary review, of up to seven years’ length. The principal purpose of tenure is to protect academic freedom. While tenure was largely an ideal prior to the 1940 *Statement*, the practice caught on. The AAUP’s 1915 and 1940 statements have since become central reference points in the developing doctrine of academic freedom.⁴

The development of the norm of academic freedom in British universities was slower, earlier, and less formal than in the US. Until the 19th Century, scholars in Britain were, in the main, working in universities that had a close affiliation with the church—Anglican in England and Presbyterian in Scotland. The reasons for this connection were various, but most significantly, the conviction that God is *logos* (Gk., ‘word’) ensured that Christianity has been marked by a tradition of intellectual enquiry, recurrently expressed by the founding of institutions devoted to scholarship, notably monasteries and universities. This legacy is evident in the names of Oxford and Cambridge’s Colleges. The formal affiliation between church and university tended to be loose, in the sense that

4. For the early history, see Richard Hofstadter and Walter Metzger, *The Development of Academic Freedom in the United States*, New York, NY: Columbia University Press, 1955.

scholars governed themselves independently of episcopal oversight. That academic freedom involves institutional autonomy is thus a medieval idea in origin. This autonomy was expressed in the governing authority exercised by Oxford University's Congregation, Cambridge University's Senate House, and the Colleges' Governing Bodies. The affiliation was intimately expressed in the life of many of those institutions, though, in a confessional context in which study and prayer were intertwined.

The contours of British history had made this confessional context coercive, however. A result of the Reformation and Restoration was the Test Acts of the late 17th Century. These required individuals appointed to public office in England and Ireland to receive communion in an Anglican church, in effect barring Catholics and non-Anglican Protestants from public life, as well as all those who were not Christian. The Test Acts extended to the universities of the day. Fellows at Oxford and Cambridge had to be Anglican, as did students who wished to graduate. So non-Anglican scholars had to find work outside the universities or had to conceal their commitments.

Working around the time that the Test Acts were legislated, for instance, John Locke published his *Two Treatises of Government* anonymously because he correctly anticipated that its attack on theologically-derived royal absolutism would be controversial, and restricted his anti-Trinitarian writings to unpublished manuscripts.⁵ He pursued a medical degree at Christ Church, Oxford, because he did not wish to be ordained, as was then required to be a Fellow, and most of his important work was done under private patronage. Non-conformists set up Puritan lectureships and independent colleges, to get around the restrictions. Parallel acts in Scotland enforced a Presbyterian establishment, in particular at St Andrews, Glasgow and Aberdeen.

The relevant Test Acts were repealed for Oxbridge students in 1828 and Fellows in 1871. This happened without much controversy, reflecting the fading collective memory of the lethal religious controversies of the 16th and 17th Centuries and, more importantly, the gradual process of pluralisation and secularisation. With Christianity's dominance contested intellectually, and increasingly so among elites generally, it made less sense to insist on the confessional nature of a university, and so less sense to require scholars to hew to Christian doctrine. It was in this context that the norm emerged that academics should be free to research and teach without constraint.

These developments in Britain paralleled and were influenced by trends in Germany, where it was first widely accepted that a primary function of the university was the task of adding to the stock of human knowledge through research.⁶ As the separation of church and state had been a long-established constitutional fact in the US, it was the 19th Century German vision of the research-focused university which exerted the greatest influence on Dewey and the other founders of the AAUP. More recent decades have seen a number of international declarations, affirming and expanding the basic tenets of the AAUP's formulation of academic

5. As did Isaac Newton. Other thinkers who were sacked for heterodoxy include William Whiston, sacked by Cambridge in 1710 for Arianism; William Frend, sacked by Cambridge in 1793 for anti-Trinitarian writings; and F. D. Maurice, sacked from King's College in 1853 for socialism and unitarianism. David Hume was not appointed to professorial chairs in Edinburgh and Glasgow due to his atheism.
6. Henry Steel Commager, 'The University and Freedom: "Lehrfreiheit" and "Lehrfreiheit"', *Journal of Higher Education* 34 (1963): 361-70; and particularly Bas van Bommel, 'Between "Bildung" and "Wissenschaft": The 19th-Century German Ideal of Scientific Education', in *European History Online* (EGO), published by the Leibniz Institute of European History (IEG), Mainz, 14 Dec 2015

freedom. These include the Siena Declaration of Rights and Duties Inherent in Academic Freedom (1982), the Magna Carta of European Universities (1988), the UNESCO Recommendation Concerning the Status of Higher Education Teaching Personnel (1997), and the Mexico Declaration on Human Rights Education in Latin America and the Caribbean (2001).

A first lesson for today: academic freedom should be a cross-partisan concern

The brief history above indicates two past conflicts in which university faculty pushed back, in the name of academic freedom, against those who would exercise control over their work: first, against the church and related theological constraints on their scholarship, and second, against industrialists, alumni and donors who opposed the ideas pursued within the academy. This was during the ‘age of the college’, in the 19th and early 20th Centuries.⁷

There is a third historical moment when academic freedom was again particularly salient. This was the 1950s and 1960s in America. The principal dynamic at this time was academics’ resistance to McCarthy-inspired anti-communist pressure. For instance, one of the major histories of academic freedom, *The Development of Academic Freedom in the United States* (cited above, by Richard Hofstadter and Walter Metzger) was written under the aegis of the American Academic Freedom Project at Columbia University. This project was intended to be a response to the pressures of McCarthyism. (That history is ‘the closest thing to an official scholarly response to the danger of McCarthyism from the university world’.⁸) In this conflict, it was political conservatives who were opposed to academic freedom. Those on the left, which included many in the academy, were suspected of being ideological fifth columnists for America’s Cold War foe regime. The suspicion was not always inaccurate: some of them undoubtedly were apologists for the Soviet brand of communism.⁹ Others were not, but they still came under the same suspicion. Appeals to academic freedom were required to defend the intellectual freedom of both groups, the latter as much as the former. Despite this, up to 100 academics are estimated to have lost their jobs due to their political beliefs during the McCarthy period.¹⁰

That attitudes towards academic freedom were politically-aligned on a right/left basis at the time is further illustrated by the book which launched William F. Buckley, the conservative intellectual, namely *God and Man at Yale: The Superstitions of “Academic Freedom”* (Washington, DC: Regnery, 1951). In this, Buckley launched a scathing attack on some of the faculty at Yale, whom he accuses of promoting atheism. He charges that, instead, faculty should teach in ways consistent with the commitments of the majority of Yale’s alumni then, who believed in God.

The history might thus suggest that this is an issue that matters to those on the left, concerned to resist the exercise of power over intellectuals within the academy by those on the right from outside the academy. That

7. Richard Hofstadter, *Academic Freedom in the Age of the College*, New York, NY: Columbia University Press, 1955

8. Scott McLemee, Academic Freedom, Then and Now, *Inside Higher Ed*, 17 February 2005

9. On some prominent philosophers’ defence of Soviet communism, see Neven Sesardić, *When Reason Goes on Holiday: Philosophers in Politics*, New York, NY: Encounter Books, 2016

10. Stephen H. Aby, ‘Discretion over Valor: The AAUP during the McCarthy Years’, *American Educational History Journal* 36:1 (2009): 121-132

conclusion would be too hasty. While attitudes towards the issue again show distinct elements of political alignment, albeit not invariably so, the polarities are now reversed, with appeals to academic freedom now tending to predominate on the right. Other issues tend to be priorities for the moderate left, while elements on the radical left are suspicious that appeals to academic freedom are nothing more than a not-very-covert ploy to introduce fascism into the academy.

This ‘flip’ in attitudes towards academic freedom—on the right, from unconcerned or anti- to pro-, and the reverse on the left—invites explanation. That attitudes can change so clearly suggests that the issue is not a natural priority for either broad coalition of interests and views. Rather, this flip in attitudes is significant because of what it reveals about the changing balance of power, in both political and cultural terms. It is possible to be suspicious about academic freedom when one is confident that one’s own position is secure from countervailing power, and (perhaps) confident that one’s opponents are of dubious moral respectability. When one is in a position of vulnerability, academic freedom comes to matter much more. The same is true of liberal freedoms more generally: they matter to those in positions of weakness.

The lesson to be drawn is that academic freedom should properly be a cross-partisan concern. Simply put, it is prudent for everyone to care about academic freedom. Who knows who will be dominant in terms of political and cultural power in the future? One political movement may enjoy power now; it may be very different indeed in 20 or even 10 years’ time, given the current febrility of culture. Protecting and promoting academic freedom is not only the right thing to do, to ensure that universities fulfil their public function. It is also a form of insurance for all, so that in the long term, even should the distribution of power change, one will nonetheless have a place in the academy.¹¹

A second lesson for today: academic freedom requires that presumptions about intent must be rejected

The McCarthy era contains further lessons for the present day. Today, ‘McCarthyism’ is a by-word for politically-motivated bullying, intimidation, and coercion, and is regarded in retrospect as indefensible. At the time, McCarthy and his allies were pursuing an agenda which had compelling moral authority. The Cold War, which was then intensifying, was not merely a great power conflict, nor is it accurately characterised as solely an ideological contest. Rather, in the West, it was a compelling moral cause. The Soviet regime was one of the most brutal and lethal in history in terms of lives destroyed, and so it is no accident that McCarthy was popular. His support peaked in January 1954, when a Gallup poll found that 50% of the American public supported McCarthy, against 29% with an unfavourable opinion.¹²

This suggests that threats to academic freedom may be particularly intense when there is a political movement with compelling moral

11. David Lewis, ‘Academic Appointments: Why Ignore the Advantage of Being Right?’ in his *Papers in Ethics and Social Philosophy*, Cambridge: Cambridge University Press (1999), pp. 187-200

12. Robert Griffith, *The Politics of Fear: Joseph R. McCarthy and the Senate*, University of Massachusetts Press (1987), p. 263

authority.

The McCarthyite episode reflects a further, specific danger. McCarthy's interest was in American academics (among others) who were members of the Communist Party or were sympathisers, who were accused of disloyalty on that basis. It would be extraordinary if there had been no-one in the US at the time who was actively working with the USSR to subvert American democracy. Nonetheless, the merit or otherwise of communism is a legitimate topic of academic enquiry. It is also possible, conceptually and practically, both to espouse communist principles and to disavow the Gulag. Political actors do not like to make that distinction, however, preferring to work on the basis of guilt by association, tribal loyalties and antagonisms, and imputed motives. On this basis, an academic who expressed sympathy for or interest in some element of communism could be accused of disloyalty to the US, and of supporting horrid conduct. It is plain that this is fatal to academic debate, however.

That academic freedom requires an intellectual culture in which it is not routine for one's intent to be publicly impugned is made evident in an observation from the time, by the historian Walter Metzger. Writing in 1953, he contrasted the situation in the US, where McCarthyism was in full spate, with that in the UK.

Professor Blackett of Manchester University has justified the Soviet position on atomic energy control, and while many question his wisdom, his loyalty is not impugned; Professor Bernal of London University has written for the London Daily Worker, and while some may (privately) question his loyalty, no one seems to call for his job.¹³

While the UK was as threatened by the Cold War as the US, Metzger observed that academic freedom seemed much more robust here. Central to that is the observation that there was a public culture, among academics, in which malign intent was not publicly presumed, and the issue at stake was debated on its own terms, rather than in terms of *ad hominem* attacks. While the public expression of suspicion about an opponent's intent makes sense in politics, it destroys intellectual exploration and collegial endeavour.

A third lesson for today: the need for an institutional response

The AAUP's *Declaration* contains a central insight, which remains of vital importance today. Faculty in the US at the time were confronted by a practical problem, namely that they were vulnerable to losing their jobs at the whim of the President and trustees of their university. As well as the job insecurity this created—which, though unattractive for the employee, is a general question about employment terms—this had direct effects on what academics did and did not do in their research, teaching and public engagement. As the proverb has it, the one who pays the piper calls the tune. And there were some tunes that their Presidents and trustees did not

13. Walter P. Metzger, 'Some Perspectives on the History of Academic Freedom', *The Antioch Review*, 13:3 (1953): 275-287, p. 280

want to hear.

The long-term health of their universities relied on the pipers calling the tune, however. An informal norm of conduct among faculty alone, by which each individual's freedom to teach and research without restriction was respected, was not enough to ensure that this happened. An institutional response was required, and the AAUP's proposal was tenure. The point about tenure is that, when the piper has it, she can call the tune.

For those who already supported the informal norm of academic freedom, tenure reinforced it and made it effective. In breaking the connection between salary and control over an academic's speech, tenure provides an institutional protection. She is formally guaranteed the freedom to decide what she plays.

The innovation had wider effects too. Many Presidents of colleges and universities did not support the norm of academic freedom, as well as donors and trustees. After all, the call for academic freedom represented a loss of control. However, over time, tenure helped to establish academic freedom as a compelling principle among those who did not previously support the norm. It became widely agreed to. In committee meetings, the principle of academic freedom could be referred to as a reason for doing or not doing something. Better still, the principle could be taken for granted, and its requirements assumed. Not only did the institutional response help to prevent certain abuses of power, it also had a shaping effect on the culture of universities.

These lessons remain applicable today. Informal norms can be extremely powerful and effective at inducing people to behave in a particular way. However, in order for such norms to be stable, they rely on people in positions of power and authority being willing to uphold them. When a norm is not upheld by those in positions of power and authority—or even when it is upheld only partially—then you cannot rely on it alone to protect you. In those cases, the prudent piper then makes sure she doesn't fall foul of the one who is paying her. By contrast, an institutional response guarantees that protection. She does not have to rely on others' approval. Perhaps as importantly, and over time, an institutional response helps to establish a principle as something that is just assumed in how people in a sector go about its business.

This report is shaped by this central lesson. If there are enough people in positions of power and influence in university leadership, who do not think that a faculty member should be free to research, teach and engage publicly without restriction and are willing to penalise you for what you say, then academic freedom has been denied. It does not need anything as deliberate as that for academic freedom to be denied, however. All it needs is for senior leaders to be concerned about the reputation of their institution, and to think that a social media campaign against one of their members will go away only when they accede to its demands, and academic freedom is in peril.

If the informal norms which sustain academic freedom are weak, then they need reinforcing, or perhaps establishing. To do this, an institutional

response is required. This must go beyond the adoption of a statement of principle, such as the influential ‘Chicago Principles’.¹⁴ Such statements are valuable, in large part because they communicate to members of an institution what those norms and principles are that the institution takes to be binding. Nonetheless, by itself they are inadequate to effect real change. For a set of principles to be effective, there need to be procedures which ensure that individuals and committees actively comply. This requires oversight and enforcement mechanisms. Only with these procedures in place does a contested principle stand a credible chance of becoming internalised.

Accordingly, Part IV of this report focuses on policies which would protect academic freedom for Britain’s academics. These are practical responses to a practical problem. The most powerful support for academic freedom occurs when the principle is upheld by academics themselves. Facilitating this outcome is one of the two key aims of the policy measures we propose.

A new problem today: threats to academic freedom from within the university

As well as having a major effect on how the principle of academic freedom has evolved and in bringing it to wider acceptance, the 1915 *Declaration* is still a powerful statement of the reasons why it matters. To fulfil universities’ public mission—of adding to the stock of knowledge, of education, and of informing law- and policy-making—individual academics need to work without fear of direct penalties.

In other respects, however, the 1915 *Declaration* is a product of its time. The key threat to academic freedom then was the risk that individual faculty members would lose their jobs because they had displeased influential trustees or donors. Being subject to their influence, it was the university’s President who usually exercised that authority. Their challenge was to solve this problem. This threat was, in an important sense, external to the university. Nor has it gone away, as threats to academic freedom from outside the university remain a serious problem.

The challenge today is that a serious threat to academic freedom may now, in addition, arise from within universities. This internal threat derives from the way that some in the university—both students and faculty members—relate to others on campus, being willing to penalise them on the basis of their perceived or actual political views. The concern is that this leads to ‘campus censorship’.

The narrative of ‘campus censorship’ is now well established in public discourse in the UK. While this is influenced in part by its prominence in the US, there has also been a steady drip-feed in recent years of controversial incidents domestically. Public controversies consist, most prominently, of two broad categories: no-platforming incidents, and the loss of a job or appointment.

‘No-platforming’ incidents are perhaps the most visible way in which

14. Available at: <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>

speech restrictions occur. The term originates from the 1970s, when the National Union of Students (NUS) in the UK decided that no members of the National Front (NF) would be invited to appear at NUS events; that NUS facilities would not be available to the NF; and that NUS officers would not appear at events where individuals associated with the NF were also due to speak. The NUS retains a no-platforming policy, proscribing six organisations at present: three from the radical right, and three radical Islamist groups.¹⁵

Since the 1970s, the tactic has been extended to individuals not affiliated with those proscribed groups; has been used by individuals unaffiliated with the NUS; and the term itself has come to refer to a variety of other actions. An example which made headlines in the UK was the no-platforming of Peter Tatchell by a then NUS LGBT representative, Fran Cowling, in 2016. Cowling refused to share a platform with Tatchell at an event at Canterbury Christ Church University. Although Cowling's action signalled her view that some of Tatchell's statements on transgender rights were in some sense 'beyond the pale', the event itself went ahead and her actions did not themselves suppress his freedom to speak. As such, this is a relatively 'soft' form of no-platforming.

A 'harder' form of no-platforming occurs when a person invited to speak at a university is then disinvited. Often this will be because of a campaign, focused on the organisers of an event, alleging that the invitee has views which mean that they should be debarred. Two prominent and recent examples of this occurred in February 2020, shortly before the coronavirus lockdown, with separate incidents of no-platforming in the same week at Oxford University. An invitation to Prof Selina Todd to speak at an event celebrating the 50th anniversary of the National Women's Liberation Conference of 1970 was rescinded at less than 24 hours' notice. An invitation to the former Home Secretary, Amber Rudd, to speak to the then UN Women Oxford UK Society was rescinded at 30 minutes' notice. In both of these cases, it was the organisers of the event who rescinded the invitation.

The Todd case illustrates how the 'softer' and 'harder' forms of no-platforming may interact. It was pressure from other speakers, who stated that they would not take part in the event if Todd was present, which led the organisers to rescind the invitation.

The two cases also illustrate a distinction between academic freedom and free speech. The Todd case involved a violation of academic freedom: this was an academic conference, in which Todd was invited to participate because of her disciplinary expertise, and which she was actively prevented from doing as a result of a campaign. The Rudd case raises issues of free speech, but not directly ones of academic freedom. This event was not connected to the research and teaching of a university, and the no-platforming could equally have occurred at an event in a town hall, for instance. It seems that the free speech concerns would be identical in that situation. The distinction between academic freedom and free speech is blurry, in that some violations of academic freedom occur by denying

15. NUS' No Platform Policy. Available at <https://www.nusconnect.org.uk/resources/nus-no-platform-policy-f22f>

an academic the freedom to speak in some context. But there are ways to violate academic freedom, other than restricting their speech. Sacking someone from their job because of the unpopular nature of their viewpoint is the most obvious.

Another form of no-platforming occurs when an institution rescinds permission for its facilities to be used. The grounds given for such decisions often relate to issues of process rather than content. For instance, Christ Church, Oxford, withdrew the use of its rooms for an intended debate on the ethics of abortion, due to be hosted by Oxford Students for Life, in 2014. This was reported to be on the grounds that the relevant college authorities did not have enough time to address concerns raised by other students, in particular students' "security concerns, both physical and mental".¹⁶ In February 2017, the Friends of Palestine Society were refused permission by Exeter University to stage a street theatre performance on campus, which would have portrayed a checkpoint operated by Israeli soldiers, similarly on the grounds of safety and security.

As the intention behind no-platforming is to deny a speaker a platform, further forms occur when the speaker withdraws in the face of pressure, or the event is disrupted by protesters, which may involve physical force. An example of the former is the withdrawal from a debate at the Oxford Union by Alice Weidel, the leader of the Alternative für Deutschland (AfD), in November 2018.¹⁷ An example of the latter is the intimidation of Jacob Rees-Mogg by 'pushing and shoving' from some protestors at an event at the University of West of England in early 2018, although the protestors were removed by security and the event went ahead.¹⁸

There are some attempts to record these incidents systematically, listing both successful and unsuccessful campaigns to have someone no-platformed. The most developed example is in the US, where the Foundation for Individual Rights in Education (FIRE) maintains a 'Disinvitation Database', listing instances of an invitation to speak being rescinded. As of May 2019, and going back to 2000, it listed 448 attempts. Of these, FIRE classified 127 disinvitation campaigns as from the right of the speaker, and 272 from the left.

There is no direct parallel for the UK. The closest equivalent is a list of instances of no-platforming and other academic-freedom-related controversies which have been reported on by a media organisation, which is maintained by Academics for Academic Freedom.¹⁹ This list is not systematic and, in particular, there is no way of knowing how likely it is that incidents have gone unreported, and whether this likelihood has changed through time. Nonetheless, the list does suggest that the frequency of such controversies has increased in recent years. From 2005-18, there are only three years where more than 5 incidents are listed (6 in 2014 and 2015, 8 in 2018). But this increases greatly to 25 in 2019, with 11 so far in 2020.

Public controversies are also sparked when someone loses their job, or other academic appointment. The offer of an unpaid visiting fellowship to Prof Jordan Peterson, by the Divinity Faculty at Cambridge University,

16. *Oxford Student*, 'Abortion Debate Cancelled', 20 Nov 2014.

17. <https://www.theguardian.com/world/2018/nov/02/far-right-german-politician-pulls-out-of-oxford-union-event>

18. <https://www.telegraph.co.uk/news/2018/02/02/jacob-rees-mogg-caught-scuffle-university-event/>

19. <https://www.afaf.org.uk/the-banned-list/>

was rescinded in March 2019. Other recent losses of post include Dr Chris Hill, formerly at the University of Central Lancashire (formally, the employment ended by mutual agreement) in July 2018, and Andrew Dunn, formerly a social policy lecturer at the University of Lincoln.²⁰ Peterson's case involved the allegation that, by associating with someone who had made an offensive statement, his approval of that statement should be inferred. The Hill case involves speech which others found offensive and objectionable, with this view upheld by their institutions, but which he alleges was mis-represented and that hostility to his viewpoint was the real problem. The Dunn case seems to involve nothing more than political animus.

These examples also give a sense of some of the issues over which no-platforming campaigns and academic dismissals occur. The transgender rights debate is a highly sensitive one, and is probably responsible for the largest number of academic freedom-related controversies in recent years. This debate has simultaneously a 'right v left' character (e.g. in the background of the Peterson case) as well as an 'intra-left' character (e.g. Tatchell, Todd). Of the 36 incidents listed in the Academics for Academic Freedom list from 2019 to now, 13 concerned allegations of transphobic views.

Other issues which are similarly sensitive include race, Islam, anti-Semitism, and abortion. Race was the larger issue in the campaigns leading to the no-platformings of Weidel and Rudd. On Islam, allegations of prejudice against Muslims were behind two of the above cases (Peterson, Hill). Critics have claimed that the Prevent duty—the statutory obligation on public bodies, including universities, to take measures to prevent radicalisation—disproportionately affects Muslims' freedom of speech. According to figures published by the Office for Students (OfS), for the academic year 2017-18, of nearly 60,000 requests for events with external speakers, 2,153 events were approved but with conditions or mitigations, and 53 events were cancelled or altered in response to information regarding the speakers.²¹ It is clear from this data that the Prevent duty has non-trivial effects, but it is unclear how many of the events affected posed a genuine risk of radicalisation. A review by the OfS itself did not conclude these cancellations posed a threat to free speech, asserting that it 'has found no evidence to demonstrate that fear and confusion over the Prevent duty is impacting free speech.'²² Further review here is important, however, and those affected in the name of the Prevent duty should be able to appeal decisions which infringe upon their legally-protected speech. The policy proposals we set out in Part IV enable this, and we return to this in Part III. Attitudes towards Muslims and Jews are not neatly separable from campaigns arising out of the conflict in Israel and Palestine, another flash-point issue, as illustrated by the Exeter case.

To be explicit, the fact that we report here an incident does not imply a view on our part that academic freedom was unjustly infringed in that case. The details of many of these cases are not fully public, and details matter. Reporting an incident implies only that there is a *prima facie* cause

20. <https://www.telegraph.co.uk/news/2019/02/28/lecturer-accuses-former-university-bringing-back-blasphemy-crime/>; <https://www.telegraph.co.uk/education/2019/01/12/university-lecturer-claims-hounded-left-wing-colleagues/>

21. Office for Students, *Prevent monitoring Accountability and Data Returns 2017-18*, 21 June 2019, p. 10

22. Office for Students, *The Promotion and Protection of Free Speech*, 26 September 2018, p. 4

for concern. Indeed, much of the thrust of our policy proposals in Part IV is to ensure that those who allege that their academic freedom has been violated are able publicly to pursue their case.

Is the situation worsening? This is difficult to answer objectively, and we have noted that there is little by way of reliable data to chart any changes. Nonetheless, there are suggestive indications that the problem of a hostile political climate may be growing. Where censure was previously reserved for fringe individuals and viewpoints, it is now mainstream politicians and speakers who are subject to campaigns to limit their speech. The following sequence of events in Oxford is instructive. In 2014, Tommy Robinson (founder of the English Defence League) gave a talk at the Oxford Union. While protestors demonstrated outside, it went ahead. In 2017, Robinson was due to speak at Oxford Brookes University. This event was cancelled, with the university's student union unable to guarantee safety in the face of planned protests. As noted, in 2018, Alice Weidel, the leader of AfD, who has a doctorate in international development, withdrew from a talk she was due to give at the Oxford Union, again in the face of a campaign. In early 2020, Amber Rudd was no-platformed.

In six years, campaigns have been mounted against those on the political fringe who command little sympathy (the EDL); to those who have been a significant electoral force, while operating on the boundaries of acceptability and sometimes over them (AfD); and then to just-about-right-of-centre conservatism (Rudd). The reaction to the recent letter by 150 writers in *Harper's* magazine (7 July, 2020)—which alleged that 'the free exchange of information and ideas, the lifeblood of a liberal society, is daily becoming more constricted', but is otherwise an anodyne assertion of the need for free speech—further illustrates this shift. Although based largely in the US, the signatories were carefully curated to represent a range of positions on the left, from radical to moderate, with a few who are identifiable as centre-right. This political centre-of-gravity was not sufficient to prevent widespread criticism of the signatories, including much that constituted *ad hominem* attacks.

The problems here go beyond the specifics of any political movement, however. The unifying thread behind most of the above incidents is an online campaign. Someone is identified as having 'crossed a line', and collective pressure is brought to bear against the target, perhaps through an open letter with hundreds of signatories, addressed to the organiser of an event or the institution where that person is employed, or perhaps through sustained online attention, usually on Twitter, by an otherwise unorganised group.

These campaigns can come from both sides of the political spectrum. During June 2020, both the University of Reading²³ and the University of Cambridge²⁴ publicly defended faculty members against hostile online attention from the political right, and rightly so, with the latter case including some horrific personal abuse.

As a generalisation, it seems that when online and personalised attacks come from the right, they tend to come from outside the university,

23. <https://twitter.com/UniofReading/status/1270655598238056450>

24. https://twitter.com/Cambridge_Uni/status/1275819264327528449

while those which come from the left may as easily come from within as from outside the university. The strategies adopted by the organisation, ‘Turning Point’ are an exception to this, however. Coming from the political right, Turning Point USA has developed the so-called ‘Professor Watchlist’, which is an aggregated list of stories published by other news organisations in which individual academics are identified for ‘advancing a radical agenda’.²⁵ A speaker for Turning Point UK has stated that the organisation will not seek to create an equivalent watchlist for UK-based academics.²⁶ However, under its ‘Education Watch’, it encourages students to report on ‘political bias’ in the education system. In practice, this consists in the digital collection and publication of emails, PowerPoint slides, and video/audio of teaching sessions.²⁷

These activities raise serious questions of academic freedom, and they come from within the university. The effect of the ‘Education Watch’ programme is to incentivise activist students to construct a public scandal. Doing so may include making false statements, or mis-reporting what has happened by omitting context which importantly changes the meaning of what has been said. Further, the activity of encouraging student reporting on teaching environments itself creates a climate of fear, for both faculty and other students, rather than of open discussion. It is a form of ‘sousveillance’—watching from below, rather than above.

As an indication of how contrary to academic freedom this activity is, the strategy of ‘sousveillance’ is also being used by the Chinese Communist Party to expand its control and influence in China’s universities.²⁸

The more general problem is thus much more wide-ranging than the specifics of any given political movement. It is that social media, especially Twitter, allow a deeply personalised form of attack to take place, which tends to see reasoned and ideally civil engagement replaced by hostile slurs. The challenge of adapting to this environment is not restricted to academia. Other sectors and institutions, in which individuals’ work involves ideas and culture, are likewise facing these challenges: this includes, most obviously, the arts, journalism and politics.

The incidents listed above, and others like them, capture media attention. While they clearly raise the concern that academic freedom is being significantly infringed, that conclusion should not be drawn directly. Reasons for resisting this inference follow.

Are incidents of no-platforming and academic dismissal actually a cause for concern?

To the neutral observer, it is not obvious how much significance should be ascribed to incidents like those above. In the US, where significant sections of the media are in the grip of a polarised culture war, incidents of disinvitation and dismissal provide fuel for the ‘red tribe’ to take aim at the ‘blue tribe’, and are reported along predictable lines. (This is despite evidence that this public conflict does not accurately represent the views of large proportions of the population. The important ‘Hidden Tribes’

25. <https://www.professorwatchlist.org>

26. <https://www.bbc.co.uk/news/blogs-trending-47159137>

27. <https://tpointuk.co.uk/education-watch/>

28. <https://www.npr.org/2020/01/20/796377204/chinese-universities-are-enshrining-communist-party-control-in-their-charters?t=1596354486427>

report by *More In Common* finds that approximately two-thirds of Americans are fed-up with polarisation. Nor can their views be neatly categorised into the ethics-and-policy package deals favoured by the activists on either of the progressive or conservative wings.²⁹)

While polarisation is less intense in the UK than the US, similar problems arise. The post-2016 Brexit debate has accelerated the process of partisan identification, initially on Leave/Remain lines, but with that divide as the anchor for wider differences in social outlook. A globalised news media also means that there is increasing cultural porosity between the US and the UK. In this context, UK universities are increasingly being identified with one tribe, whether as a result of others' ascription, accurately or not; the preponderance of views among individuals within the sector; universities' official position, implied or stated; or some combination of these factors.

The polarised environment makes it difficult for a neutral observer to identify how endangered academic freedom is. Are individual controversies indicative of a larger problem? Or are they simply a few isolated incidents, which hostile parts of the media watch carefully for, in order to blow out of proportion—so boosting print sales or clicks, on the back of constructed outrage?

It would clearly be poor reasoning to infer a larger pattern from a few incidents alone. Moreover, critics of the 'campus censorship' narrative have some compelling replies, which should be weighed seriously. Here are three.

Academic freedom has survived student activism in the past

First, it is hardly unprecedented that students should be drawn to radical politics. This dates back not just to the 1960s and 70s. Students were key participants in the 1848 revolutions in Europe, for instance,³⁰ which would seem far enough in the past to make student activism a traditional pursuit, with a pedigree as respectable as Big Ben (built in 1843). The normal rhythm of university life involves a bit of friction and controversy. If universities have managed to weather waves of student activism in prior decades successfully, why not now?

On this view, incidents of no-platforming do not reflect a wider reality in which research, teaching and university administration continues much as it always has. What may be different now is that a faster news cycle, and the ferocious scrutiny of social media, mean that we are more likely today to hear of infractions of academic freedom than in the past. There may also be some instances where people in positions of authority unexpectedly find themselves in a more intense glare of publicity than was previously possible, and so make poor decisions out of concern for their or their institutions' reputation. Overall, however, the impression of a threat to academic freedom is more attention-grabbing than the reality.

In short, on this view, "students will be students". If this criticism is correct, the greater danger to academic freedom is not a few instances of no-platforming, but rather one of governmental over-reaction.

29. <https://hiddentribes.us/#the-exhausted-majority>. On the problem of 'package deal ethics', see James Mumford, *Vexed: Ethics Beyond Political Tribes*, London: Bloomsbury (2020).

30. E.g. Lewis Namier, *1848: The Revolution of the Intellectuals*, Oxford: Oxford University Press (1992).

Some kinds of speech should not be welcomed in universities

Second, the stated occasion for some of these incidents involves speech which is—to put it non-emotionally—not attractive. Consider the Peterson case. Peterson is a controversial and very public figure, being inspiring and intellectually stimulating for some, and loathed by others. Those who campaigned for his fellowship to be rescinded did so on the basis of a photograph, in which Peterson had his arm around a man wearing a t-shirt, printed on which was the text, ‘I’m a proud Islamophobe’. The claim was that, by associating in this way, Peterson’s presence in Cambridge University would contribute to a hostile environment for Muslims. The University of Cambridge should properly seek to prevent a hostile environment for its Muslim members. What is at stake is whether Peterson’s association in this way meant that his presence would contribute to a hostile environment, and to what degree.

This illustrates a more general conclusion, which is drawn by critics of the ‘campus censorship’ narrative. Tracing the no-platforming policy from its origins at the NUS in the 1970s to the present-day, Evan Smith observes that:

there has also been heated debate over the limits of the “no-platform” policy, as some have pushed for it to be extended to other forms of oppression [beyond fascism and racism] and that sexists, homophobes and transphobes should also be “no platformed”. At various points in time, some have also argued that Zionists or Islamic fundamentalists should be subject to the “no platform” policy.³¹

Fascism, racism, sexism, homophobia, transphobia: this is an unpleasant line-up of attitudes or views. On this view, controversies about instances of no-platforming are at the centre of a ‘moral panic about the free speech “crisis” at British universities’.³² Worse—the criticism continues—what really lies behind appeals to free speech and academic freedom is the desire to be nasty to groups of people who have already been ill-treated. Smith quotes Will Davies:

[T]he very notion of ‘free speech’ has become a trap. Neo-fascist or alt-right movements now use it to attack alleged ‘political correctness’, using the principle of free expression to push hateful and threatening messages towards minority groups. . . . Whereas intellectual freedom was once advanced in Europe as the right to publish texts that were critical of the establishment, it has now become tied up with spurious arguments surrounding the “right to offend”.³³

The observation is at least partially correct. Movements and individuals with neo-fascist and alt-right commitments clearly do appeal to free speech rights. There should be no mystery as to what this is: a cynical attempt to gain an audience, by playing the victim and by seeking to hoist those committed to principles of tolerance and liberty on their own petard.

31. Evan Smith, *No-Platform: A History of Anti-Fascism, Universities, and the Limits of Free Speech*. London: Routledge (2020), p. 3.

32. *Ibid.*

33. Will Davies, *Nervous States: How Feeling Took Over the World*. London: Jonathan Cape (2018), p. 209.

No-platforming is itself an exercise of freedom of speech and association

Third, critics contest the idea that no-platforming impinges on others' free speech rights. My refusal to share a platform with you does not prevent you from speaking. On this view, the NUS's refusal to participate in events in which there may be speech which the NUS abhors, by ensuring that its officers and facilities are not available, is an assertion of its own freedom of speech and of association. The NUS defends its policy on these grounds. 'Students are collectively **free** to invite—or not invite—who they wish to their events. SUs are democratic membership organisations, they too have and should have the **freedom** to decide who they should and should not invite to speak.'³⁴

While freedom of association is a clear basis on which to defend no-platforming, the NUS's policy, and the tactic more generally, is primarily based on a different consideration. The principal reason behind it is a view about the significance of a platform. The claim is that a platform—whether literal or metaphorical—confers legitimacy on a given viewpoint. It confers 'credibility' on fascists or racists 'to promote their message of hate, which in turn can lead to violence against those they target'.³⁵ For a society to be tolerant and humane, there are clearly some viewpoints that would need to be present in it only in a negligible way, if held at all. Fascism is one such, and diminishing the spread of these ideas is the aim of the tactic. The moral basis for the no-platforming policy thus rests on the conjunction of the following claims: a sociological claim, that a platform confers influence; a broadly liberal claim, that one has the *pro tanto* right to dissociate; and a normative judgment, that some specified views, such as fascism, are inimical to a flourishing society.

It is not merely that these claims have force. Each is obviously true.

Not only do these three counter-arguments have some obvious plausibility, their cumulative weight should also be emphasised. This is made clear by considering them in sequence. Like any social ideal, academic freedom has always been imperfectly realised, and will survive some fraying at the edges. Whatever the tensions in the current political scene, the people who are experiencing the pressure are those whom one should have not much sympathy for. And there are some subtle lines to be drawn here anyway, which require careful adjudication between competing claims to freedom. One might readily conclude that the potential danger to academic freedom is just not a serious problem. To illustrate, take another instance of no-platforming, that of Carl Benjamin (aka. 'Sargon of Akkad'; University of the West of England, May 2019). If all that is happening is the cancellation of a few events with this kind of speaker, then whatever intellectual loss is involved, that seems to be one we can live with.

The counter-arguments identified above all have weight. Nonetheless, they are not decisive. We consider them in reverse.

34. NUS' No Platform Policy. Emphasis in the original.

35. *Ibid.*

Limits to freedom of association for public bodies

It is unlikely that freedom of association provides a sufficient basis on which to defend the practice of no-platforming because, taken by itself, it proves too much. To see this, note that a parallel argument is available for academic dismissals, cases of which clearly violate someone's freedom. The parallel argument would claim that a university is free to determine who works for it and who does not; might observe that the university may also be a democratic institution; and so conclude that it should have the freedom to dismiss someone. The argument may continue: so long as the person who is dismissed has the opportunity to find employment elsewhere, that person remains free.

Such a general conclusion cannot be drawn. The key point is that the freedom to associate or dissociate is *pro tanto* only, and there are some justified limits on that right. Further, these limits are sometimes affected by the nature of the organisation. For instance, suppose a mosque is seeking to appoint an imam. The mosque may properly refuse to appoint a Christian to that post, and do so on the grounds that the applicant is a Christian. In doing so, the mosque exercises its freedom to associate. But there are other times where the freedom to associate is restricted, so that it is impermissible to take account of someone's religion. When a hospital is appointing a nurse, or a factory someone to work on the shop floor, it may not take an applicant's religion into consideration. While freedom of association sometimes allows religion to be taken into consideration and sometimes does not, there are potential grounds of distinction which are likely ruled out under any circumstances. The fact that a golf club may be a wholly private, voluntary association does not permit it to consider someone's race, for instance, in deciding who can join.

So, whether the practice of no-platforming is justified depends on two further considerations. First, what is the nature of the organisation—is it a body governed by public norms, like a hospital or factory, or is it more like an association with thicker, non-public norms, like a religious institution? Second, on what basis is the freedom to associate being exercised, and is it permissible to take account of this basis, in this context? Similar questions arise for individuals who would exercise a personal freedom to dissociate: is the basis on which they wish to dissociate a permissible one, given the context in which they wish to do so?

The answer to the first is clear. Take universities first, and then student unions. That public norms should apply to the UK's universities is plain, not least because it is established in law that universities are public bodies (Equality Act 2010, Schedule 19).

On student unions, we leave aside the NUS, which is a national body and has no direct connection to any university. That the student union at a particular university or college should be governed by public norms, like a hospital or factory, follows from a number of administrative facts. First, the Education Act 1994, s. 20, recognised as student unions those bodies having the principal purpose of promoting the general interests of its members as students, or a representative body whose principle purposes

include representing the generality of students at an HEI. Second, a major source of funding for most student unions is a block grant from the university or college they are associated with, whose income substantially derives from publicly-administered research grants, or taxpayer-backed student loans. Third, since 2010, student unions may no longer be exempt charities, and the majority are now overseen by the Charity Commission. Pertinently for the present discussion, this imposes the legal requirement that, though it is permitted to engage in political campaigns which are relevant to its purposes, the Student Union's purposes themselves should not be political. Given these administrative facts, it is difficult to suppose that a student union should not be subject to public norms.

As public norms apply to UK universities and their student unions, the case for the legitimacy of no-platforming turns on the nature of the views and individuals who are the targets.

The boundaries of viewpoint diversity to be drawn by law

Many of the incidents of no-platforming involve the targeting of individuals or movements who will enjoy little general sympathy, such as Weidel from the AfD or Robinson from the EDL. This raises what is perhaps the most difficult question on issues related to academic freedom. Which views should have no place on a university campus? And, perhaps as importantly, who decides?

It is clearly the case that some speech is properly subject to legal restrictions. Categories of speech which are criminal under UK law include intentionally encouraging a crime, which includes incitement to violence and conspiracy, while there are criminal and civil penalties for defamation. In affirming that these restrictions are properly imposed, this report is not a defence of what is sometimes called 'free speech fundamentalism', the view that there should be no legal constraints on speech. The question is not whether there should be limits on speech. The question, rather, is where those limits should be. Given this, what about the advocacy of views which are fascist, racist, sexist, or otherwise objectionable: should these be restricted in some way; if so, how; and by whom?

The basic tension here is an established liberal dilemma—that speech that one person finds deeply offensive is, for someone else, advocacy of a view which matters greatly to them, or perhaps merely that they consider true. Germany prohibits the denial of the Holocaust, for instance. David Irving says that the Holocaust did not occur, and presumably believes it; critics wonder how he can do so on a good-faith basis, and are profoundly offended by his denial. Within a liberal framework, it is debated whether profoundly offensive views may be restricted from public discourse.³⁶ A significant proportion of the high-profile controversies revolve around the expression of views which some people consider to be, in themselves, profoundly offensive and harmful to someone's emotional well-being, but with those claims denied by the speaker.

36. A classic discussion is Joel Feinberg, *Offense to Others: The Moral Limits of the Criminal Law*, Oxford: Oxford University Press (1985).

The public discussion of transgender rights illustrates this tension. Free speech may easily be used as a cover for people to denigrate transgender individuals. Universities are properly tasked with ensuring an inclusive environment for all, one which is easily threatened if members of the university make casual and derogatory statements about specified minority groups, such as transgender people. There is a compelling and direct interest for transgender people in potential reforms to the Gender Recognition Act 2004. There are also other groups within society who may be affected by revised law and policy. Such effects are properly a matter for public and academic debate. Holding these two goals together—of ensuring both an inclusive social environment for transgender people, and enabling legitimate debate—is not straightforward.

Nonetheless, this tension does not characterise all such incidents. The no-platforming of Amber Rudd was a watershed moment. If one cannot tell the difference between Rudd's politics, and those of Weidel, something has gone very wrong. Making offence a basis for restricting speech has always risked a version of the 'heckler's veto', in which the listener who is most easily disturbed or shocked by a viewpoint is able to control what others can say. There is no implication here as to what the intent is, if any, on the part of the listener; it could be a bad-faith attempt to exert control, or a wholly good-faith reaction, in which genuine offence is reported. Nonetheless, if the criterion for acceptable speech is that no-one is offended, a dynamic arises by which speech is over-readily restricted. A principled basis is thus required to determine which speech is permitted, and which is not.

Our view is that the decision about which speech should be permitted, and which restricted, should be reserved for the law. The views which should be prohibited on campus are those which the law determines should be prohibited. Such prohibition may occur through new case law deriving from existing legal instruments, in particular the European Convention on Human Rights. Further, as the law is subject to democratic control, the British public have the additional opportunity to determine, collectively, whether a form of speech should be prohibited. Such a decision should be made through the regular processes of legislation, with that law then upheld by the courts. How speech should be restricted is a tricky and complex question, and one which all members of society have a stake in. As public bodies, it is not one that universities are free to decide, as by doing so they would exclude unilaterally some viewpoints from discussion. Only through the rule of law are individuals protected from the exercise of arbitrary power. This includes protecting individuals against others who would deny them their lawful rights.

This position is not idiosyncratic. It is also that of the Equality and Human Rights Commission,³⁷ the Office for Students,³⁸ and indeed is affirmed by the statutory duty concerning freedom of speech in universities (the 'Section 43' duty; see Part III).

In making this point, we leave open a separate and important discussion. It is properly debated what speech the law should penalise, and in what

37. Equality and Human Rights Commission, *Freedom of Expression: A Guide for Higher Education Providers and Students' Unions in England and Wales*, February 2019, p. 8

38. <https://www.officeforstudents.org.uk/media/3662206d-ccf4-4bed-a651-1df37aa0d5f0/freedom-of-speech-report.pdf>

ways. It may be that forms of ‘hate speech’ should be restricted, as indeed they are, under UK law. It is debated whether speech which is a cause of profound offence should be restricted. Some philosophers argue that speech by the powerful silences those who are marginalised, and so the speech of the former should be restricted, on grounds of enabling free speech. This claim was influentially made in relation to violent pornography, which arguably removes the ability of women to withhold consent from sexual activity.³⁹ Whether or not any of this is so and, if so, how to regulate such speech are issues of vital public concern. We do not take a view on these questions here. Our point is that they should be decided publicly. Those who think the law is too permissive or too restrictive on speech should make and win the public argument, and should then influence legislation. Doing so provides a non-arbitrary basis for the exercise of power over one of the most vital liberties in a free society.

(This suggests an important distinction between the situation in the UK as contrasted with the US. Changing the law around speech restrictions is feasible in the UK, given that no Parliament can bind its successors. In contrast, in the US, it is de facto impossible to change the First Amendment. This means that those who advocate novel restrictions on speech have fewer feasible options to change the law around speech. As a result, the use of social power to accomplish such goals becomes more compelling, rather than the democratic processes of deliberation and legislation.)

The alternative to this an invidious one for the UK’s universities. Anything other than freedom of speech within the law would involve the UK’s universities deciding, for themselves, which of the diversity of viewpoints held by the public should be tolerated within the university. Doing so would substitute the rule of law with the rule of politics. This is a very different and unattractive prospect.

Does academic freedom protect racism?

It may be objected that the wide boundary for speech permitted by UK law fails adequately to protect ethnic minority individuals from racist speech. Academic freedom involves freedom within the law to “question and test received wisdom” as well as “put forward new ideas and controversial or unpopular opinions.” This is indisputably a very broad scope of freedom, one within which opinions and ideas that some members of ethnic minority groups in Britain might find troubling or uncomfortable, would most certainly fit. In the currently highly-sensitive, deeply-polarised and strongly-politicised atmosphere on race and racial issues, some may fear that if academic freedom is defended more robustly, it could lead to research enquiries which are directly or indirectly intended to produce racist findings.

Some may even argue that the fundamental motivation of those emphasising the need to be more vigilant about academic freedom is simply to use it as a cover for racism. Given the current nervous atmosphere around race, history, as well as demographic realities in British academia and wider society, which are both predominantly white, such fears are

39. For a summary of this debate, see Mari Mikkola, ‘Does Pornography Silence Women?’, ch. 3 in her *Pornography: A Philosophical Introduction*, Oxford, Oxford University Press, 2019

understandable and cannot be simply dismissed offhand.

It is difficult to imagine that black students would or should be unmoved at news a professor in their department is pursuing a line of research “proving” black people are inherently less intelligent than white people, for instance, all under the umbrella of academic freedom. Or that a student of Indian heritage might not be deeply offended by a professor or lecturer teaching in class that British colonialism was the best thing that ever happened to the Indian people. There is undeniable scope for racist assertions behind the concepts of “controversial” and “unpopular” beliefs.

However, the question ultimately boils down to whether we aim to build an academic community and wider society which operates on the good-faith assumption of positive intentions in others or one that operates on the assumption of nefarious intentions. Is British academia and wider society to be a place where individuals are presumed well-meaning, until they prove otherwise or the contrary? It is difficult to imagine building any sort of cohesive society if the latter becomes our default position. Trust is the glue that holds any society together, and trust cannot be built on suspicion.

Furthermore, with British institutions, including universities, now under a microscope following the outpouring of anti-racist protests and initiatives after the heinous killing of George Floyd in America, it smacks of the implausible that any rational scholar interested in a successful academic career would consider propagating racist beliefs to be a wise or even just beneficial career path. And surely, if in no one else, we have a right to assume rational behaviour from members of the academic community.

As highlighted in the July 2020 letter in *Harper's* magazine signed by over 150 intellectuals, including many of a liberal or even strongly-leftist bent like Noam Chomsky, the ‘free exchange of information and ideas is the lifeblood of a liberal society’. The letter pointed out how the current narrowing of boundaries ‘of what can be said without threat of reprisal’ is harmful and ultimately ‘makes everyone less capable of democratic participation’. It also rightly argued that ‘the way to defeat bad ideas is by exposure, argument, and persuasion, not by trying to silence or wish them away’.

In academia particularly, ideas must be allowed to flow. If an environment is perpetuated in which academics, especially those in the early career stage who are less secure in their positions, fear to voice any opinions outside those which currently enjoy the status of consensus, then tomorrow’s ideas will be nothing more than a replication of today’s. That the earth is flat was once a consensus opinion. For human thought to evolve, today’s ideas must consistently be challenged and face perpetual re-evaluation. This is how human ideas have developed and improved over time. This is how the human mind has sharpened itself over centuries. Now is not the time to stop.

Freedom in research and teaching is the central concern, not no-platforming

The foregoing leaves a further, important objection to be addressed. Granted, there have been a number of high-profile incidents of no-platforming and some dismissals. In the grand scheme of things, how much does this matter, however?

While we reject the view that these high-profile incidents are unimportant, we concur that incidents of no-platforming are not the most important threat to academic freedom. Rather, what matters is that research and teaching should happen in a way such that people are free to explore ideas, without needing to fear the consequences of disagreeing with others. Pressures to conform on ideological or political grounds, which exert a silencing effect on staff and students, are a more serious potential threat to academic freedom.

In our first report, we began to test whether there was a problem here by focusing on the attitudes and reported experiences among undergraduate students. Prior work had focused on students' attitudes towards free speech in the abstract. We went beyond this, looking at students' judgments on particular cases (such as the campaign to no-platform Germaine Greer, or the rescinded fellowship offer to Jordan Peterson), as well as how malleable these judgments were according to the context in which the question was considered, in which speakers' freedom of expression was contrasted with the emotional safety of potentially vulnerable listeners. We found that there were relatively strong redoubts of support for both free speech and for emotional safety (in the range of 30-40%, and 20-30%, respectively), with a 'malleable middle', who could be swayed according to the context in which they considered the question.

Most importantly, earlier results provided initial evidence that there is a problem of 'chilling effects' in the classroom. On Brexit, only 4 out of 10 (39%) Leave-supporting students said that they would be comfortable discussing that view in the classroom. This contrasted with Remain-supporting students, 9 out of 10 (89%) of whom would be comfortable expressing that view. Similar chilling effects were found in a December 2019 study by the Policy Institute at King's College London, 'Freedom of Expression in UK universities'. The authors classified a majority of students (60%) as 'contented' with their freedom of expression, but results were different for smaller sub-groups of the student population. While 1 in 4 (25%) reported feeling unable to express their views in university because they were scared of disagreeing with their peers—not trivial, but not a sizeable proportion — 59% of those who identified as conservative agreed that students with those views were reluctant to express them.⁴⁰ What matters is not the overall proportion of people who feel comfortable expressing their view, but the proportions within specific sub-groups.

This has direct outcomes on the learning experience for students. Not only do Leave-supporting students lose their freedom to explore ideas openly, but the whole student body is denied the opportunity to see both

40. Jonathan Grant et al, *Freedom of Expression in UK Universities*, The Policy Institute (KCL), December 2019.

sides of a crucial contemporary debate articulated and debated openly by their peers. Enabling such debate is a pedagogical challenge, lying at the core of British universities' educational mission.

While attitudes to free enquiry among students are important, of considerably greater significance to the long-term health of Britain's universities are the attitudes and experiences of the faculty—professors, lecturers and researchers. It is the faculty in universities, and particularly those in permanent positions, who shape the course of an institution over decades. Permanent faculty play a formative role in setting the culture of departments through the research they conduct; how they conduct themselves when engaging with others' research; in administration; and how they conduct their teaching, including overseeing the teaching of non-permanent colleagues, whom they may also mentor. Permanent faculty also exert a shaping influence through a vital category of decision-making, namely appointments. With successful candidates often occupying a position for decades, it matters greatly for the long-term culture of an institution who is appointed. Another vital category of decision-making relates to funding, with faculty reviewing applications for grant funding. A third essential category is reviewing papers, to recommend whether or not a manuscript should be published.

This report therefore focuses on the attitudes and experiences in the workplace of academics in British universities. We turn to this in Part II, below.

Is government regulation compatible with academic freedom?

We address a final objection here. As we noted above, academic freedom consists in the individual freedoms of research, teaching, and public engagement, as well as a collective freedom, namely institutional autonomy. A critic of the policy proposals we advocate in Part IV may argue that, whatever government may wish to see, the one thing it cannot do is to promote academic freedom directly. This is because any government action will impinge on institutional autonomy, which is itself a component of academic freedom.

This objection has already been made. For instance, Universities UK and London South Bank University have expressed concern about the OfS becoming a regulator of free speech, on the grounds of institutional autonomy. Sir Timothy O'Shea, former Vice Chancellor and Principal of the University of Edinburgh, stated that the OfS's (modest) proposals seem to be a move towards 'increased bureaucratic intervention and a possible decrease in university autonomy'.⁴¹

The argument has also been made forcefully in the US context, by Robert Zimmer, President of the University of Chicago. Zimmer is responsible for convening the Committee on Freedom of Expression, which formulated the 'Chicago Principles', so is an undoubted advocate of academic freedom. In March 2019, and anticipating an Executive Order

41. Joint Committee on Human Rights, *Freedom of Speech in Universities*, HC589/HL PAPER 111, 21 March 2018, p. 41

from President Trump in relation to free speech, he wrote:

*A committee in Washington passing judgment on the speech policies and activities of educational institutions, judgments that may change according to who is in power and what policies they wish to promulgate, would be a profound threat to open discourse on campus. In fact, it would reproduce in Washington exactly the type of on-campus “speech committee” that would be a natural and dangerous consequence of the position taken by many advocating for the limitation of discourse on campuses.*⁴²

As it happened, the Executive Order that arrived a few weeks later was of negligible significance on this issue.⁴³ Nonetheless, Zimmer’s point matters. Would the government assuming for itself power to adjudicate over what speech is permitted not be a serious diminution of institutional autonomy, and open up the prospect of other chilling effects?

Our proposals, if enacted, would lead to a modest reduction in institutional autonomy. But we argue that doing so is necessary to secure individual academic freedom. There are two points to make in defence of this claim.

First, it is widely accepted that institutional autonomy may sit in tension with the demands of individual freedom, just when an institution seeks to constrain the freedoms of its individual members. This was recognised in the 1915 *Declaration*, for instance, in which the drafters acknowledged that what they called ‘proprietary schools’ may be set up with a particular purpose—such as a college founded to advocate the benefits of protective tariffs, or of socialism. In such cases, academics may legitimately be expected to research and teach in a way consistent with, e.g., the advocacy of socialism. But this ‘get-out’ clause does not apply in the case of the UK’s universities, which are public institutions, and where protection for viewpoint diversity should exist. In cases of conflict in public institutions, individual academic freedom takes priority.

Second, the suite of policy proposals that we set out in Part IV does not involve any public body determining what cannot be said, let alone one which is subject to political control. So, it is not vulnerable to Zimmer’s critique. Indeed, the fundamental point of these proposed reforms is to guarantee protection for academic freedom, *regardless* of who exercises political or cultural power. Its goal is to protect academic freedom, for the expression and development of viewpoints that are not prohibited by the law.

To anticipate Part IV, the policy framework which we propose establishes no new legal principles. Rather, it seeks to make effective the principles which are already established in law.

It does so in the following ways. We seek to provide:

- clear and easy access to justice, so that individuals who allege that their academic freedom has been restricted may have their claims tested by independent public bodies, including through courts and tribunals;

42. <https://news.uchicago.edu/story/president-zimmers-message-free-expression-and-federal-action>

43. Text at https://www.insidehighered.com/sites/default/server_files/media/White%20House%20Executive%20Order.pdf

- measures by which a norm of political non-discrimination may become embedded across the sector.

There is a high argumentative bar required to reject either of these principles.

To reject the first, one must suppose that due regard for institutional autonomy means that universities should have the final decision as to whether they had fulfilled their legal obligations. But that is in plain tension with principles of natural justice. It cannot be that a party to a suit should also have final responsibility for adjudicating whether they have complied with the law. Whether universities have fulfilled their legal obligations is properly for the courts and other public bodies to determine, and emphatically so when a university is itself a party to the alleged breach.

To reject the second, one must suppose that institutional autonomy means that external bodies should not seek to promote public norms of non-discrimination within the sector. But this already happens, with the work of the Equality Challenge Unit under AdvanceHE, which seeks to promote norms of non-discrimination on the basis of race, sex, and sexuality. It would be arbitrary to reject measures intended to support a norm of political non-discrimination and tolerance for diverse viewpoints, while defending those intended to support other norms of non-discrimination.

Part II. Experience and views of faculty in the UK

Overview

We now turn to consider the attitudes and experience of faculty in the UK.

As noted in Part I, faculty matter because they play a decisive role in setting the culture and environment of departments on a day-to-day basis. Whether permanent, or on time-limited contracts as researchers and/or teachers, they do so by shaping how research and teaching is conducted, and by being responsible for the variety of decisions in which, for instance, papers are accepted for publication or rejected; grants are awarded or not; people are extended job offers, honorific posts, and promotions; and students are admitted. More generally, faculty set the tone. Taken individually, very few of these decisions are of decisive significance. What is of interest and significance are patterns across them.

The presumption is that such patterns exert a shaping effect on the culture of the university, and ultimately influence the public contribution made by the sector.

The central question we ask is:

To what extent are UK-based academics free to pursue research or public engagement which may have a political interpretation, without social or professional penalty within the sector?

Other writers often use the term ‘ideological’ in similar contexts, instead of ‘political’. We use ‘political’ as, in natural language, it more obviously has a neutral, descriptive connotation than the term ‘ideological’.

That academics’ research and public engagement may be susceptible to a political interpretation arises from the nature of politics. Political activity tends to be structured around competing sets of social ideals and principles; these are often associated with judgments about what explains social behaviour and phenomena. Academic work may be seen as advancing or contesting such sets of ideals, principles and judgments, and so be judged accordingly. When so, it has a political interpretation. The question is whether doing work which has such an interpretation brings social or professional penalties.

We start this Part by surveying existing literature, as this is important to show that there is significant prior work that documents trends within academia. We focus on evidence on the political preferences of academics in the UK; the literature on discrimination in general, especially race-

and sex-based discrimination; and the nascent literature on ideological discrimination, including work that focuses on academia. We then report new data from a survey and discuss its significance. This data confirms the trends established in prior work, and supplements it with some new findings. We conclude with areas for future work.

Trends from existing work on UK- and US-based academics

This section surveys existing work on the political views of UK-based academics, methods used in work on race- and sex-based discrimination, and work on political discrimination in academia.

Political views of UK-based academics

The political preferences of UK-based academics have changed over time. Paralleling trends in the US, since the 1960s, the distribution of political preferences among academics has shifted from being reasonably split across the political spectrum, to being significantly left-leaning today. While this change has resulted in a greater divergence between the distribution of political views among academics and in the British public in general, much of this divergence is explained by the growing effect of education on political preferences.

Data on the voting patterns of UK-based academics provides the best longitudinal evidence of these changes.⁴⁴ In 1964, 35 percent of UK academics voted for the Conservatives and 47 percent for Labour, a modest difference. Support for the moderate Liberal Democrats or SDP rose substantially, reaching 35 percent by 1989, during Thatcher's tenure in office. By this time, support for the Tories had fallen to 18 percent and Labour plus the Greens had modestly increased their combined share to 44 percent among academics.

Existing data on the recent and current distribution of political preferences among UK-based academics is more variable. The *Times Higher Education Supplement* (THES) has conducted polls of its readers prior to the national elections in 2015, 2016 (EU Referendum), and 2017. As these are opt-in surveys, they are vulnerable to self-selection bias. To improve on THES, Chris Hanretty used data from the *Understanding Society* survey, in which participants' occupation is recorded. This allows a random sample of higher education professionals to be extracted (N = 178 respondents or greater, per wave).⁴⁵ *Understanding Society* data improves on THES in that participants are not self-selected. The data does not record vote (either intended or reported), but it does record a report of 'closeness' with a party. This disallows a direct comparison with earlier data, and also disallows an estimate of the absolute levels of support for each party. But it permits a relative assessment of the distribution of political preferences among academics, as compared with the general population.

Using this data, Hanretty found that, in the period 2014-16 and among academics, self-reported 'closeness' to a party had, for left-leaning

44. C. H. Halsey, C.H. (1992). *The Decline of Donnish Dominion: The British Academic Professions in the Twentieth Century*. Oxford, UK: Oxford University Press, ch. 11 (Appendix I).

45. <https://medium.com/@chrishanretty/is-the-left-over-represented-within-academia-90b1cbe00e8a>

parties (Labour, Liberal Democrat and Green) climbed to 82 percent, compared with 42 percent for the general population, while closeness to the Conservatives and UKIP among academics was down to 15 percent, compared with 50 percent in the general population. This indicates that, as of approximately 5 years ago, left-leaning political preferences were over-represented in academia when compared to the British population in general. It is worth noting that Hanretty's analysis corroborates the pattern of party affiliation in the THES data.

It is consistent with this data, but not proven, that the degree of divergence between the distribution of academics' political preferences, and those of the British population in general, has accentuated over time.

If it were to be shown that this divergence has accentuated over time, then the trend in the UK would be parallel to that in the US. To display that trend, and using triennial surveys of tens of thousands of professors from the Higher Education Research Institute at UCLA, Sam Abrams found that the proportion of academics identifying as 'far-left/liberal' increased from around 40 percent in the mid-1990s to 60 percent by 2010-11, as the share of faculty who identified as 'moderate' and 'conservative' decreased. This occurred in a period when the distribution of political preferences in the US public remained relatively steady, with the proportion of those identifying as left-liberal in the 20-30 percent range, while that of moderates hovered around the high 30 percent and conservatives the mid 30 percent mark.⁴⁶

While this data considers only national averages, Abrams also investigated which variables affect the degree of divergence, including discipline and type of institution (e.g. public university, liberal-arts college, etc). Perhaps surprisingly, he found that region was the most significant factor (with New England having the greatest impact).⁴⁷

Race- and sex-based discrimination

There has been a great deal of academic work investigating discrimination, with race- and sex-based discrimination a particular focus, and this for compelling reasons. We note first the methodology used for this work. While some discrimination is overt, in the form of behaviours which are readily understood as stigmatizing by the victim, much discrimination is hidden. For instance, the decision to offer a job appointment is invariably made 'behind closed doors', where the candidate is not privy to a committee's deliberations. Because discrimination may often be hidden in this way, identifying the degree of discrimination that members of a group may face poses methodological challenges for researchers.

The challenge of identifying how severe hidden discrimination may be is further exacerbated by the fact that social norms against discrimination have become widely accepted. Such norms are a net positive for society of course, but they have the unintended effect of making the researcher's task harder, as people in general want to be thought well of. 'Social desirability bias' means that respondents' answers may reflect how they would like to be seen, rather than being an accurate report.

46. Samuel J. Abrams, 'Professors Moved Left Since 1990s, Rest of Country Did Not', *Heterodox Academy*, 9 Jan 2016.

47. Samuel J. Abrams, 'There Are Conservative Professors. Just Not in These States.' *New York Times*, 1 July 2016.

To overcome this, two methods may be employed. Field experiments are the gold-standard, such as a CV or resumé study, in which all information on competing CVs are kept identical apart from, for instance, ethnic or racial cues such as name. In the absence of a field experiment, which takes considerable time and money, surveys provide a way to identify those attitudes that may underpin discrimination. A way that social desirability bias may be counter-acted is through a telephone poll conducted by a ‘robo-caller’, allowing respondents to speak anonymously. An alternative is a list experiment. This is a tool which we adopt in our survey.

An effect of social desirability bias is that the results from a simple survey will likely understate the degree of discrimination that exists. A recent study on ethnic-based discrimination indicates this, in which the results of a survey indicated no discrimination or positive discrimination, while an accompanying field experiment found negative discrimination.⁴⁸

Turning to findings, Anthony Heath and Valentina Di Stasio recently conducted a meta-analysis of field experiments on race-based discrimination in employment in the UK. Surveying work from the 1960s to the present day, they derive a ‘discrimination ratio’. A discrimination ratio of 1:1 indicates that, for instance, a black job candidate and a white job candidate would need to apply to the same number of jobs in order to receive the same number of invitations for interview. Heath and Di Stasio find discrimination ratios of around 1.3:1 to 1.6:1 for different racial or ethnic minorities in the UK, including black Caribbean-, Indian- and Pakistani-descended Britons. In the context of the studies, members of these minority groups need to make around 30 to 60 percent more applications than white Britons for the same number of positive outcomes.⁴⁹ Peter Riach and Judith Rich provide an earlier meta-analysis of field experiments, covering race-based and other forms of discrimination. They find a similar ratio for race-based discrimination in other countries.⁵⁰

Findings are more variable for sex-based discrimination. A major field experiment on sex-based discrimination in the UK was also conducted by Peter Riach and Judith Rich.⁵¹ They found that in ‘male-dominated’ occupations, women were rejected for interview at approximately twice the rate that men were (46 to 23 percent). In ‘female-dominated’ occupations, this was reversed, with men rejected for interview at four times the rate of women (59 to 16 percent).⁵² Perhaps surprisingly, this ratio remained nearly identical in ‘mixed’ occupations (60 to 17 percent).⁵³

Prior studies of political discrimination among academics

In more recent years, a nascent body of work has begun to look at the possibility of discrimination on ideological or political lines. ‘Political’ or ‘ideological’ discrimination involves one’s professional judgment about another person or their work being affected by whether one agrees or disagrees with the political or ideological orientation that may be displayed. For example, one discriminates on political grounds if one favours or disfavors someone because that person is, say, a libertarian or a socialist.

48. Jesper N. Wulff and Anders R. Villadsen, ‘Are Survey Experiments Valid As Field Experiments in Management Research? An Empirical Comparison Using the Case of Ethnic Employment Discrimination’, *European Management Review* 17:1 (2020) 347-356

49. Anthony Heath and Valentina Di Stasio, ‘Racial discrimination in Britain, 1969-2017: meta-analysis of field experiments on racial discrimination in the British labour market’, *British Journal of Sociology* 70:5 (2019), pp. 1787-1788.

50. Peter Riach and Judith Rich, ‘Field Experiments of Discrimination in the Market Place’, *The Economic Journal*, 112 (2002) 480-518, p. 483.

51. Peter Riach and Judith Rich, ‘An Experimental Investigation of Sexual Discrimination in Hiring in the English Labour Market’, *B. E. Journal of Economic Analysis and Policy* 5:2 (2006) 1-22, p. 8.

52. This finding is replicated by Alison Booth and Andrew Leigh, ‘Do Employers Discriminate by Gender? A Field-Experiment in Female-Dominated Occupations’, *IZA Discussion Paper* No. 4690, January 2010. For wider survey, see Ghazala Azmat and Barbara Petrongolo, ‘Gender and the Labor Market: What Have We Learned from Field and Lab Experiments?’, *Labour Economics* 30 (2014) 32-40.

53. An accessible introduction to the field is given by Judith Rice, ‘Measuring Discrimination: What Do Field Experiments of Markets Tell Us?’, in *Making Equality Count*, ed. Bond and Russell, Dublin Liffey Press, 2010.

It is likely to be no accident that this work has begun as political polarisation has intensified, in particular in the US.⁵⁴ Unsurprisingly, studies connect political polarisation with political discrimination. For instance, in 2014, Shanto Iyengar and Sean Westwood found that affective polarisation—hostile feelings towards opposing political partisans—was considerably stronger in the US than hostile feelings based on race. Further, affective polarisation affects discriminatory behaviours to a degree that markedly exceeds that based on race.⁵⁵ We are not aware of any studies which seek to compare, in the UK, the relative propensity to engage in political discrimination with other forms of discrimination, such as race- and sex-based.

While political discrimination could occur in any sector of society, it is of particular interest within academia, where political viewpoint may directly affect or emerge out of the content of someone's work. Accordingly, some studies focus on political discrimination within academia specifically. Key contributions to this literature include work by George Yancey,⁵⁶ Yoel Inbar and Joris Lammers,⁵⁷ Nathan Honeycutt and Laura Freberg,⁵⁸ and Uwe Peters and co-authors.⁵⁹

We focus on the latter three contributions. Each of these used an opt-in survey to gauge the attitudes and opinions of a given sample. Inbar and Lammers ($N = 508$ observations) sought to evaluate the attitudes of psychologists in the US, and focused on the attitudes of and towards political conservatives. Honeycutt and Freberg extended that study, using a sample of academics in California across disciplines, and 'mirroring' these questions for political liberals in addition to conservatives ($N = 618$). Peters et al. use an international sample of philosophers, and used a more variegated set of political orientations or viewpoints, rather than a simple left-right division ($N = 794$).

These studies confirmed, for their respective samples, the same central finding as that of Sam Abrams noted above, namely that the professoriate has a strong left-liberal orientation, and few political conservatives, relative to the general population. The studies by Inbar and Lammers, and Honeycutt and Freberg, sought responses on a liberal-conservative scale on social, economic, and foreign policy issues, as well as an 'overall' scale. In Inbar and Lammers' data, the proportions of those identifying as conservative were higher for economic and foreign policy issues (at 18% and 10% respectively) than social questions, where over 90% identified as liberal and only 4% identifying as conservative. Moreover, only 6% of respondents identified as conservative overall, giving a 14:1 ratio of liberals to conservatives.⁶⁰

The Honeycutt and Freberg study broadly confirmed the findings from Inbar and Lammers, although the figures were not as dramatic for the multi-disciplinary sample as for the sample of social psychologists. Higher proportions of respondents identified as conservative on economic and foreign policy issues (27% and 6% respectively) as compared to social issues (11.5%). 'Overall' responses gave a roughly 5:1 ratio of liberals to conservatives. In the Peters study, with a sample of philosophers, 75% of

54. The increase in political polarization over four decades is charted by Shanto Iyengar and Masha Krupenkin, 'The Strengthening of Partisan Affect', *Political Psychology* 39 (2018) 201-218.

55. Shanto Iyengar and Sean J. Westwood, 'Fear and Loathing Across Party Lines: New Evidence on Group Polarization', *American Journal of Political Science* 59:3 (2015) 690-707, p. 696.

56. George Yancey, *Compromising Scholarship: Religious and Political Bias in American Higher Education*. Baylor University Press, 2011

57. Yoel Inbar and Joris Lammers, 'Political Diversity in Social and Personality Psychology', *Perspectives on Psychological Science* 7:5 (2012) 496-503

58. Nathan Honeycutt and Laura Freberg, 'The Liberal and Conservative Experience Across Academic Disciplines', *Social Psychological and Personality Science* 8:2 (2017) 115-123

59. Uwe Peters, Nathan Honeycutt, Andreas De Block and Lee Jussim, 'Ideological diversity, hostility, and discrimination in philosophy', *Philosophical Psychology* 33:4 (2020) 511-548

60. Inbar and Lammers, above n 57, pp. 497, 500-501.

those who responded leaned left, 11% were moderate, and 14% leaned right.

On the willingness to discriminate politically, the findings were striking. In Inbar and Lammers' study, over 1 in 3 of those who identified as liberal would discriminate against conservatives in hiring decisions, while 1 in 4 would discriminate against them in reviewing their grant applications.⁶¹ Honeycutt and Freberg replicated this result nearly exactly, and showed that the willingness to discriminate was symmetrical on both political sides. In their sample, 33% of liberals were willing to discriminate against conservatives in hiring decisions (answers varying from 'somewhat' to very much'), which was equally matched by conservatives' willingness to discriminate against liberals, at 32%.⁶² This study also found that the more ideologically committed a respondent was, the more likely they were to be willing to discriminate.⁶³ From the Peters study, the highest levels of willingness to discriminate were again reported for hiring decisions. For a right-leaning prospective hire, over 55% of left-leaning philosophers reported being willing to discriminate 'occasionally' to 'all the time'. For a left-leaning hire, the equivalent proportion of right-leaning philosophers willing to discriminate was over 45%.⁶⁴

These studies have been vital for highlighting dynamics within universities that may affect the level of viewpoint diversity as expressed in academic research and teaching.

For present purposes, however, they suffer from three limitations. First, the samples were drawn from the US, and in one case from academics internationally. A sample of UK-based academics is clearly needed in order to evaluate whether there is a need for policy or legal reform in the UK. Second, each of these studies depended on participants opting-in to take the survey. This creates the risk of a self-selection bias, in which those with strong feelings opt-in while moderate voices fail to register. Third, each of these surveys relied on participants' willingness to report their attitudes in a way that was susceptible to social desirability bias.

A further piece of work which overcomes the first limitation, and touches on political discrimination, is a survey conducted in 2017 by Terrence Karran and Lucy Mallinson.⁶⁵ In a study on academic freedom, Karran and Mallinson surveyed 2340 academic members of the University and College Union (UCU), the main union for academic staff in Britain. The threats to academic freedom that they were principally concerned by were those arising from processes of academic administration, such as managerial favouritism and imperatives flowing from research and teaching assessment exercises. Qualitative comments gave insight into a series of 'invisible' threats to academic freedom which are rarely identified. The most widespread of these was psychological bullying from colleagues, reported by 27 percent of respondents.

Results also indicated a risk of disciplinary action for academic speech from department heads or managers. Such individuals, often senior staff in rotating appointed positions at department or School/Faculty level, hold considerable power over individual careers. Survey respondents

61. *Ibid.*, pp. 500-501

62. Honeycutt and Freberg, above n 58 pp. 118-119

63. *Ibid.*, p. 119.

64. Peters et al. above n 59, Figure 5

65. Terrence Karran and Lucy Mallinson, 'Academic Freedom in the UK: Legal and Normative Protection in Comparative Context. Report for the University and College Union, 7 May 2017

mentioned cases of threatened or actual dismissal from employment, increasing an academic's teaching or administrative load, removing them from a cherished teaching or administrative position, berating them during performance reviews and withdrawing grant funding. A small but non-trivial proportion of respondents reported that they had been subjected to disciplinary action, or been threatened with it, for academic speech in the context of teaching (5.7%), research publication (2.8%), in a non-public forum within their institution, such as a governance board (8.4%) and in a public forum (6.8%).⁶⁶

Research questions

The central question we seek to answer is:

To what extent are UK-based academics free to pursue research or public engagement which may have a political interpretation, without social or professional penalty within the sector?

To answer this overarching question, we divide it into some subordinate components. One concerns chilling effects. Do academics feel comfortable expressing their view on politically-salient or controversial issues, and have they decided not to express their views in research or teaching because of the risk of penalties? Reported chilling effects do not directly give evidence of any problem, however. Someone's fear of penalties may be irrational, and the correct response may be to get a thicker skin.

To address this, we then consider a suite of attitudes which affect the social and professional context in which academics work. One concern is the climate of the workplace. Are academics comfortable interacting in an informal context with colleagues who hold politically-salient or controversial views? A related, key aspect to the professional context in which academics work is the degree to which the perceived political import of their work may affect how their career goes. To assess such political discrimination, we focus on attitudes towards grant applications, papers submitted for publication, and applications for promotion in which a political orientation is salient.

Finally, we consider how academics would respond to colleagues who work on some highly sensitive issues—our examples are multiculturalism, empire, family, and diversity in organisations—and who defend unpopular conclusions. Controversial work on these issues and similar can prompt campaigns for someone to be dismissed or otherwise suffer a professional cost, such as having support for a research project removed. We investigate how widespread the support for such dismissal campaigns may be, and what the factors are that affect who would support them.

Although it is not a research question that we set out to answer, our study also provides new data on the distribution of political preferences among UK academics. This provides better evidence on longitudinal trends, as well as providing a basis for comparison with the general population and those who are tertiary-educated.

66. *Ibid.*, pp. 47-48

Methods

The main source for this study is a survey of UK academics. The survey was administered on 27 March 2020 by YouGov, whose exceptionally large panel of respondents enabled us to achieve a large sample of university professors and lecturers. See footnote for methods and cross-tabulated results.⁶⁷

This study differs from the methods employed in those discussed under political discrimination above, towards overcoming the limitations identified above. It does so in the following ways.

First, administering the survey via YouGov results in better representativeness. The American studies identified above collected a convenience sample by emailing academics directly. With a response rate of no more than 25%, this introduces the possibility of self-selection (Though having a large number of respondents, Karran and Mallinson's study had a response rate of 2.5%). In contrast, YouGov's UK panel of hundreds of thousands consists of participants who complete a range of different types of surveys for remuneration, a little over a thousand of whom happen to be current or retired academics. They are thus less likely to be selectively attracted toward filling out a particular survey, mitigating the risk of bias. A majority of between 61% and 76% of YouGov's panel of professors and lecturers responded, resulting in a sample that is more likely to represent the actual population of academics than other studies (UK or US) to date.⁶⁸

Second, our sample is of UK-based academics, across disciplines. This is of clear importance in assessing whether legal or other policy changes are required in the UK.

Third, in order to mitigate the effects of social desirability bias, we use a list experiment. This is an innovation in work on political discrimination, and gives a more accurate indication of how prevalent the willingness to discriminate on political grounds is. We discuss list experiments below.

In reporting the results, below, we focus on the headline findings. Annex 1 provides more detailed statistical analysis to address questions of whether findings are statistically significant net of confounding variables.

Sample

The sample consists of 820 respondents (484 currently employed and 336 retired; average age of current academics is 49 and of those retired is 70). Given the approximately 217,000 academic staff working in British universities in 2018-19, our sample is proportionately many times larger than a conventional opinion survey (typically a sample of 1,500 across a national population of 60m). As such our data has a good claim to being representative of the wider academic population even though, as with all opinion surveys, there is a margin of error in the results.

Of these participants, 57% were male and 43% female; and 5% were from a Black, Asian, or minority ethnic background. These data place our figures very close to the sector average on gender, but with a substantial undercount of minorities and younger academics. Where appropriate,

67. YouGov's sampling and weighting methodology can be found at: <https://yougov.co.uk/about/panel-methodology/>. The question wording and cross-tabulated results are at: https://docs.cdn.yougov.com/4lwd0ybm5c/BBResults_200423_Academics.pdf

Note that figures in results vary slightly due to weights. Due to error in small subsamples when using weights, we present raw data in the report.

68. It is impossible to calculate a specific response rate for any given survey because the company uses a system called "active sampling". This means that respondents do not get invited to take part in a specific survey, and get allocated only to the survey that needs them most when they enter the survey system.

we use YouGov data weights based on official Higher Education Statistics Agency (HESA) data by ethnicity, gender and age.⁶⁹

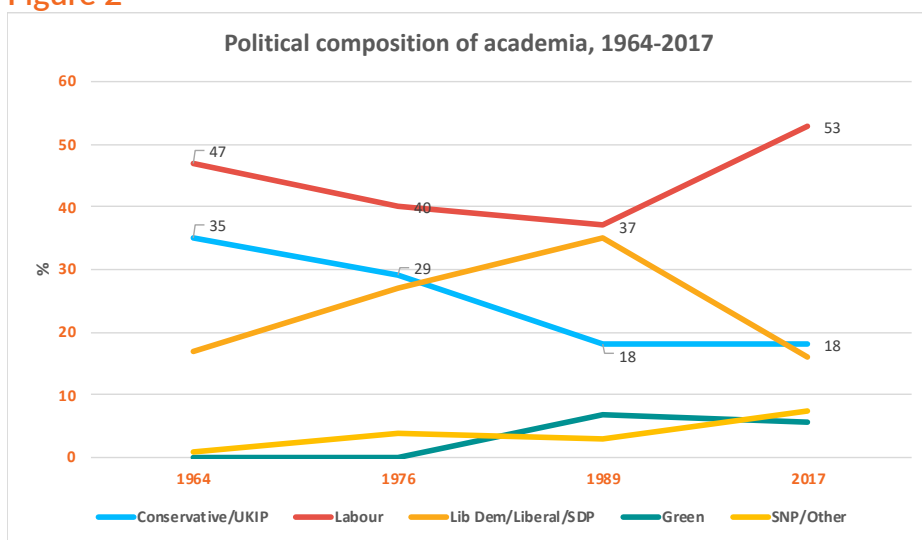
A little under half of the sample (47%) teach in the social sciences, humanities, arts, psychology or in education (SSH fields). This share is approximately similar for current and retired academics. The remainder are scientists, economists, or teach medicine, business, engineering or in applied and vocational (STEM) fields. In the analysis, we focus more on the social sciences and humanities. This is because political considerations are a larger aspect of these fields’ conceptual foundation, and are thus assumed to exert greater influence over the culture and practices of these disciplines.

Political preferences of UK academics

We began by asking respondents to identify their political ideology on a 5-pt left-right scale (‘very left’, ‘fairly left’, ‘centrist’, ‘fairly right’, ‘very right’). Although Honeycutt and Freberg used different terms (‘liberal’, ‘moderate’, ‘conservative’), this allows a reasonably close comparison between the distribution of political preferences among academics in the different samples—both of which are multidisciplinary, and defined geographically. In our sample, 53% identify as left, 35% as centrist, and 9% as right. This suggests, while still left-leaning, the professoriate in the UK is not as left-leaning as in California, where the figures were 71%, 15% and 14% respectively.

The sample also provides data on the political parties that participants voted for in the 2017 and 2019 General Elections, as well as their vote in the 2016 EU Referendum. By combining it with prior data, the GE voting information allows a direct comparison as to how political preferences among UK academics have changed over time.

Figure 2

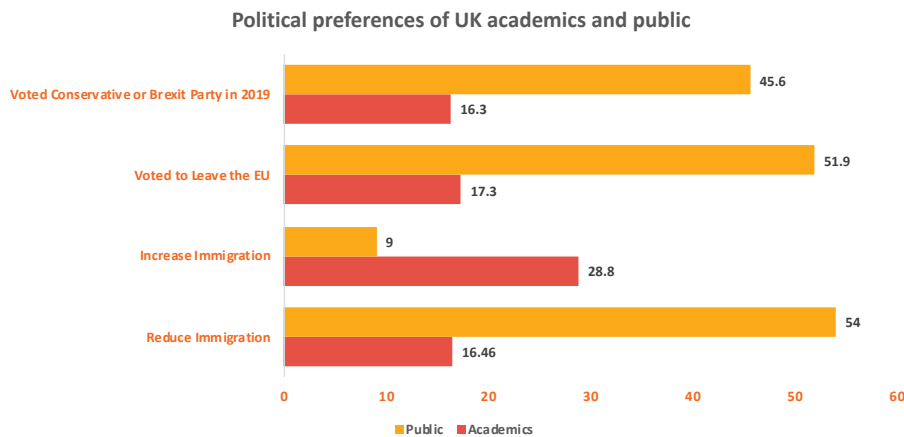


Additional sources. Halsey, *The Decline of Donnish Dominion* (1992); N=819 for 2017.

69. <https://www.hesa.ac.uk/data-and-analysis/sb256/figure-6>

In addition, the data allows a comparison of political preferences of current UK academics with those of the general population. In figure 3, we focus on votes for parties on the right, and two ‘wedge’ issues: the 2016 EU Referendum, and attitudes towards immigration.

Figure 3



Additional sources. National election results; Ipsos Mori survey on immigration, 22 Nov, 2019. N=820 for red bars (sample includes ‘don’t knows’).

Much of the difference between academics’ political preferences and those of the general population can be explained by education level. In other words, these differences are likely not due to factors specific to academia, but reflect the fact that academia is full of highly educated people, as is true of other sectors as well. For instance, for the 2016 EU Referendum, only 17% of those with degrees in the media/marketing/advertising/PR and sales sector voted Leave while 70% voted Remain—similar to the 14:78 ratio among current academics. Figures for degree-holders in accountancy (23:68), financial services (23:63), and hospitality and leisure (24:57) are also not far off that of academia. Having said this, academia is more distinctive in its left-right orientation, with, for example, the proportion identifying as right-wing being 2-3 times higher (18-37%, depending on category) among technical college and teaching professionals than among academics (9%) (See Figures 3A and 3B in Annex 1 for details). Yet much of this is due to the more advanced education level of academics, as PhD-holding teachers differ considerably less from academics.

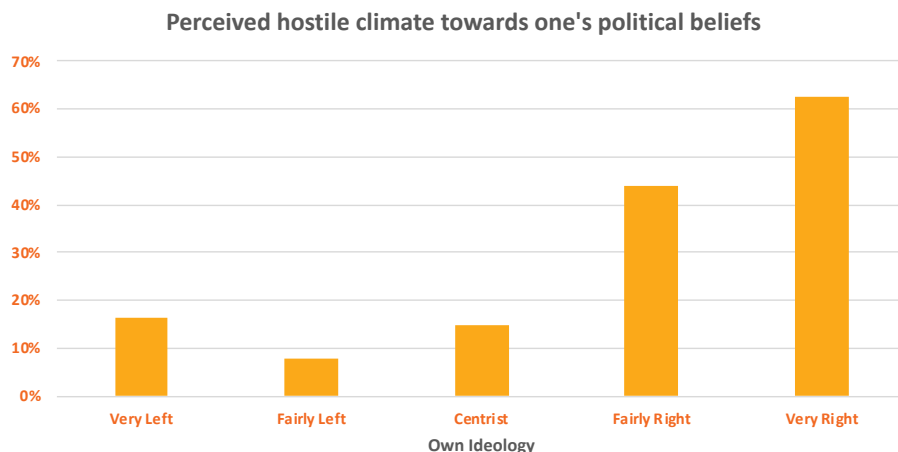
There is, therefore, a benign possible explanation – that highly-educated people self-select into academic jobs - for much of why academia ‘leans left’ when compared to the general population.

Chilling effects

We turn to consider various indicators as to whether individual academics feel comfortable expressing their political beliefs in the context of their work. We asked whether respondents feel ‘that there is a hostile climate

towards people with your political beliefs in your department’. Results are displayed in figure 4, by respondents’ own political ideology, indicating a clear gradient. For models which control for confounding factors and assess statistical significance, see Annex 1, table 4A and figure 4A.

Figure 4



Note: Includes retired staff. N=799 (8 very right, 66 fairly right, 291 centre, 349 fairly left, 85 very left).

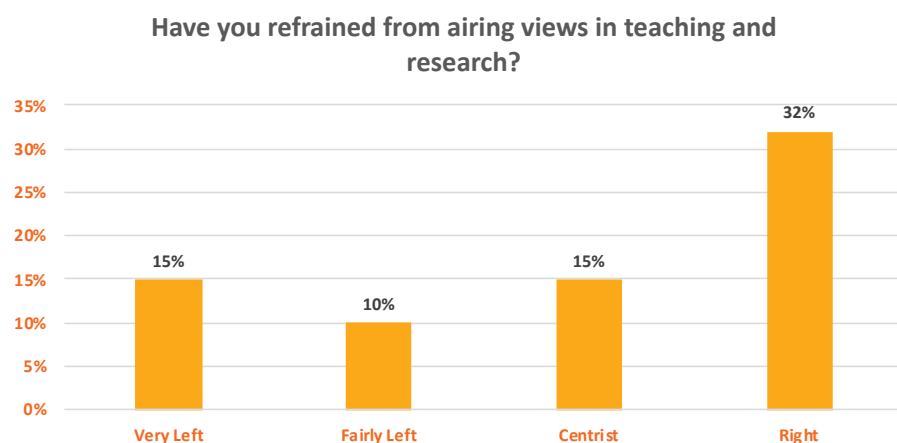
In a statistical model predicting whether a respondent perceives a hostile climate, there is a high standard error for 'very right' due to its small sample size, but it is statistically significant at the $p < .01$ level (with centrist as reference category).

Given this gradient, it is unsurprising that, in a closely related question, only 22% of those on the right agreed that they ‘identify with the culture of their department’, rising to 59% of those who identified as ‘fairly left’ and 54% of those who identified as ‘very left’. Indeed, among those on the right, the proportion of those not identifying with the culture of their department was approximately double (42%) that which did.

In addition to perceptions of the climate of one’s department, we asked whether respondents had ‘refrained from airing views in teaching or academic discussions, or avoided publishing research, because of possible consequences to your career from doing so. Please describe your experiences (if any), and how frequently you have faced them.’

Before reporting the qualitative feedback received, we coded responses as 1, where people had refrained from airing views for reasons of politics or ideology, or 0, where they reported never having to refrain or complaints had to do with content which was not political or related (e.g. interpersonal or administrative) in content. Results for the sample in figure 5 show that self-censorship is twice as high for those on the right as for other political affiliations.

Figure 5



Note: Includes retired staff. N=799 (74 right, 291 centre, 349 fairly left, 85 very left).

These are overall results, including retired as well as active academics across all disciplines, but certain parts of the academy appear to exhibit more self-censorship. For right-wing academics who currently teach; or who may be current or retired and taught in SSH subjects, over 40% said they self-censored. Among right-leaning staff currently teaching in SSH subjects, the share who report having self-censored reaches 50%. Among current SSH academics on the left, those who identify as ‘very left’ self-censor more (26%) than those who are centrist (21%) or ‘fairly left’ (12%).⁷⁰ For models which control for confounding factors and assess the statistical significance of ideology, see Annex 1, tables 5A and 5B, and corresponding figures 5A and 5B.

What is the reason for this self-censorship? A range of comments underscore the fact that social pressure from colleagues is the primary deterrent to expressing views.

‘Totally, as I am not massively left-wing, and most of my colleagues were. In the interests of harmony and a comfortable working environment, I used to just keep my views to myself or make grunting noncommittal noises during discussions which turned political. This would happen in staff meetings, or often during subject seminars for lecturers. It went on for years.’ – Centrist Remainer.

‘Yes. Avoided expressing views due to bullying in workplace’ – Centrist, immigration restrictionist.

‘Yes. I have to be careful about expressing my views, because the bigoted politically correct, woke, thought police would object to my conservative (with a small ‘c’) views.’ – Right. Leaver

‘I voted leave but was scared to reveal this as my colleagues were so aggressive in their attitude’ – Tory Leaver

70. For current SSH academics, N=38 very left, 105 fairly left, 70 centrist, 16 right.

‘While enmity toward even centrists, let alone conservatives, is not overt, the atmosphere is such that homogeneity of opinion and sociopolitical views is implied and expected. For all the protestations of diversity and inclusion from the “woke” squad, the one thing they most singularly do not want is diversity of opinion.’ – Tory Remainer

‘Yes, I tend to remain quiet. Letting my leave views out in the open would definitely harm my reputation in the uni’ – Tory Leaver.

‘Yes. I am a liberal conservative and the vast vast majority of my colleagues at university are very Left wing. I support individual responsibility, thrift, independence, hard work, low taxation and small government. My colleagues opposed all of these. I have long been a euro sceptic and support leave- there were some colleagues who shared this view but were very loath to say so publicly. The hypocrisy of the champagne socialist colleagues was breathtaking. As was their open hostility to anyone who held views different to their own.’ – Labour Leave voter.

‘Yes. No specific instances but generally I ‘guard my tongue’ except with people I fully trust.’ – Tory Leave voter

‘1) I hinted that Leave was not so bad as it seems to 2 colleagues who then accused me of being a leaver and were very angry and abusive. 2) I told someone I had voted Leave and they called me a racist’ – Centrist. Leaver.

‘Yes, refrained from talking about leave vote because the atmosphere is that this is an inappropriate view to hold. This being the case since the referendum.’ – Tory. Leaver. Centrist.

‘As a Conservative voter I would not share my political views within the workplace. I am certain I would have been regarded with hostility from a number of fellow employees. I have seen this happen with other employees. The ability to discuss and explore political beliefs seemed to have disappeared.’ – Centrist Tory. Leaver.

‘Been told leavers are fascists’ – Centrist. Leaver.

‘I have had research ideas that I have not pursued as I think they would have negatively impacted my career’ – Tory. Centrist. Leaver.

‘Certain areas are off limits in academia and you risk your job and reputation if you go against the herd. The days of academic freedom are long gone and it is suicide to express views that differ from those of the liberal thought police.’ – Centrist. Remainer.

‘I have ambivalent feelings about the Hijab, however, I would not voice them in my department for fear of being considered Islamophobic, rather than it being an issue of patriarchy, which should be fought against.’ – Centrist, Labour, Remainer.

‘I don’t think my views on trans issues are entirely in line with the current orthodoxy in academia.’ – Centrist, Labour, Remainer.

‘Yes. It’s hard to put a number on it in relation to frequency but there is definitely a strong view within social work academia that some views (left-wing) are acceptable and some views (right-wing) are not. Social work as a discipline sees itself I think not really as an academy in which debate and free-thought is the aim but as an advocacy group for marginalised groups (which is a laudable aim, don’t get me wrong – but it’s very different from traditional views of academia in my opinion).’ – Leftist, Labour, Remainer.

‘Agreement is often assumed by ardent Remainers, and I usually avoid expressing my views unless asked directly. Agreement is also usually assumed by management for neoliberal employment policies (incl. redundancies): I spoke publicly against these and was ‘frozen out’ as a result (i.e. moved to another, non-leadership role). Agreement is also often assumed with various fashionable ‘right-on’ ideas about, e.g., sustainability, decolonising the curriculum, etc. I generally avoid such discussions. I am aware of a colleague who has been complained about (anonymously) for her so-called ‘TERF’ views -- I support her fully. She only discovered my similar views because I do not self-censor what I publish (though I do tend to self-censor in face-to-face interactions at work unless asked a direct question about my views).’ – Leftist, Labour, Remainer.

While there were fewer concerns on the left, a number of complaints came from the centre-left about the far left. Sensitivities around the transgender rights debate was the most common reason for self-censorship among those on the left, but there were other sources of perceived restriction too. These include one comment expressing fear of running afoul of the Prevent duty to report radicalism, and one on the new activity of Turning Point UK in monitoring left-wing lecturers.

‘We recently had an incident where a student expressed his concerns about the lack of right-wing views expressed by lecturers and this person also criticised our department as being left-wing. I am not afraid of what the university might do but rather I might find myself the subject of a report to Turning Point, or outed on twitter for what I’m teaching.’ – Labour Remainer

‘Not at the moment, but I am concerned about Turning Point UK.’ – Labour Remainer

‘It is generally taken that lecturers do not air their personal political views in influencing students. I have had some lively discussions with students over this issue particularly in relation to health care. I have had to temper my own views in the University setting. When undertaking research using IPA I had to ask the university not to make my work readily available to students as I had to set out my preconceived ideas and biases which included my political beliefs. In an increasing litigious era, lecturers/researchers need more protection as students seem to use any angle in order to bolster erroneous claims.’ – Labour Remainer

‘Prevent makes me very uncomfortable, particularly when discussing urban uprisings and armed resistance during one of my modules.’ – Labour Remainer

‘No but as a supporter of rights for Palestinians and an arranger of placements in the West Bank for students over the summer vacation (linked with their course/career choices) am mindful that it causes considerable angst amongst some others.’ – Labour Remainer

More generally, while some left-wing academics felt they could not express their views in class due to student sensibilities or pressure to remain neutral, others felt it was important to let students know where they stood in order to have a good discussion.

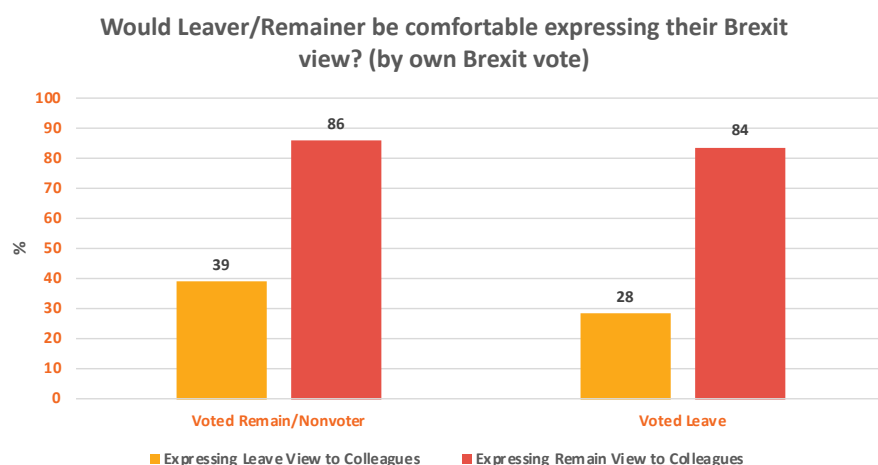
‘Yes, tend to be wary of expressing personal politics as management very against this. Would love to discuss it more as seems deeply patronising not to – I teach adults.’ – Labour Remainer

I have had issues with reviewers in journals because of my use of language referring to EU’s border policies (e.g. they were not comfortable with my attempts to use variations of the term ‘fascism’). – Labour Remainer

‘I try to avoid making any political statements when teaching.’ – Labour Remainer

As well as the above qualitative reports, we repeated a question from earlier work on comfort expressing views around Brexit. In our prior report, we found that fewer than 4 in 10 Leave-supporting students would feel comfortable expressing their view on Brexit in class, compared to nearly 9 in 10 Remain-supporting students. Repeating this question for faculty found still greater chill effects, with just 3 in 10 Leave-supporting faculty being comfortable expressing their view. Figure 6 shows that 86% of academics who voted Remain or did not vote say a Remainer would be comfortable expressing a Remain view to colleagues. But just 39% of Remain and non-voting faculty, and, crucially, a mere 28% of Leave-voting faculty, felt that a Leaver would feel comfortable doing so.

Figure 6



Active academics only (N=67 Leave, 417 Remain/Non-voter).

There is important variation in reported comfort in expressing one's view on Brexit, according to whether the respondent is retired, and whether they are in STEM or the social sciences and humanities (SSH). Figure 5A and table 5A in Annex 1 shows how comfort varies between SSH and STEM staff, and by Brexit vote, with status and demographic controls. Among currently employed social science and humanities faculty—that is, including those academics whose research and teaching might plausibly bear on the policy question—just 18% of Leave-supporters indicate that a Leaver would feel comfortable expressing their view. This figure does not reach statistical significance, given the small size of the sample (N = 22). Nonetheless, both SSH and Leave-voting are independent, significant effects on not being comfortable expressing a Leave view. A larger sample would be expected to confirm the point that Leave-voters, within SSH, are particularly likely not to feel comfortable expressing that view.

Political discrimination

The above data indicates that a non-trivial proportion of academics feel that their departments are a hostile climate for people with their political viewpoint; they engage in self-censorship; and they report not being comfortable expressing a mainstream political viewpoint, namely 'Leave'. These chill effects are concentrated among those who identify as on the political right, and who work in the social sciences and humanities.

Are these chilling effects mere perception, however, or are they grounded in reality? An initial indication that such fears are reasonable lies with the fact that only a minority of Remain-voting academics thought a Leaver would feel comfortable expressing their views to colleagues. If there is evidence for discrimination, or even a willingness to expel a member of staff for their views, then it is rational for those who may be targeted to conceal their beliefs in teaching, research and collegiate conversation.

Accordingly, a series of questions sought to elicit academics' willingness to discriminate on political grounds. We begin with a seemingly 'soft' form of discrimination: social avoidance, specifically the willingness to sit with someone of an opposing view at lunch, which performs an important social role in cementing collegiality and anchoring a pleasant work environment. Note that we are not asking whether people would prefer to sit next to those who share their views, which is uncontroversial even if it may create modest incentives for ambitious people to conceal their views. Instead, we probe whether people would avoid others on the basis of their beliefs, which would seem to create a more powerful 'chilling' and self-censoring effect.

While many of our questions examine the Brexit and right-left political axes, qualitative comments above revealed an important reservoir of anxiety among gender-critical leftist scholars. Is this warranted? One way to approach the question is to ask how comfortable an academic would be sitting down to lunch with someone who endorses a gender-critical feminist approach. Collegiality is an important part of academic wellness, and social ostracism represents an example of Mill's 'despotism of custom' in action. While 86% of those surveyed would be comfortable sitting next to a Remain supporter, this falls to 54% for sitting next to a Leave supporter but reaches just 37% for lunching with someone who opposes admitting trans-women to women's refuge centres. Even a majority of Leave supporters would not be comfortable doing so. Gender-critical scholars may thereby face more discrimination than conservatives and Leavers. Further analysis of attitudes to social interaction with gender-critical scholars appears in table 6B and figure 6B in Annex 1.

List experiment—discriminating against Leavers in job appointments

We now move to a more conventional form of discrimination: bias in hiring. In order to circumvent people's tendency to conceal their true motives due to social pressure not to admit to discrimination, we use a survey technique known as a list experiment. List experiments are designed to counteract social desirability bias, and operate as follows.⁷¹

Consider table 1, below. Half the sample receive list 1 and half receive list 2. List 1 contains three statements and list 2 contains the same three plus an additional statement, which reports political discrimination. Subjects are asked how many of the statements they agree with. These statements consist of a number of similarly contentious questions, and permit those of different ideological views to find something to agree with. Because people are not questioned directly about any one of the items, it is not possible to know which individual would discriminate. However, it is possible to calculate an average level of discrimination across the sample. This anonymity is what allows people to answer questions free of pressure to adhere to social norms.

Respondents are allocated randomly into one of the two treatment groups in table 1. If there is no discrimination, the average number of statements people agree with should be identical in both lists. In this

71. For more on list experiments, see, for instance, E Gonzalez-Ocantos et al, 'Vote Buying and Social Desirability Bias: Experimental Evidence from Nicaragua', *American Journal of Political Science* 56:1 (2012) 202-217.

case, assume that people agree with two out of the three statements in the identical lists. List 1 therefore has an average of 2. So, if list 2 has an average score of 2.5, this means that half of survey respondents agreed with statement four and are thus willing to discriminate. The difference between the two lists, .5, would represent the average discrimination level in the sample, declared under conditions of anonymity.

In addition, respondents in List 1 were also asked the same question directly, but in a way that could be individually identifiable. (All the data is anonymous, but in principle, individual responses could be identified.) The difference between this and the revealed discrimination in list 2 gives an indication as to how much people are concealing their true willingness to discriminate.

The statement we used to test willingness to engage in political discrimination was, ‘If a known Leave supporter applied for a job at my workplace, I would try to avoid hiring them.’

Table 1. List Experiment Design

How many of the following statements do you agree with?	
List 1	List 2
<i>Please tell us the number of these statements you agree with:</i>	<i>Please tell us the number of these statements you agree with:</i>
Statement 1 (no, yes)	Statement 1 (no, yes)
Statement 2 (no, yes)	Statement 2 (no, yes)
Statement 3 (no, yes)	Statement 3 (no, yes)
	‘If a known Leave supporter applied for a job at my workplace, I would try to avoid hiring them’ (no, yes)
Total: x	Total= x + discrimination
<i>Direct question:</i>	
‘If a known Leave supporter applied for a job at my workplace, I would try to avoid hiring them’ (Agree, disagree, don’t know)	

A consequence of the list experiment is that the questions on discrimination employed in the survey are more direct. Rather than asking whether people would discriminate on a 7-point scale from ‘1-Not at all’ through ‘4-Somewhat’ to ‘7-Very Much’, ours is phrased as a simple ‘Yes/No/Don’t Know’.

In responding to the direct statement about political discrimination against Leave voters, only 10% agreed, 76% disagreed, and 14% replied

that they did not know. Among Remain and Left voters, the share willing to discriminate inched up slightly to 12%. While these figures are some cause for concern, they are considerably lower than the numbers obtained in the two previous US-based studies. It is possible that this is largely due to differences in question wording between the 7-point US scales and our 3-point scales. Some may also be due to the nature of our sample, which is more representative.

However, under conditions where individual responses could not be identified, 32% of those in the list 2 treatment group agreed that they would try to avoid hiring a Leave supporter (see table 7A, and figures 7A and 7B in Annex 1 for details). When compared with the 10% of those in list one who, when directly asked, agreed with the statement, this implies that that the actual willingness to discriminate, as revealed by the list experiment, is likely to be three times higher than the stated willingness to discriminate. Accordingly, we apply a multiplier of three across subsequent questions on direct discrimination, where question response categories are directly comparable.

The most significant predictor of willingness to discriminate against a Leave supporter was that a respondent should identify as an activist (see figure 7C in Annex 1). On a five-point scale, 23% of our sample agreed with the statement ‘I would consider myself an activist’, and of this group, it was revealed that 58% of self-described activist scholars would discriminate against a Leaver.

Political discrimination in job appointments—‘hard’ and ‘soft’

The list experiment tested for political discrimination against Leavers only. This invites the question as to whether the willingness to discriminate is evenly distributed across the political spectrum, as Honeycutt and Freberg found, or whether this problem is accentuated in particular parts of the political spectrum.

To test this, we asked a series of questions on both ‘hard’ and ‘soft’ discrimination. The former is addressed through the question, ‘In choosing a job candidate, I would be inclined to support a known centrist over a known leftist with a slightly stronger track record.’ The term ‘leftist’ was then replaced with ‘conservative’ to test for anti-conservative bias. (This is ‘hard’ discrimination because it involves conferring a benefit against the verdict of a merit-based criterion.)

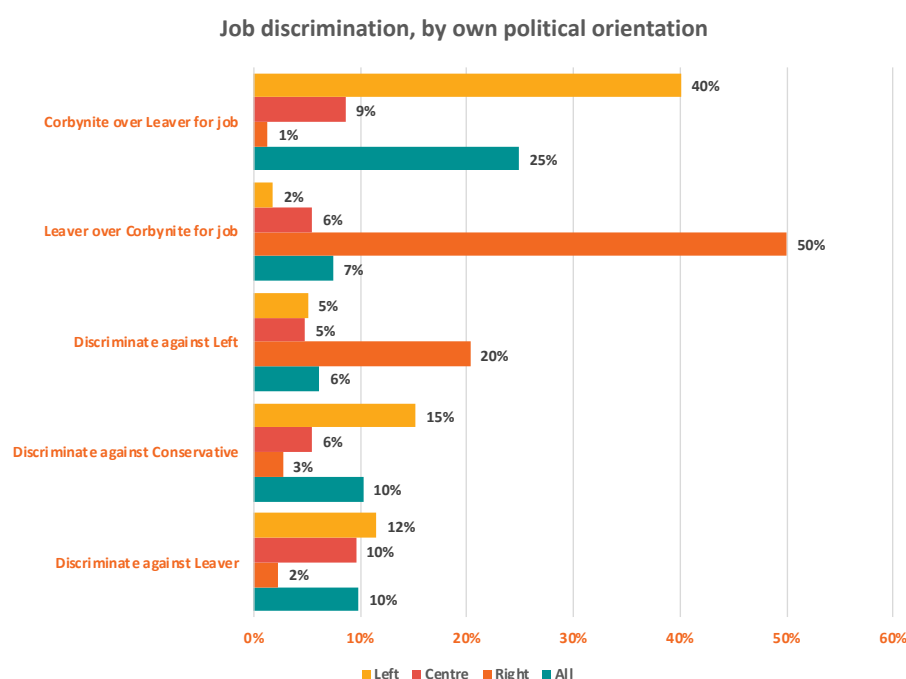
Soft discrimination—in which political affiliation is used as a tie-breaker—is measured by a question which asked: ‘In choosing between two equally qualified job candidates, one a Corbyn-supporter and another a Leave supporter, if you had to pick between them, who would you be inclined to choose?’ Respondents could pick one of the two, or state ‘no preference’ or ‘don’t know’—the last the modal choice. Clearly many on the left do not (or did not) support Corbyn. Support for Corbyn may be viewed as similar to advocating Leave, in that it indicates a bold political position that often evokes strong opinions.

The results are shown in figure 7. On measures of ‘soft’ discrimination,

the emphatic finding is the willingness of those on the right to prefer a Leaver (at 50%), and those on the left to prefer a Corbyn supporter (40%). Nonetheless, the majority of academics said they would have no preference and would still not favour one of the candidates.

On measures of ‘hard’ discrimination, the willingness to discriminate is lower, but is nonetheless present. Those on the right are more willing to discriminate against those on the left than the reverse (20% as against 15%).

Figure 7



Note: Includes retired staff. N=799 (74 Right, 291 Centre, 434 Left).

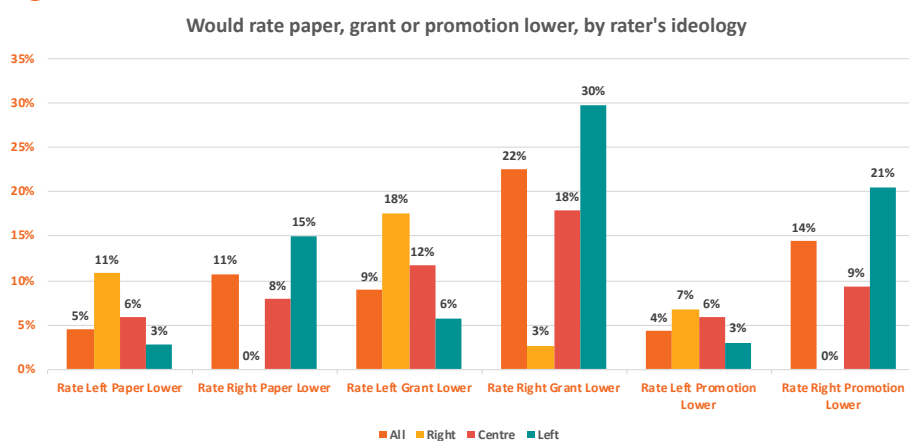
These results support the finding from Honeycutt and Freberg, and from Peters et. al, namely that the willingness to discriminate on political grounds in appointments is present across the political spectrum.

These results also support the finding that political discrimination in academic appointments is high. The list experiment revealed that the willingness to discriminate is approximately three times higher than is stated directly. The previous studies surveyed earlier found about half of academics on each side to be willing to discriminate against those on the other. Although it should be noted that some approximation is involved when applying the multiplier, our data supports the same finding.

Political discrimination in reviewing grant and promotion applications, and manuscripts

As in other studies, we find clear evidence of political discrimination in reviewing grants and promotion applications, and papers. As figure 8 illustrates, across the entire sample, grants adopting a right-wing perspective were discriminated against by 22% of academics, whereas those taking a left-wing stance faced bias from 9% of the professoriate. For journal articles, the figures are, respectively, 11% as compared to 5%, and for promotion applications, 14% as opposed to 4%. Figure 7 revealed that in employment, right-wing academics were more likely to discriminate against the left, but, as figure 8 shows, when it comes to rating papers, grants and promotion applications, the left appears to discriminate more against the right than the reverse.

Figure 8



Note: Includes retired staff. N=799 (74 Right, 291 Centre, 434 Left).

These figures seem, if not low, nonetheless tolerable. When the threefold multiplier is applied, however, this verdict changes significantly. Doing so would suggest, at the maximum, that there is a two-thirds likelihood that a reviewer of a right-leaning grant-application will rate it lower on grounds of political disagreement. This is unlikely, however, as there is a resilient majority of meritocratic scholars and these questions have 5 rather than 2 response categories; this illustrates that the multiplier is a basis for an approximation only. Nonetheless, the resulting figures are significant, with political discrimination against those on the right likely ranging from 30-50%, and those on the left from 12-25%. For details on estimation procedure, see note 3, figure 7A in Annex 1.

The forms of political discrimination discussed above are largely hidden, involving decisions that those discriminated against are likely not to learn about. Nonetheless, the results support the view that scholars who self-censor, in particular those on the right, are acting rationally when they do.

Dismissal campaigns

The most contentious aspect of discussion of academic freedom concerns the direct imposition of penalties on others, on the basis of political or related disagreement. The most dramatic instance of this are highly-public dismissal campaigns, in which other academics seek to have a colleague removed from post.

Some of the qualitative feedback received went beyond reports of self-censorship, to include statements alleging the threatening use of power to restrict academic activity.

‘Yes, indeed I have lost two senior jobs because I voted leave.’ – Tory Leaver.

‘I have been called in for a meeting with University marketing, my Head of Department, and an HR officer after I published an article in a peer-reviewed academic journal that examined an aspect of conservative intellectual history. They asked why I had not explicitly condemned conservatism as immoral within this article. I explained that I did not believe it was appropriate for me to use my position as a researcher to subjectively pass judgement on modern political ideology. I was told that there are some subjects we shouldn’t remain neutral on, and that we have a moral duty to condemn those on the political right. I was told that, if I insisted on remaining impartial within my research, I was not to further research this subject and warned I may face disciplinary hearings if I did.’ – Tory Leaver.

‘Given the derogatory views regularly expressed by my colleagues about Leave supporters, including the VC sending a University-wide email referring to us as ‘Little Englanders’, I have no doubt that if my views were known then it would negatively affect the attitude of my colleagues towards me significantly. It probably wouldn’t be career-ending, but it would reduce my influence, make it harder for me to deliver my teaching and leadership responsibilities, and quite likely force me into a position where I would have to move institutions.’ – Tory Leaver.

‘I have to be careful about where I place my research because of two different areas of my research (1) the Conservative Party, largely because I am not hostile to the party and (2) [REDACTED]. Colleagues have attempted to stop me teaching about [REDACTED].’ – Tory Remainder.

‘We had a professor who was very left wing and who reduced the promotional chances of anyone that was centrist or slightly right of centre.’ – Tory Remainder.

‘A previous line manager had a large photo of Jeremy Corbyn on his desk. When I failed to approve (I said nothing) he had me removed from the programme despite very positive feedback.’ – Centrist Remainder.

‘Yes - I avoid making political statements - have also had head of department voice strong disapproval for the sort of research I do and to use the ethics approval system to prevent certain research topics being studied.’ – Left Labour Leaver

These comments go beyond the chill effect of social opprobrium from colleagues, and identify the potential for abuse of power by those in the hierarchy within the university. (Some details have been redacted or amended to preserve anonymity.)

In addition, we sought to probe attitudes to some controversial putative research findings—the kind of work which has sometimes led to academics being the subject of a dismissal campaign. These areas are undoubtedly controversial, addressing questions of race, gender, and sexuality directly or indirectly. Each of the questions is based on a real controversy or research area, with the details suitably abstracted.

We do not endorse the hypothesised conclusions. The principle at stake is whether, if someone publishes work which runs counter to strongly-held moral or political views, they are at risk of a campaign for them to lose their job. If academic freedom means anything, it means that there must be protection for some work which fits that description. That being said, the academic freedom that would protect someone's ability to work on such areas should not be divorced from the proper expectation that their work is conducted responsibly. This includes not only the intellectual requirements associated with high quality and objective research, but also a social obligation to seek to forestall the misuse of any results. Our aim here is to test the extent to which scholars may disagree with the substance of someone's findings, but agree that those who publish controversial research findings should not be removed from their posts. The questions are as follows:

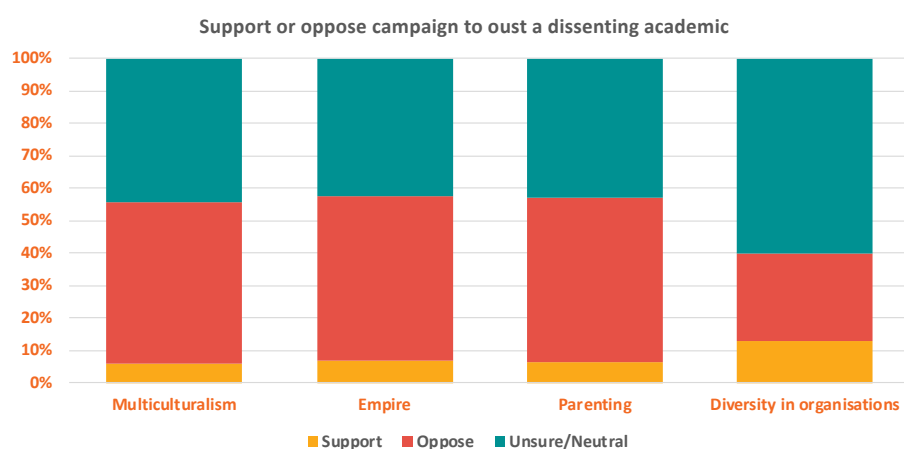
- If a staff member in your institution did research showing that greater ethnic diversity leads to increased societal tension and poorer social outcomes, would you support or oppose efforts by students/the administration to let the staff member know that they should find work elsewhere? [Support, oppose, neither support or oppose, don't know]
- If a staff member in your institution did research showing that the British empire did more good than harm, would you support or oppose efforts by students/the administration to let the staff member know that they should find work elsewhere? [Support, oppose, neither support or oppose, don't know]
- If a staff member in your institution did research showing that children do better when brought up by two biological parents than by single or adoptive parents, would you support or oppose efforts by students/the administration to let the staff member know that they should find work elsewhere? [Support, oppose, neither support or oppose, don't know]
- Please imagine a member of your organisation has done work showing that having a higher share of women and ethnic minorities in organisations correlates with reduced organisational performance. Several thousand professionals, some from your organisation, have signed an open letter calling for the staff member to be fired in order to protect disadvantaged groups

from a hostile learning environment. A small group have started a counter-petition defending the staff member on grounds of academic freedom. Would you: [a) Sign the open letter, which called for the staff member to be fired, b) Support the views expressed in the open letter, but choose not to sign it, c) Not support or sign either letter, d) Support the counter-petition, but choose not to sign it, e) Sign the counter-petition, f) Don't know.]

These issues are not just controversial, but concern hypothesised research findings that could appropriately give rise to moral concern and censure. Work which gave rise to such results could be motivated by malign and prejudiced attitudes, and be intellectually suspect in consequence. In addition, it could easily be used to reinforce negative stereotypes. How an academic interprets their own work will likely be taken as evidence on this: if someone's data showed a correlation between diversity and lower organisational performance on some metric, would they conclude that diversity should be resisted, or explore ways to overcome this? The issue that matters for academic freedom is the extent to which such malign intent is assumed, or whether there is the social 'space' for research to be discussed which has been conducted in good-faith, and which comes to conclusions which there is strong opposition to.

Results are shown in figure 9. These results reveal an important reservoir of support for academic freedom among staff at British universities. Even on some 'hot-button' social issues, for any given campaign, only 6-13% of academics are willing to back campaigns to fire academics who advocate unpopular views. Those who oppose such a campaign are likely to outnumber those who support it by 8 to 1. This figure, by itself, understates the willingness to countenance a dismissal campaign, however. Across the four hypothetical campaigns, 1 in 4 of the 235 current social science and humanities (SSH) academics in the sample were willing to support at least one.

Figure 9



N = 820.

The strongest predictors of someone's willingness to support a dismissal campaign are age, and identifying as 'very left'. Younger staff tend to be more supportive of restrictions, although it is not clear if this is due to how old someone is, or their generation (i.e. a cohort effect). Of those who identify as 'very left', support for dismissal only ranged between 16-31%. That is, even in the most sensitive case, a two-thirds majority of 'very left' academics did not support dismissal campaigns. Table 9 and figure 9A in Annex 1 provide a statistical model of effects, with demographic controls.

Although there are very low levels of support for dismissal campaigns, there are similarly low levels of support for active steps towards protecting academic freedom. The last scenario imagined two open letters, one calling for dismissal, another a counter-petition. Among SSH academics currently in post, only 7% would sign the open letter, but only 13% would sign the counter-petition. 60% of respondents would not support either side, or did not know.

Discussion

The above findings are significant for a number of reasons. Principally, they confirm for UK academia the general findings that prior studies have established, most especially for the US. The situation in the UK is, on balance, not as severe as that in the US, but it is not far off. This noted, we highlight three further points.

First, there is a substantial threat to academic freedom from within the university, which arises because of the prevalence of political discrimination. Many individual acts of political discrimination are likely to be of minor significance: a slightly lower mark on a grant application here, a bit of resistance to a promotion application there. Cumulatively, however, there is reason to believe that there are structural effects. This is not because one side of the political spectrum is innocent of any willingness to discriminate and the other guilty; rather, the willingness to engage in political discrimination is reasonably evenly distributed across the political spectrum. The basic problem arises because of the baseline distribution of political preferences. There are simply very few on the right in academia, and many on the left. With the probability of someone discriminating against a Leaver at 32%, the likelihood that at least one member of a 4-person job appointment panel is willing to discriminate rises to approximately 80%. It is difficult to suppose that, in a fiercely competitive environment, this does not have some impact.

Political discrimination may be part of the explanation for why political preferences among academics have, proportionally, become increasingly left-liberal, but is unlikely to be a significant dimension. This is because there are similar trends among highly-educated people in other professions; and because the leftward lean among the relatively apolitical STEM disciplines is only modestly lower than in the social sciences and humanities. However, our findings suggest that if gender-critical or conservative SSH academics did not anticipate discrimination and conceal

their views in their work and public speech, they would likely struggle to progress in their careers.

The true significance of political discrimination is thus likely to be the loss of *expressed* viewpoint diversity within academia. Viewpoint diversity exists; it is just that it is concealed. This matters both for debate among academics, as well as the public contribution that academia makes to the life of the nation. Recall the finding that, among currently employed social science and humanities faculty, just 18% of Leave-supporters report being comfortable to express their view. (As noted, the margin of error on this is significant.) While support for Leave among academics is significantly lower than that in the general population, at 17% as contrasted with 52%, this proportion is nonetheless not trivial. However, the asymmetry in comfort in expressing one's Brexit view, combined with the baseline rates in Brexit view among faculty, results in the public near-silence of one viewpoint. For the sake of argument, assume the above figure, and suppose that the share of those with a particular Brexit view willing to express their view on Brexit to a colleague is the same as the share willing to go on public record. The result is that only 3% of SSH academics would be prepared to declare their pro-Leave position publicly. It is understandable if the general public were to infer from this that only a marginal fringe of academics support Leave. But that inference would be false, as the 3% figure significantly under-represents the actual support for the position among those who might have expertise on it within the sector. The chilling effect has real consequences for public and intellectual debate.

Second, there are encouragingly low levels of support for dismissal campaigns against other academics. The headline is that, while it may be intimidating to look at the number of signatories on a letter, which contains strong words of moral accusation, such groups are highly unrepresentative of attitudes within the sector as a whole. This finding should, itself, enable institutional leaders to look beyond an immediate 'comms crisis', when they are faced with such campaigns against members of their faculty.

It is unlikely that dismissal campaigns have no effect, however. They serve to police the boundaries of what is considered acceptable discourse, so exerting a deterrent effect on those who would question that consensus. Even those well away from the boundary may be wary of being accused of breaching it. In itself, such a dynamic need not be problematic, if the discourse that is being ruled socially unacceptable is indeed just that. The problem arises when there are good faith reasons to question those boundaries, and when, in the heat of political controversy, malign intent is assumed.

Third, there is reason for optimism. While political discrimination is a real problem, the list experiment reveals that two-thirds of academics who engage in it do not wish to admit it. This suggests that, even though it may be flouted in practice, a norm against political discrimination already exists. The challenge is to reinforce it, so that it becomes effective.

Finally, the problem of political discrimination is likely to be widespread in many other sectors, beyond academia. Political discrimination is a

danger where the content of someone's work may have a political, moral, religious, or related interpretation, as is especially the case for scholarship in the social sciences and humanities. In America, for instance, 42% of Democrats and 28% of Republicans think a business executive should be fired for donating to the opposing party.⁷² As others observe, political discrimination is more socially acceptable than other forms of bias.⁷³

Part of the challenge is that universities are structurally distinctive. Particularly for SSH academics, colleagues are likely to be aware of each other's political views or outlook. Where someone's views are manifest in their work, and the political composition of a sector is tilted in one direction, there is thus a danger of structural discrimination. This is likely to be true of the arts; journalism, especially publicly-funded broadcasting; other areas of education; some charities; and no doubt other sectors too. Future work would investigate the degree to which challenges around political discrimination in academia compare with these other sectors. (Some initial data-gathering on this was conducted by Simpson and Kaufmann, using the SurveyMonkey platform, but due to a lack of covering information, the data collected has been deleted and that strand of work discontinued.)

We now turn to consider the existing legal and regulatory support for academic freedom.

72. Cato Institute/YouGov 2020 Summer National Survey, July 1-6, 2020

73. Iyengar and Westwood above n 55

Part III. Existing legal and regulatory framework

The UK has a body of statutory and regulatory protections for academic freedom and free speech on campus. These protections have evolved over several decades, starting in the mid-1980s. This section traces their development, to summarise the existing framework.⁷⁴

Statutory obligations on freedom of speech and academic freedom from the 1980s

Two Education Acts in the 1980s provided influential formulations of freedom of speech and academic freedom, which have been central to the legal and regulatory framework that has subsequently evolved.

A duty to ensure freedom of speech was established in Section 43 of the Education (No. 2) Act 1986. This applied to higher education institutions (HEIs), then comprising universities, polytechnics, and colleges. The duty requires that those individuals and bodies of persons involved in the governance of an HEI should:

take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers. (s. 43 (1))

From this general duty, two more specific further duties were stated in the Act. First, the use of the premises ‘is not to be denied to any individual or body of persons on any ground connected with the beliefs or views of that individual or of any members of that body; or the policy or objectives of that body’ (2). Second, the governing body of that institution must issue and keep up to date a code of practice around freedom of speech. This should set out for its member the procedures for holding meetings (3), so ensuring that the general duty is met.

The free speech obligation of Section 43 is demanding. It should be noted that it does not impose an absolute requirement of enabling free speech on HEIs, as the duty is qualified by ‘reasonable practicability’. Nonetheless, the criterion of ‘reasonable practicability’ does not, on the face of it, permit those involved in the governance of an HEI to distinguish some speech as permitted and some as forbidden on the grounds of its content directly. Grounds for restriction may be based only on potential problems arising from the practicalities of enabling speech. This obligation largely remains in force in England and Wales. (See below,

⁷⁴. We are grateful to Julian Rivers, and other lawyers who wished to remain anonymous, for their comments on Parts III and IV. Errors remain our own.

in the discussion of the Higher Education and Research Act 2017, for a qualification on scope.)

There are, of course, some legal restrictions on the content of speech. Defamation is one category of restriction. Others include the statutes which prohibit forms of ‘hate speech’: speech which is threatening or abusive, and which is intended to harass, alarm, distress, or stir up hatred towards someone on the basis of a specified characteristic, including race, religion, and sexual orientation. Fraud is also criminalised, and hostile or threatening speech constitutes tortious assault. That there are some content-based restrictions on speech is recognised in the wording of the duty, which, in its statement of its general aim, requires that ‘freedom of speech within the law’ is secured on campus (s. 43 (1), emphasis added). Speech outside the law is, on pain of legal inconsistency, not protected.

A duty to ensure academic freedom was also established on a statutory basis in the 1980s. This was imposed by the Education Reform Act 1988, in Section 202. The duty requires:

that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions. (s. 202 (2))

Unlike the duty to ensure freedom of speech, it is vital to note that this duty was not imposed directly on universities. Rather, it was imposed on the University Commissioners, a body established by the same act to oversee the governance of HEIs. The Commissioners were then responsible for ensuring that the duty was met at the institutions they oversaw. The phrasing used in the s. 202 duty has since been replicated by many institutions in their governing statutes and ordinances. However, because there is no direct legal obligation for them to do so, the situation is patchy across the sector.

The duty to ensure academic freedom should be understood in the context of wider controversy about the 1988 Act. Part of its overall aim was to make it easier for universities to remove individual academics who were making marginal contributions to research and teaching. This arose due to concerns that UK universities were underperforming relative to competitors in the US. As the law at the time meant that permanent faculty could be dismissed, in effect, only in cases of gross moral turpitude or gross incompetence, the proposed remedy was to make it possible for universities to remove academics who were coasting or underperforming. This was fiercely contested by academics at the time, of course. One of the charges was that the reform would undermine academic freedom, by enabling allegations of an individual’s incompetence to be used as cover for removing someone with an unpopular view. The duty to protect academic freedom was an attempt to assuage these concerns.

Recognition of Student Unions

As noted earlier (Part I), the Education Act 1994 contained specific provisions governing student unions. Under Sections 20-22 of the Act, student unions were recognised as those bodies having the principal purpose of promoting the general interests of its members as students, or a representative body whose principal purposes include representing the generality of students at an HEI.

The Act also established a duty on the governing body of the university or college to which the union is affiliated to ensure regular governance of that union. This requires, for instance, that the governing body should review its statutes not less than every 5 years, oversee its accounts, confirm the integrity of its elections, and so forth. The governing body of an HEI is also required annually to ‘bring to the attention of all students’ the provisions of the s. 43 duty, and of the code of practice established by the provider under that duty (see s. 22 (4)).

Importantly, Student Unions are not directly subject to the s. 43 duty to ensure freedom of speech. While it is expected that a Student Union will comply with any memorandum of understanding between it and the relevant HEI, it is the HEI’s responsibility to ensure that premises are not denied to someone on any ground connected with the beliefs or views of a speaker or group.

Finally, Student Unions are usually subject to regulation by the Charity Commission, and so must comply with charity law. Compliance with the freedom of speech duty may be required of Student Unions insofar as this is necessary to further the purpose of education. It is fair to say that the Charity Commission’s guidance in this area remains unclear, however, and enforcement is weak.⁷⁵

Protections for academic freedom under the European Convention on Human Rights

The Human Rights Act 1998 incorporated the European Convention on Human Rights (ECHR) into domestic UK law, and established the European Court of Human Rights (ECtHR) as having supremacy over UK courts in relation to human rights cases. Pertinently, Article 10 of the ECHR protects freedom of expression in general, and Article 9 protects freedom of thought, conscience, and religion. As universities are public bodies, they are subject to the ECHR. Two points about the ECHR and the ECtHR’s jurisprudence are relevant.

First, while the free speech requirements imposed by the Education (No. 2) Act 1986 do not seem to permit content-based discrimination, the ECHR may do so. In particular, paragraph 2 of both Articles 9 and 10 provide that limitations on the rights of freedom of expression, thought, conscience and religion may be imposed by law, so long as they are necessary in a democratic society, and in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms and others. This exemption clause establishes

75. See <https://ogs.charitycommission.gov.uk/g048a001.aspx>, especially §7. Additional guidance for how charities can comply with the Prevent duty is provided at <https://www.gov.uk/government/publications/protecting-charities-from-abuse-for-extremist-purposes/chapter-5-protecting-charities-from-abuse-for-extremist-purposes>.

that the relevant courts—up to the European Court of Human Rights in Strasbourg—have jurisdiction to weigh and determine how to resolve competing human rights claims, including claims which if upheld would have the effect of restricting someone’s speech. This allows the possibility that the ECtHR could rule that a specific piece of legislation from a state party, which would specifically permit some speech, may nonetheless contravene one’s human rights, because restricting that speech is necessary in a democratic society, for instance.

Second, there is a body of case law deriving from Article 10 which specifically considers extra protections for freedom of expression in the context of academic freedom. Some points from this are salient. For one, the protection afforded for academics’ speech is in some circumstances likely to exceed that for a citizen. The ECtHR has stated that academics are afforded ‘the highest level of protection under Article 10’. For another, however, the protected speech must be within the academic’s sphere of research, and be based on their ‘professional expertise and competence’.⁷⁶ Because the ECtHR expressly considers academic freedom under Article 10, UK citizens are entitled to pursue a claim that their academic freedom has been breached in the UK courts and to appeal the verdict to Strasbourg.

Additional sources of law: the Equality Act 2010 and the Prevent duty

Some additional sources of law have noteworthy impacts on the legal and regulatory terrain around academic freedom. These are the Equality Act 2010, and the Prevent duty, which derives from the Counter-Terrorism and Security Act 2015. We consider them in turn.

The Equality Act 2010 is a wide-ranging piece of legislation, serving a number of functions, and in particular drawing together and harmonising prior law around harassment and discrimination. Central to the Act are the nine ‘protected characteristics’ it recognises, which are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The Equality Act 2010 explicitly considers issues of academic freedom and freedom of speech in one place only, and somewhat in passing. Nonetheless, the Act bears on the topic of this report in the following ways.

First, the Act’s harassment provisions provide the context in which academic freedom is expressly considered. According to the Act, person A harasses person B if A engages in conduct related to a relevant protected characteristic, and which has the purpose or effect of violating B’s dignity, or creating an intimidating, hostile, degrading, humiliating, or offensive environment for B (s. 26 (1)). This recognises that someone need not intend to harass another in order for harassment to take place. Harassment is not decided solely according to whether the person alleging harassment feels intimidated or humiliated, however; it must also be ‘reasonable’ for the conduct to have this effect (s. 26 (4) (c)).

The Explanatory Notes to this section consider whether speech in an

76. In particular, see *Erdogan v Turkey* [2014] 346/04 and 39779/4, at 6, 40. For survey, see James Murray and Bryn Harris, ‘Academic Freedom and the Freedom of Opinion and Expression: The English Law Position. Response to Call for Submissions by UN Special Rapporteur’, April 2020, p. 8. Further details on the case law are also provided by Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua, ‘Academic Freedom and Its Protection in the Law of European States’, *European Journal of Comparative Law and Governance*, 3 (2016): 254-345, p. 266.

academic context could meet this threshold.

In determining the effect of the unwanted conduct, courts and tribunals will continue to be required to balance competing rights on the facts of a particular case. For example, this could include balancing the rights of freedom of expression (as set out in Article 10 of the European Convention on Human Rights) and of academic freedom against the right not to be offended in deciding whether a person has been harassed. (Explanatory Notes, s. 26 (99))

This note allows for the possibility not just that academic freedom could be in tension with a right not to be offended, a possibility that is not controversial. It also allows that the putative exercise of academic freedom could so infringe the right not to be offended—which, we must presume, is here an allusion to the right of B not to be subject to an offensive environment created by A—that it could rise to the level of harassment. It is easy to imagine scenarios in which this could be the case. If a lecturer stated his view that Hinduism is inextricably bound up with caste-based violence, did so repeatedly over a series of lectures and at a tangent from the main topic, and was pointedly looking at the single student wearing a bindi during these comments, this would seem to be a clear instance of harassment. It would not be surprising if the courts found this to be so, and this note in the Act allows for the possibility. (Subsequent guidance on freedom of expression in universities issued by the Equalities and Human Rights Commission (EHRC) seems not to take this view, which we turn to below.)

Second, the Equality Act 2010 establishes the ‘public sector equality duty’ (PSED), which has broad ramifications. The PSED requires that public bodies, including universities, must:

have due regard to the need to—eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; foster good relations between persons who share a relevant protected characteristic and persons who do not share it. (s. 149 (1))

The PSED establishes that universities in England and Wales are under a legal obligation to promote equality, and to minimise tension between those who share a protected characteristic and those who do not. How this engages in practice with questions of academic freedom and freedom of speech is not stated in the Act, but is also covered by the subsequent guidance issued by the EHRC.

Third, it is important to note that the Equality Act 2010 is not intended to provide a general protection for free speech, nor does it have that effect. Of the nine protected characteristics, eight concern demographic characteristics of a person, and one concerns their viewpoint, namely religion and belief. Nonetheless, this protected characteristic does not extend to cover any viewpoint that a person may avow. Rather, the term ‘belief’ should be understood as recognising that beliefs that are non-

religious in some important sense (e.g., which do not acknowledge a God or gods) may nonetheless play a functionally-equivalent role in someone's life to explicitly religious beliefs. Accordingly, the Act expressly envisages limitations to what kinds of 'philosophical belief' are protected: it must be genuinely held; be a belief not an opinion; be a belief as to a weighty and substantial aspect of human life and behaviour; be cogent, serious, cohesive and important; and be worthy of respect in a democratic society (Explanatory Notes, s. 52; these are referred to collectively as the 'Grainger test'⁷⁷).

Case law around the Equality Act 2010 has further clarified what sorts of beliefs count as protected from discrimination. It is pertinent that, while some political viewpoints are protected, some are not. Those which are protected include 'democratic socialism' and 'left-wing democratic socialism'.⁷⁸ Those which are not protected include 'Thatcherism' and 'challenging "political correctness"'.⁷⁹ This last case is especially salient as it was the basis for an allegation by an academic of discriminatory dismissal, under the Equality Act 2010, which the employment tribunal rejected. It is likely that one key difference is not the content of these loosely defined views as such, but rather the role that they played in the life of the person alleging discrimination or harassment.

That the protected characteristic of religion and belief is not a general protection of free speech in the workplace is further confirmed by the recent case of Maya Forstater. Forstater is a gender critical feminist who believes *inter alia* that one should not be compelled to use the pronouns that a transgender person prefers, and was dismissed by the charity she worked for following complaints about her Twitter activity. At an employment tribunal, Forstater was found not to have harassed others, but to hold a belief that is 'unworthy of respect in a democratic society'.⁸⁰ It would be surprising if Forstater's right to express that belief was not upheld by the ECHR's Article 10, but the employment tribunal was nonetheless able to rule that her dismissal was not discriminatory, invoking a clause from the Grainger test. (Whether this judgment survives appeal remains to be seen.) By contrast, were Forstater to have been employed by a university, it is highly likely that her dismissal on the same grounds would have contravened her academic freedom. This claim is reinforced by subsequent comments in a High Court judgment, namely that gender critical views of the kind that Forstater advocates 'are expressed by legitimate scholars whose views are not grounded in hatred, bigotry, prejudice or hostility, but are based on legitimately different value judgments, reasoning and analysis, and form part of mainstream academic research.'⁸¹ Unlike the 1988 Act's duty of ensuring academic freedom, the Equality Act 2010 does not seek to protect someone's freedom to question a consensus, or to advocate a controversial or an unpopular view.

A further source of legal obligation on universities, which affects academic freedom, is found in the Prevent duty. The Counter-Terrorism and Security Act 2015 established a general duty on specified authorities, known as the Prevent duty, to 'have due regard to the need to prevent

77. *Grainger plc v Nicholson* [2010] IRLR 4

78. *Olivier v Department for Work and Pensions* [ET/701407/2013]; *GMB v Henderson* [2015] UKEAT/0073-12-1303

79. *Dr A Dunn v University of Lincoln* [ET/260181917/2018]. Dr Dunn represented himself in this case.

80. *Forstater v CGD Europe and Ors* 2200909/019, at 85, 90.

81. *R (Miller) v The College of Policing & The Chief Constable of Humberside* [2020] EWHC225 (Admin), at 250.

people from being drawn into terrorism'. The bulk of the particular duties required by the Prevent duty are established by the Prevent guidance, which is issued by the Secretary of State. Perhaps the most sensitive area of the Prevent duty is its application to educational authorities, including universities and other HEIs, which have some specific guidance issued to them in addition to the general guidance. Because of the potential for tension between the aims of the Prevent duty and the purposes of the university, s. 31 of the 2015 statute specifically affirms the importance of academic freedom and freedom of speech. Like the PSED, the Prevent duty is also a 'due regard' duty. However, under s. 31, HEIs must have 'particular regard'—a higher legal standard than 'due regard'—to the duty to ensure freedom of speech and to the importance of academic freedom, where these are defined by the 1986 and 1988 Acts respectively (see s. 31, (2) and (5)).

The legal validity of the Prevent guidance was tested in the courts in the case of *Salman Butt*.⁸² A regular advocate in universities of conservative Islam (by his own description), Butt had been identified in a 2015 press release by the Home Office as someone on record as expressing views contrary to British values, and the judge noted that his endorsement of stoning adulterers to death was an instance of 'violent extremism'.⁸³ Among a number of claims made to the court, Butt argued that a paragraph from the relevant Prevent duty guidance was unlawful. This paragraph from the guidance states that, when deciding whether or not to host a particular speaker, HEIs should:

*consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. In these circumstances the event should not be allowed to proceed except where [HEIs] are entirely convinced that such risk can be fully mitigated without cancellation of the event. ... Where [HEIs] are in any doubt that the risk cannot be fully mitigated they should exercise caution and not allow the event to proceed.*⁸⁴

In its judgment in March 2019, the Court of Appeal upheld this claim, stating that this paragraph was 'trenchant', and implying that it gave 'insufficient weight' to the duty to ensure freedom of speech under the s. 43 duty, which is also re-affirmed by the 2015 Act. The court did not attempt to redraft the guidance, viewing that as a matter for the government.⁸⁵ At the time of writing, the relevant webpage making the guidance available notes this judgment, and states the government 'is considering the ruling and will announce its next steps in due course'.⁸⁶ Although the EHRC's guidance was issued prior to this judgment, it is likely better to represent the statutory position, of the particular regard due to academic freedom and freedom of speech.

82. *R (on the application of Salman Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256

83. <https://www.gov.uk/government/news/pms-extremism-taskforce-tackling-extremism-in-universities-and-colleges-top-of-the-agenda>; <https://policyexchange.org.uk/high-court-rejects-legal-challenge-against-counter-radicalisation-strategy-at-uk-universities/>

84. <https://www.gov.uk/government/publications/prevent-duty-guidance/prevent-duty-guidance-for-higher-education-institutions-in-england-and-wales>, (11).

85. *R (on the application of Salman Butt) v Secretary of State for the Home Department* [2019] EWCA Civ 256, 175-177.

86. <https://www.gov.uk/government/publications/prevent-duty-guidance>

Higher Education and Research Act 2017

The Higher Education and Research Act 2017 ('HERA') was the most important piece of legislation governing higher education in England passed for 25 years, since the Further and Higher Education Act 1992 which it replaced. The headline contributions made by HERA are to establish two bodies, the Office for Students (OfS), and the funding body, United Kingdom Research and Innovation (UKRI). For present purposes, it is the OfS which is of central importance. In addition, HERA confirms and slightly amends the above statutory duties from the 1986 and 1988 Acts.

Higher education is a devolved matter, to differing degrees, across the constituent nations of the United Kingdom. Being enacted after the various devolution settlements, HERA applies only to England and Wales. The details of the existing legal and regulatory framework are thus discussed in this report only in relation to England and Wales. Further work would be required to consider the relevance of the differing statutory and regulatory frameworks in Scotland and Northern Ireland.

The need for the OfS can be largely understood as an outworking of the series of decisions, since 1998, to change the model for funding undergraduate education. Instead of public funding for tuition and means-tested maintenance grants, the model is now centred on student loans. Although the taxpayer retains considerable financial liabilities, as the Student Loans Company is a public body largely owned by the Department for Education, formally it is the student who now pays for his or her individual education, through repayments over their working life. This puts the student in the position of a consumer. But the student qua consumer is in a weak market position: at the point of deciding which university to go to (and usually being young, 17 or 18 at the time), they have relatively little information about the education and experience they would receive, as well as very little consumer power once at university, being effectively locked into a degree programme. The OfS, and the regulatory priorities it has been given under HERA, should be understood as forms of consumer protection, designed to enable students to make fully informed choices about the education they are paying for.⁸⁷ Many are opposed to the 'marketisation' of higher education, of course.⁸⁸ It is, perhaps, an unintended consequence of this change that it is now possible for students to bring universities to court for breach of contract.⁸⁹ Nonetheless, how to change the funding model for higher education is a knotty policy question, well beyond the scope of this report. For present purposes, we simply take it as a fact.

The OfS came into existence on 1 Jan 2018, with wide-ranging purposes and powers. We start with its powers. Most significantly, all HEIs are required to register with the OfS if they are to be entitled to award degrees or to use 'University' in their title, and as a corollary, to be entitled to the public financial support associated, including students' eligibility for student loans. In exercising the power to register HEIs, the OfS is responsible for satisfying itself that students' interests are met, in terms

87. The need for an institutional body playing this role is defended in David Palfreyman and Ted Tapper, *Reshaping the University: The Rise of the Regulated Market in Higher Education*, Oxford: Oxford University Press (2014).

88. See, e.g., Roger Brown with Helen Carasso, *Everything for Sale? The marketization of UK higher education*, London: Routledge (2013).

89. Mattha Busby, 'Student receives £61,000 over "Mickey Mouse degree" claim', *The Guardian*, 2 June 2019.

of the quality of education they will receive. These are the ‘registration conditions’.

The OfS’s responsibility for safeguarding students’ interests, however, is an ongoing one. As well as overseeing the process by which HEIs may enter the market in providing higher education, the Act also envisages existing HEIs leaving the market, if they are unable to secure students’ interests. So, the OfS does not satisfy its function only by doing due diligence on prospective HEIs, to check that they have met their ‘initial registration conditions’. It also has an ongoing regulatory role, ensuring that HEIs meet their ‘ongoing registration conditions’. Accordingly, the OfS has the power to fine providers who are in breach of the general ongoing registration conditions, which apply to all providers, and to impose specific ongoing registration conditions, to mitigate the risk of any future breach of general ongoing registration conditions.⁹⁰ It also has the power to suspend an HEI’s registration, and to de-register it.

The OfS is a non-departmental public body which, though initially funded by the Department of Education and accountable to it, is operationally independent of the Department.⁹¹ Nonetheless, the Secretary of State has a number of powers in relation to the OfS. Principal among these is the requirement for the OfS to ‘have regard’ to any guidance issued to it by the Secretary of State (Section 2 (3)), with that guidance setting out the OfS’s priorities. The expectation was originally that such guidance would be issued annually. One letter of strategic guidance was issued in 2018, three in 2019, and none so far in 2020 (with the coronavirus crisis dominating government business).⁹² The Secretary of State also has the power to require a report on measures relating to equality of opportunity, to confer supplementary functions on the OfS, and to give directions to the OfS about the performance of any of its functions (Sections 37, 76, 77).

HERA reiterates the pre-existing statutory obligations regarding academic freedom and freedom of speech, and in some ways builds on them. Take academic freedom first. In the highest-level statement of the general duties of the OfS, the first of the seven guiding principles is to ‘protect the institutional autonomy of English higher education providers’. This statement is parsed as follows: institutional autonomy requires freedom within the law for providers to conduct their day-to-day management; freedom to determine which courses are taught, their content, and criteria for appointing academic staff and offering places to students; and the freedom for academic staff to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of losing their jobs (s. 2 (1) and (8)); the duty to protect the institutional dimension of academic freedom is re-iterated at s. 36).

The protection to individual academics, ensuring their freedom to test received wisdom and put forward controversial or unpopular opinions, is reiterated in the details of the regulatory framework. The OfS is obliged by the Act to publish a list of ‘public interest governance conditions’. Only one

90. Office for Students, *Securing student Success: Regulatory framework for higher education in England*, February 2018, p. 43.

91. Office for Students Framework Document, October 2019.

92. <https://www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/>

of these conditions is specified by statute, and it is the mandate to ensure that academics are free to test received wisdom, repeating the formulation given in the 1988 Act (s. 14 (7)). The OfS has since published this list of public interest governance conditions, with 12 separate conditions, two of which are academic freedom and free speech.⁹³

Compliance with these public interest governance conditions is itself a requirement, if a provider is to satisfy the ongoing registration conditions which it is subject to and retain its power to confer a degree. In particular, there are 24 ongoing registration conditions which a provider must meet. Of these, one requires that a provider's governing documents must be consistent with the public interest governance conditions. Another requires that it should also have effective and adequate management and governance arrangements, such that it operates in accordance with its governing documents.⁹⁴

To summarise, HERA has largely reiterated the pre-existing statutory duties to ensure academic freedom and freedom of speech in universities in England and Wales. It has modified whom those duties are incumbent on, however. Universities remain subject to the s. 43 freedom of speech provisions directly. (There is a small distinction between the situation in England and Wales. In Wales, all HEIs are subject, as per the scope of the original 1986 Act. In England, the duty is imposed only on registered higher education providers. There are institutions which were covered by the original 1986 Act, but which are not now registered HEPs. For instance, Oxbridge colleges are not individually registered with the OfS, so it is arguable that they are now exempt from this duty. See s. 43 (4A) and (5) of the 1986 Act.)

In addition, the OfS is now also responsible for ensuring that the duty is fulfilled by registered higher education providers. On academic freedom, it is now the OfS's responsibility to ensure that HEPs respect this, rather than the University Commissioners, on whom the 1988 Act imposed the duty. It remains the case that universities are not directly subject to the duty in statute. Under HERA 2017, the OfS has some of the powers required to regulate both freedom of speech and academic freedom.

However, there are some limitations on the current exercise of these powers. On free speech, the OfS specifically recuses itself from considering individual disputes between students and universities.⁹⁵ Potential complaints should be referred to the relevant institution in first instance, and the Office of the Independent Adjudicator for Higher Education (OIA) if the complainant is not satisfied. The OIA considers complaints from students only, however, and not academic staff. It is not obvious from its website whether the OIA considers disputes over free speech as being within its jurisdiction, with free speech not included in the list of 13 concerns it highlights as within its competence to consider.⁹⁶ In response to an email, the OIA did state that it could consider such cases. If a student complained that their freedom of speech had been denied, then the OIA would determine whether the student 'had been treated fairly, whether the provider had followed its procedures correctly and whether the final

93. Office for Students, *Securing student Success: Regulatory framework for higher education in England*, February 2018, p. 145.

94. *Ibid.*, p. 141.

95. <https://www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/freedom-of-speech/raising-concerns-about-free-speech/>

96. <https://www.oiahe.org.uk/students/can-you-complain-to-us/>

decision was reasonable'.⁹⁷

Although the OfS does not investigate individual disputes around free speech, it does have a process by which information can be reported to it. The OfS is able to receive a 'notification' from any individual, concerning a possible breach of one of the conditions of registration at a higher education provider. As noted, these conditions include duties to protect free speech and academic freedom. Information from these notifications are used as part of the OfS's regular monitoring activity, but have no further significance.⁹⁸ In the 18-month period January 2018-May 2019, when the notifications process was established, the OfS had received 16 notifications on issues related to academic freedom and free speech. These complaints concern 11 providers, with one provider being subject to 4 notifications.⁹⁹ There is widespread ignorance about this process within the sector; I learnt about it only during the process of researching this issue.

Overall, the current actions being undertaken by the OfS are fairly described as 'light-touch', being restricted to gathering some data on a reactive basis. At the time of writing, no fines have been issued by the OfS for breaches by an HEP of the ongoing conditions of registration in relation to academic freedom or free speech, nor have any specific conditions of registration been imposed on the 394 registered HEPs in relation to any of the public interest governance conditions.¹⁰⁰ The OfS describes its role as follows.

*We will only intervene or engage when there is a threat to free speech. Whilst there are a number of regulatory levers which the OfS could apply if free speech is being suppressed, it is hoped that we will not have to use these and that this course of action would be taken only after very careful consideration. . . . At present the OfS is not planning to visit providers that have faced issues regarding freedom of speech but we may engage with providers or other bodies to understand what action they have taken as a result of these issues and what lessons can be carried forward in future.*¹⁰¹

There is even less involvement on academic freedom, where the OfS is formally committed only to its basic regulatory requirement that providers' governance documents and management processes should protect individual academic freedom. This likely reflects the fact that most of the public discussion of 'censorship on campus' has taken place in the context of no-platforming incidents, and so has been cast as a free speech issue, rather than an academic freedom one.

Subsequent reports and guidance: the JCHR enquiry and EHRC guidance

Since the OfS was established, there have been some noteworthy milestones in the policy-related discussion of these issues. Given the prominence of the 'no-platforming' narrative in media discussion, the focus has been on issues of free speech, with attention paid particularly to how events with

97. Email of 29 June 2020.

98. <https://www.officeforstudents.org.uk/contact/complaints-and-notifications/>

99. Office for Students, FOI Response 2020-221-FOI

100. <https://apis.officeforstudents.org.uk/OfsRegisterDownload/api/Register/>

101. Office for Students, *The Promotion and Protection of Free Speech*, 26 September 2018, p. 15

external speakers should be managed.

Conducted through 2017 and publishing its results in March 2018, an important enquiry on freedom of speech in universities was held by Parliament's Joint Committee on Human Rights (JCHR). Its primary purpose was to gather as much evidence as possible of potential threats to free speech, although it did also issue some recommendations. In gathering evidence, it focused on potential threats deriving from student-against-student activity, and on regulatory barriers, most particularly the Prevent duty and the bureaucracy involved in putting on events. Its verdict was broadly positive, but with a caveat. It was broadly positive, in that the report 'did not find the wholesale censorship of debate in universities which media coverage has suggested'. The caveat was that the evidence available to the JCHR did not address the danger highlighted in evidence to the committee by the Minister for Universities, namely that instances of events disrupted or cancelled are not the only concern, but that 'just as important is what is hard to measure: the large number of events which do not happen at all'. The report accordingly recognises the danger of such 'chilling effects', and calls for further research to identify how significant this is.¹⁰² This reflects a recognition that the principal source of student opinion which the JCHR relied on—33 responses from student union officers—was unlikely to be adequately representative.

The report made two substantive recommendations. First, it identified the OfS as the body best placed to support free speech in universities. It proposed that the OfS should: intervene if problems emerged at particular institutions; have an accessible means of feedback for students to report issues related to free speech, which it could act as an arbiter on; and report annually on free speech in universities, including reporting when universities have been non-compliant with the Section 43 obligation in the Education (No. 2) Act 1986. Second, it identified the value of a joined-up approach to free speech in universities and the need for clear guidance, and commended a summit with key public bodies which was due to be convened on the issue, and which subsequently took place later that spring.¹⁰³

Just prior to the publication of the JCHR's report, the then Minister of State for Universities, Science, Research and Innovation, Sam Gyimah, issued the inaugural letter of Strategic Guidance to the OfS. This letter highlighted the importance of the OfS being 'a champion of free speech', and stated an expectation that the OfS would engage with the forthcoming summit aimed at creating standards of good practice in managing external speakers. It would be fair to say that free speech is not of central importance in this letter of guidance, with action on the issue being one of 33 deliverables issued to the Office for the following year.¹⁰⁴ (Two subsequent letters of Strategic Guidance have affirmed again the importance of free speech and the OfS's work in this area, but again the comments are not strongly emphasised.¹⁰⁵)

The summit alluded to by the JCHR and in the Minister's letter then took place, in May 2018. Convened by the Equality and Human Rights

102. Joint Committee of Human Rights, *Freedom of Speech in Universities*, HC589/HL PAPER 111, 21 March 2018, pp. 19, 20.

103. *Ibid.*, pp. 41-42.

104. <https://www.officeforstudents.org.uk/media/1111/strategicguidancetotheofs.pdf>

105. <https://www.officeforstudents.org.uk/media/8c8219d4-b565-4310-ad80-84f3872e628f/of-s-strategic-guidance-2019.pdf>, <https://www.officeforstudents.org.uk/media/1a105d7c-e6ef-4e3d-ab23-bd3e93e01257/letter-from-the-education-secretary-sept19.pdf>

Commission (EHRC), it gathered representatives from 10 further public bodies: Department for Education, Home Office, Charity Commission, OfS, Higher Education Funding Council for Wales, Commission for Countering Extremism, NUS, Universities UK, IndependentHE, and GuildHE. The resulting report, *Freedom of expression: A guide for higher education providers and students' unions in England and Wales*, was published in February 2019. While the guidance does not replace any existing regulatory or statutory guidance, it is intended to provide a standard for best practice which can be (and has been) widely agreed upon.

The EHRC's *Freedom of expression* guide is a valuable, considered document. It goes a long way towards setting out sensible steps as to how the legal obligation to secure freedom of speech in universities should be implemented in practice. In this, it focuses on how to ensure that events with speakers take place in a legally-compliant manner. It also sets out the obligations in a clear, simple manner.

Most centrally, the report affirms that all speech which is within the law should be facilitated on university campuses—within the bounds of what is reasonably practicable, as per the s. 43 duty. To our knowledge, the guidance also goes beyond prior statutory guidance, in stating that HEIs are obliged to take reasonably practicable steps to ensure that an event with a given speaker can go ahead, in the event that a Student Union rescinds an invitation.¹⁰⁶ It also states that Student Unions are required to comply with the HEI's code of practice on free speech.¹⁰⁷ (This claim is not supported by the 1994 Act, however.)

Further, the EHRC guidance affirms the importance of freedom of speech and academic freedom in ways that are arguably stronger than some of the relevant legal and regulatory provisions considered above, in commenting on the two sources of duties which, in its terms, may 'interact' with freedom of expression, namely Prevent and the Equality Act 2010.

On Prevent, the EHRC's guidance clearly delineates that the duty is applicable only in limited circumstances, and that there are likely to be ways to enable events to go ahead.¹⁰⁸ This is in contrast to the risk-averse approach stated in the Prevent duty guidance, and rejected in the Butt case.

On the Equality Act 2010, the guidance states that the harassment provisions 'cannot be used to undermine academic freedom', and that the PSED should be applied 'without restricting lawful speech'.¹⁰⁹ For speech which may engage either of the Prevent or PSED 'due regard' duties, there are a number of measures which a university could take, towards mitigating risks. Proposed measures include: challenging high-risk speakers with opposing views, having an independent chairperson to facilitate an event and make sure a range of views can be heard, filming an event to deter the use of unlawful speech, having a policy setting out principles of respectful discourse that speakers have to follow, and postponing an event if necessary to enable other of these mitigating steps to be taken.¹¹⁰ In a noteworthy contribution, the guidance also emphasises students' responsibility for avoiding speech which they are likely to find

106. Equality and Human Rights Commission, *Freedom of expression: A guide for higher education providers and students' unions in England and Wales*, February 2019, p. 27.

107. *Ibid.*, p. 15.

108. *Ibid.*, pp. 24-25, 33.

109. *Ibid.*, pp. 18, 26.

110. *Ibid.*, p. 33.

offensive: ‘If the subject matter of a talk is clear from material promoting an event, then people who attend are unlikely to succeed in a claim for harassment arising from views expressed by the speaker.’¹¹¹

The status of the guidance is worth noting. The document is explicit that it does not replace the existing regulatory or statutory guidance.¹¹² Nonetheless, being issued by a public body, the guidance is likely to have persuasive force in a court or tribunal. That it does not replace existing regulatory or statutory guidance still matters, however, in relation to both the Prevent duty and the Equality Act. On Prevent, while the guidance was issued prior to the judgment in Salman Butt’s case, it is likely that it more accurately represents the weight which the Counter-Terrorism and Security Act 2015 itself places on academic freedom and freedom of speech, than that in the Prevent duty guidance. On the Equality Act 2010, the guidance’s explicit statement that the Act’s harassment provisions cannot be used to undermine academic freedom is open to question. This is on the basis of the Act’s Explanatory Note cited above.

There is much to be commended in the EHRC report, and we do not detail here all the points of agreement. For present purposes, however, two points are worth highlighting, which qualify the contribution made by the EHRC’s guidance.

The first and principal point concerns its scope. The guidance is focused on how HEIs should manage events with external speakers, given the law at present. The management of events with external speakers is an issue of clear importance for free speech in universities, and the focus on this question arose because of the public attention given to instances of no-platforming. But it is, as we have argued above, of less importance than the activities which occupy the majority of time and effort in higher education, namely teaching and research. Freedom in teaching and research is centrally an issue of academic freedom, and it is the loss of academic freedom, we argue, which is leading to a loss of viewpoint diversity in the UK’s universities. This is not a criticism as such of the EHRC’s guidance, which largely achieves the objective set for itself. Nonetheless, that guidance neither addresses nor resolves the more fundamental question of academic freedom. That is a separate task, which we contribute to here.

Furthermore, the EHRC’s guidance does not address the question of whether there are gaps in the legal protections currently afforded to freedom of speech, and in the regulatory and governance mechanisms by which these legal protections are made effective. Indeed, part of the value of the report is that, in clarifying the legal duties incumbent on HEIs and Student Unions, it highlights areas for improvement. Consistent with its aim, however, the guidance makes no recommendations as to whether the law should be changed or regulatory arrangements improved. This is another important limitation in the scope of the report.

Second, the measures proposed to mitigate risk from a controversial speakers risk having a significant unintended impact. All of the measures—whether intentionally or not—have the effect of sending a social signal, namely that some of the views under discussion here are at best ‘on the edge

111. *Ibid.*, p. 18.

112. *Ibid.*, p. 5.

of acceptability’, and may well be over it. Trigger warnings which precede a reading in a syllabus—warning students that the text contains material which may be likely to offend—have the same effect. There are situations where this implicit signal may be appropriate, or be an unavoidable side-effect which should be tolerated. But sometimes this implicit signal can function subtly to pathologise or stigmatise a viewpoint which ought to be in full consideration. Moreover, patterns in how such mitigating measures are employed, as with patterns in how trigger warnings are employed, can create a normative sociological order in which some viewpoints are excluded, or perhaps tolerated but with a sense of danger. It is not difficult to see how a risk-averse bureaucracy would consistently use these measures designed to mitigate risk in a way that is politically aligned, with the effect that a new social consensus is constructed and reinforced.

Summary

The basic principles around academic freedom and free speech on campus, including their wide scope, were established in statute by the two Education Acts from the 1980s. The recent creation of the OfS, established by HERA, is a focal institution with appropriate powers to champion free speech and academic freedom within the sector. Nonetheless, in part due to the relative youth of the OfS, this opportunity is not yet realised. Further, the existing legal duties are surprisingly indirect in many cases, with universities not directly subject to a duty to secure academic freedom, and Student Unions not directly subject to a duty to ensure freedom of speech. There is also a plausible case that the strongest protections for academic freedom, which are legally enforceable by individuals, derive from the European Convention on Human Rights. These are deficits in the current protection for academic freedom.

We turn now to consider what measures may protect academic freedom and freedom of speech more robustly than current arrangements support.

Part IV. Policies to protect academic freedom in the UK

Having considered above the evidence that academic freedom is being infringed, we turn now to consider what policies might help to protect it. Before doing so, it is worth drawing together the threads of the argument developed so far.

- There are two distinct threats to academic freedom and freedom of speech in universities. The first is attempts to penalise someone's speech not by rebutting the arguments, but by campaigning to have them sacked, rendering them unemployable or effectively 'untouchable' within their profession, or by seeking to disrupt an event or have it cancelled. The second is a 'softer focus' problem, namely the willingness of a proportion of academics to allow their agreement or disagreement with the inferred politics of a project, or a person's research, to influence their decisions about whether to support or inhibit that work. We term the latter, 'political discrimination'. Like other forms of discrimination, political discrimination tends to be hidden. These two threats need to be dealt with in different ways.
- Formal powers must be exercised in order to prevent the more dramatic ways of penalising someone's speech, such as dismissal campaigns. At present, while the relevant legal principles are clearly established, there is a surprising lack of readily available means by which these principles can be enforced.
- Combatting political discrimination is harder, because of the concealed nature of the behaviour. Political discrimination will be stopped most effectively when a norm against such discrimination becomes widely endorsed among academics—sufficiently widely that those who advocate an unpopular view do not have reason to fear that their career will suffer because of others' reaction.
- Significantly, in recent decades, a considerable amount of expertise and energy has been invested in the challenge of combatting discrimination on the basis of other personal characteristics, such as race and sex. Discrimination on the basis of these characteristics may take overt forms, but even when that is successfully combatted, hidden discrimination may still occur. Nonetheless, there has been considerable if not complete success in combatting these forms of discrimination, by promoting norms against race- and sex-based

discrimination. This observation supports the following lesson, namely that the policies and strategies which have been developed to combat other forms of discrimination are available to combat political discrimination in universities and colleges.

We now turn to identify the opportunities that a number of different institutions have to protect academic freedom.

In outline, and most centrally, **we envisage a significantly more engaged approach for the OfS in relation to protecting and promoting academic freedom and free speech on campus. This should include establishing, via statute, the post of a Director for Academic Freedom.** This Director would be a member of the OfS and on the senior team. At present, the OfS restricts itself to gathering data in a light-touch, largely reactive way, regarding whether higher education providers are fulfilling their conditions of registration. We propose that it should become proactive in its data-gathering and monitoring of HEIs' compliance with registration conditions; that it should be willing to exercise the powers it already has and to demonstrate that willingness; and that its powers should be enhanced in order to provide formal redress for individuals whose academic freedom and free speech has been denied, a power that does not presently exist. Although the OfS is already authorised by the Higher Education and Research Act 2017 to carry out many of these functions, primary legislation would be required to enhance further its ability to protect and promote academic freedom. Academic freedom is a concern for universities which extends beyond solely its effect on students. So, other things being equal, it would be preferable for this responsibility to be exercised by a bespoke public body. Nonetheless, it remains the case that the Office for Students is an existing public body which already has the powers and the legal responsibility for addressing this challenge.

A key element of our approach, in which the OfS should have the capacity and responsibility for individual redress, was anticipated in relation to students by one of the recommendations in the JCHR's 2018 report.¹¹³ We develop and expand that recommendation further.

Further, **we propose some changes in the operation of the law around academic freedom and freedom of speech, so that employment tribunals and courts have jurisdiction to determine whether these freedoms have been violated for individuals or groups.** At present, it is possible that there is a legal liability for universities under UK law, but it is not clear that there is. This lack of clarity is deterring people from taking up cases against those universities which are alleged to have failed to uphold their legal duties. As precedent would then be established through case law, so those involved in the leadership and governance of universities would also begin to have greater clarity on the specific actions required of them to fulfil their legal obligations. Moreover, the costs involved in renegeing on those obligations would become clear. Ensuring that there are legal liabilities independently of the Director for Academic Freedom would also ensure that there was support for academic freedom, in a way

113. Joint Committee of Human Rights, *Freedom of Speech in Universities*, HC589/HL PAPER 111, 21 March 2018, p. 47, §14.

that would endure beyond any vagaries in future political support for the activities of the Director.

In addition, **we propose a multi-strand approach, by which civil society and universities can also act to protect and promote academic freedom, supporting the work of Parliament, the OfS, and the Department for Education.** This is, in part, because a norm becomes embedded most effectively when multiple actors independently adopt the same principles, and thereby reinforce each other's compliance. Deep-rooted change then becomes possible. A further reason for doing so is because the OfS is instructed to have regard to the need to protect the institutional autonomy of higher education providers (HERA 2017 s. 2 (1) (a)). This will be achieved most effectively if universities themselves take seriously the need for procedural protections for academic freedom.

Proposals follow for Parliament, the Office for Students, civil society, the Department for Education, and universities. These incorporate and expand on the proposals developed in our earlier report, *Academic Freedom in the UK* (November 2019).

How Parliament can protect academic freedom

As noted, many of the powers required for the OfS to be more significantly engaged in protecting and promoting academic freedom are already granted to it under HERA 2017. However, some are not. In particular, we propose that a Director for Academic Freedom, sitting on the Board of the Office for Students and exercising significant powers, would provide a focal point for oversight and enforcement of existing statutory duties. This should be supplemented with further enforcement measures by establishing, in statute, ways for employment tribunals, other courts, and the Director to consider allegations by individuals of egregious academic freedom violations. An Academic Freedom Bill enacted by Parliament could helpfully establish these enforcement measures, and could rectify some existing gaps in legislation.

The proposal that a Director for Academic Freedom should sit on the Board of the OfS, with power to investigate specific allegations that academic freedom or freedom of speech on campus has been violated, is contrary to the role that the OfS envisages for itself. In its September 2018 response to the JCHR's report, the OfS stated that, 'We do not agree, however, that the OfS should act as an arbiter between students, student unions and universities as our function is to ensure that a provider is complying with its conditions of registration.'¹¹⁴ We accept that the primary responsibility of the OfS is to ensure that providers are complying with the conditions of their registration. It is not clear to us, however, how this can be done without actually investigating specific cases. Nor is it clear how it can be a champion of academic freedom and free speech in the sector, as per ministerial guidance, without such proactive measures.

114. Office for Students, *The Promotion and Protection of Free Speech*, 26 September 2018, p. 15

Enabling existing duties to be enforced

Parliament should, through statute:

1. Establish the position of a Director for Academic Freedom. The Director for Academic Freedom should be a member of the senior team of the Office for Students, reporting to the Board of the OfS, and appointed by the Secretary of State, as per the other members of the OfS. The Director to have particular responsibility for ensuring HEPs' compliance with the public interest governance conditions concerning academic freedom and freedom of speech. In exercising this responsibility, the Director also has the power to investigate allegations that academic freedom and freedom of speech have been violated in a HEP. This power to investigate may be exercised either in relation to individual cases, or patterns of cases.

Comment. Establishing this office in statute would give it a basis equivalent to that of the Director for Fair Access and Participation (see HERA 2017, Schedule 1, Section 2).

2. Establish that the Director for Academic Freedom has ombudsman powers. This should include the right to summon persons and papers, and absolute privilege to protect his or her reports. All who are members of a registered HEP or have had some formal affiliation with a registered HEP to be entitled to complain of infringed academic freedom or free speech to the Director. The Director to determine whether to investigate, and also to have power to investigate potential violations of academic freedom in the absence of a formal complaint. The Director to make recommendations about remedial actions for the Board of the OfS to consider. The Board of the OfS then responsible for determining whether and how to act on the Director's recommendations.
3. Establish that the Director should submit an annual report on the state of academic freedom and freedom of speech. This should accompany or be a discrete component of the annual report submitted to the Secretary of State by the OfS, reporting on its performance.
4. Establish an academic freedom clause which, by automatic operation of law, is incorporated into the contracts of academics, and which has no time-based qualifying period.

Comment. At present, HERA 2017 requires only that a higher education provider has statutes and ordinances which *have the effect of* protecting academic freedom, so that individuals are able to advocate unpopular opinions without risking their job. This means that there is inconsistency across the sector as a whole, with each institution having its own statutes and ordinances, and in

some cases, no ordinance at all. These include variability in terms of who enjoys these protections. (This is particularly relevant for short-term teaching staff, who can be on ‘zero-hours’ contracts, as well as those who would be classified as workers rather than full employees.) By incorporating a clause to this effect through law automatically, it would establish that employment tribunals were always qualified to consider whether an HEP’s dismissal of a given academic complied with the statutory duty to protect academic freedom.

In general, employees require two years of continuous employment in order to claim unfair dismissal at an employment tribunal. There are some exemptions to this, however. For instance, an employee has the right to go to an employment tribunal for unfair dismissal on the grounds of political affiliation, regardless of the length of employment.¹¹⁵ The Equality Act 2010 also protects employees with protected characteristics against discrimination—including unfair dismissal—regardless of the length of their service. This same exemption should be applied for academic freedom, so allowing for ‘day one’ claims.

Benefits from this process include ‘a more predictable and transparent application of the rules as the case law builds publicly available precedents, a move to openness away from the arcane procedures of the traditional university environment, and a greater opportunity for compensated exits (which are often not provided for in academic statutes).’¹¹⁶

5. Establish that universities and other higher education providers have a duty to protect academic freedom: that academic staff have freedom within the law to question and test received wisdom, etc.

Comment. At present, HEPs are not directly subject to a duty to protect academic freedom. Rather, the statutory duty is imposed on the University Commissioners (in the 1988 Act) and on the Office for Students (in HERA 2017) to ensure that academic freedom is protected at a given HEP. Because this duty is not imposed directly on HEPs, individuals who allege that their dismissal is a breach of their academic freedom have no clear means of appealing their own university’s decision, on the basis of this statutory duty, through an independent court or tribunal. (This point allows that a case may be possible under the ECHR, alleging a breach of Article 10. This route is costly, however.) The duty to ensure academic freedom should, in addition, be imposed on HEPs directly. One effect of doing so would be to facilitate such individuals bringing a tort in breach of a statutory duty, as per the following recommendation.

6. Establish that breaches of the duty to protect freedom of speech or of academic freedom are torts in breach of a statutory duty, with

115. Employment Rights Act 1996 s. 108 (4), in light of *Redfearn v Serco Ltd* [2012] ECHR 1878.

116. This proposal is drawn from James Murray and Bryn Harris, ‘Academic Freedom and the Freedom of Opinion and Expression: The English Law Position. Response to Call for Submissions by UN Special Rapporteur’, April 2020.

Higher Education Providers being liable for damages for violating these duties.

Comment. At present, it is unclear whether a tort case can be brought by an individual who alleges that the HEP has violated its statutory duties around freedom of speech. Furthermore, it is clear that there is no tort case that can be brought by an individual who alleges that they have lost their job, due to their espousal of a controversial or unpopular opinion. This is because, as noted directly above, the academic freedom duties are not imposed in statute on a given HEP directly. Universities currently have little legal liability for dismissing someone in breach of their academic freedom. This must be remedied, in order to ensure that existing legal principles are satisfied in practice.

There are a number of advantages that establishing a tort in breach of a statutory duty would bring. It would allow more detail to be added to the current formulation of the statutory duty. For instance, it would specify who can claim a breach of their academic freedom; who has liability (whether the higher education provider, or student union, or individual, or combination); what actions are prohibited; which courts would have jurisdiction; and remedies. Specifying what actions are included in the extent of the duty is important, as there are some academic activities in which judgments as to content as well as quality are relevant. For instance, in organising a thematic seminar series, one may properly decide to invite speakers on the basis that the content of their work is aligned with the priorities of the series. The task is to identify when content-based restrictions are improper, and to forbid their imposition in such circumstances.

This recommendation provides an additional layer of protection for those who are subject to egregious academic freedom violations, but who do not count as employees or workers, and so would not enjoy the protections afforded by a statutory academic freedom clause in their employment contract. This is particularly relevant for those who hold honorary or otherwise non-stipendiary fellowships, including emeritus academics. For instance, in the Peterson case, it is unlikely that Prof Peterson would have been afforded any protection by an academic freedom clause inserted into a contract of employment. This is because, on the evidence available publicly, the visiting fellowship he was offered was not a form of employment. Nonetheless, a privilege was rescinded, with some alleging that it was on the basis of the views that Peterson espouses. Were there to have been a statutory tort, with the HEP liable, Peterson would have been able to make the allegation and a court could have determined whether his claim had merit. This provision is also relevant to those individuals and groups who are denied freedom of speech on campus.

7. *As an alternative to Recommendation 2.* Authorise the Director for Academic Freedom at the OfS to give legal assistance to individuals who allege that their academic freedom or freedom of speech has been violated. This legal assistance would include the ability to provide or arrange for the provision of legal advice, legal representation, facilities for the settlement of a dispute, or any other form of assistance.

Comment. This recommendation provides an alternative means of individual redress, other than through the ombudsman functions of the Director for Academic Freedom. If the Director for Academic Freedom possessed these powers, the post-holder would be able proactively to pursue legal cases, under the tort in breach of statutory duties which would be established, towards protecting individuals' academic freedom. This would also help to establish precedent, thereby clarifying for HEPs their legal obligations. Furthermore, it would lower the costs involved for individuals in pursuing cases against their HEP. A model for these powers is provided by the grant of equivalent powers to the Equality and Human Rights Commission, under the Equality Act 2006, ss. 28-29.

This recommendation could be enacted only as an alternative to Recommendation 2, namely the grant of ombudsman powers to the Director for Academic Freedom. It would give rise to clear risks of procedural bias if an ombudsman were also empowered to assist only one side to a dispute.

The above schema provides threefold protection for individuals' academic freedom. Importantly, it does so in a way which is not dependent on the goodwill or support of those within their university or HEP, as this cannot be assured. First, the schema regularises and clarifies that an individual would be able to take their case to an employment tribunal. These tribunals could then hear cases of academic dismissal, and in a context where the tribunal's judgment must consider clear legal protection for those who hold unpopular views. These are the most egregious instances of violation of academic freedom.

Second, the tort in breach of a statutory duty provides a 'back stop' route for pursuing legal remedies for individuals whose academic freedom or freedom of speech is violated, but who are not employees.

Third, the wide jurisdiction possessed by the Director for Academic Freedom provides a binding regulatory mechanism by which wider questions of academic freedom, which go beyond cases of dismissal or lost privileges, could be considered. For instance, individual academics would be entitled to complain to the Director in the event that their HEP imposed improper conditions on what texts or materials should be required or should not be permitted on course syllabi; this would likely be a violation of their academic freedom. It would be the role of the Director to determine whether and when such conditions are compatible

with academic freedom, with the power to call for persons and papers in evidence; for the Director to make recommendations as to how academic freedom should properly be protected and promoted in that situation; for the OfS then to act to ensure that a specific HEP takes appropriate steps to comply with the relevant public interest governance conditions; and for the OfS to promulgate to the sector what best practice looks like for HEPs to comply with the public interest governance conditions which are incumbent on all.

Clarifying the law and extending coverage

Parliament should:

8. Expand the scope of activities which are protected beyond those specified by existing academic freedom legislation. The existing formulation in HERA 2017 s. 14 (7), as adopted from the 1988 Act, requires that academic staff should have ‘the freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges that they may have at their institutions’. This protection should be extended to ensure that *the failure to appoint, promote, or otherwise confer a benefit is included, as well as having a detriment imposed*. In addition, the activities that fall within the scope of this duty should explicitly include *research, teaching, and public engagement*.

Comment. The existing formulation leaves a number of gaps. For instance, it does not prohibit an appointments committee from refusing to confer a job or privilege on the basis of someone’s viewpoint. Nor does it prohibit other forms of penalty being imposed, which do not constitute the loss of a privilege or one’s job. The ‘failure to appoint...’ and ‘having a detriment imposed’ clauses remedy this. The latter clause would have beneficial effects, such as preventing someone’s exposure to vexatious allegations of harassment or other wrongdoing subject to internal disciplinary proceedings. For instance, disciplinary proceedings at a university can be used as a means of putting pressure on academics who advocate unpopular views, to the extent that this constitutes an extended form of harassment. The active use of such proceedings towards this end by members of a University, or the negligent failure to prevent this outcome by those in the University responsible for administering such proceedings, both as judged by a reasonable observer, should constitute a denial of academic freedom.

Determining the level of protection which should be afforded for speech in the context of public engagement by academics involves some further questions, as some draw a line between public speech which is protected and unprotected. One reason for doing so is based on the ‘quality’ of an academic’s speech, and the

other concerns its topic. We reject the ‘quality’ constraint, but it is a more complex question whether the ‘topic’ constraint should be endorsed or not. We consider them in turn.

The ‘quality’ of an academic’s speech, and whether this affects its protection or otherwise, is an important question. Can someone be dismissed for ‘low-grade scholarship’? The proposed criterion is a troubling one, because it invites the question as to who is to judge what counts as poor scholarship. The usual response is to say that other academics are best placed to make this judgment. The problem we have identified, however, is that other academics may be willing to let such a judgment be swayed by political agreement or disagreement. There is no reason to suppose that this judgment is immune from reputational concerns for their institution. It is difficult to see how such a criterion, if established as precedent in case law, would not exert a powerful chilling effect on public engagement by academics, for anything other than peer-reviewed publication may be liable to the accusation that it had failed to meet this condition. In practice, it would be those who espouse unpopular views who would meet with the charge, while those who espouse popular views would not or would see the charge brushed away. Preventing this arbitrariness is precisely the aim of a defence of academic freedom, and for that reason we reject it.

Should speech by an academic on general matters of public interest, independent of their professional expertise, be protected by academic freedom? This is a more complex question. Case law from the European Court of Human Rights takes a view on this point, with the ECtHR affording protection, on the basis of academic freedom, to academics’ public speech which is based on their professional expertise and competence.¹¹⁷ It is unlikely that comments by philosophers on the implications for public health advice of viral epidemiology, for instance, would thus be protected on the basis of an appeal to Article 10 of the ECHR.

It is a more complex question whether protection on the basis of academic freedom should be restricted to speech on topics on which an academic has professional expertise and competence. While the case law from the European Court of Human Rights is worthy of consideration, it does not settle the question of what UK law should be—human rights law imposes only a minimum standard, leaving Parliament free to impose stronger legal protections. The case for arguing that it should be so restricted would draw a parallel with those who are subject to a duty of impartiality, such as broadcast journalists, judges, and civil servants. Those who are subject to such a duty do not enjoy the normal liberties of the citizen, and are not free to comment publicly on matters of the day as they see fit. Doing so would jeopardise the perception and perhaps the reality of their need to be impartial in fulfilling their professional roles. Two considerations

117. *Erdogan v Turkey* [2014] 346/04 and 39779/4, at 40.

count against this conclusion, however. First, and principally, it is unlikely that impartiality is a legitimate constraint on academics' work. It is plausible that academic research and teaching should be subject to an intellectual duty of objectivity. But objectivity is not the same thing as impartiality. Being free to follow the argument or the evidence where it leads may lead to conclusions which are considered partial in the context of a particular political debate. That context should not prevent those conclusions being explored and defended. So, second, once it is recognised that impartiality is not a legitimate requirement on an academics' work, it is difficult to see why the normal liberties of the citizen should not be granted to academics.

9. Make it explicit in law that, in fulfilling both the public sector equality duty and complying with the harassment provisions of the Equality Act 2010, HEPs are to have particular regard to the need to ensure academic freedom and freedom of speech.

Comment. The current legal relation between academic freedom and freedom of speech, and the Equality Act 2010, is unclear, and this should be rectified.

The EHRC's 2019 guidance on freedom of expression in effect asserts that the duty to enable free speech, and the duty to protect academic freedom, already takes precedence in law over both the harassment provisions of the Equality Act 2010 and the public sector equality duty to promote equality and minimise tensions between those with a protected characteristic and those without. The guidance states that 'lawful free speech' should be enabled, while an HEP may take measures under their public sector equality duty to mitigate risk, such as mandating that the chair of an event is neutral, or requiring that there be an opposing speaker. As such, in the view of the EHRC's guidance, these legal duties do not conflict.¹¹⁸

This understanding is contested, however. In particular, the JCHR's 2018 report states that universities 'must strike a balance to ensure they respect both their legal duty to protect free speech and their other legal duties to ensure that speech is lawful, to comply with equalities legislation'.¹¹⁹ The report elsewhere specifies that the need for balancing derives from the public sector equality duty and not, for instance, an allegation of harassment.¹²⁰ The need to 'balance' duties arises only if they may conflict. This would suggest that those individuals and bodies involved in the governance of an HEP must determine for themselves how to trade-off between two conflicting legal duties, and would be exposed to any legal liability only if they made a wholly unreasonable judgment as to where the balance should lie.

The JCHR's understanding of the legal situation reflects more closely the language of the Equality Act 2010, in the only place

118. Equality and Human Rights Commission, *Freedom of expression: A guide for higher education providers and students' unions in England and Wales*, February 2019, pp. 18, 26.

119. Joint Committee of Human Rights, *Freedom of Speech in Universities*, HC589/HL PAPER 111, 21 March 2018, p. 39. See also Corey Stoughton, *Free Speech and Censorship on Campus*, Higher Education Policy Institute, Occasional Paper 21, 27 June 2019, p. 9.

120. Joint Committee of Human Rights, *Freedom of Speech in Universities*, HC589/HL PAPER 111, 21 March 2018, p. 14.

where it considers a possible conflict between its provisions and duties pertaining to academic freedom. As noted, this is in relation to the Act's harassment provisions (see Part III). The Explanatory Notes accompanying the Act explicitly envisage that the courts would be responsible for making a 'balancing' decision, between rights to academic freedom and rights not to be offended in a way that would constitute harassment. In turn, this implies that HEPs would be required to make the same determination. Resolving this unclarity in primary legislation would be valuable.

The Equality Act 2010 is notably silent on the need to protect academic freedom and freedom of speech from excessive application of its provisions. This is in contrast to the Counter-Terrorism and Security Act 2015, which established the Prevent duty, where there is explicit protection for academic freedom and freedom of speech in s. 31. Our recommendation seeks to provide an equivalent level of protection for academic freedom and freedom of speech as already exists under the Prevent duty. It would be also open to government to make explicit what forms of conduct would be protected by the need to have particular regard for academic freedom or freedom of speech. This could be either in primary legislation, by incorporating a 'For the avoidance of doubt...' clause (for parallel, see the Public Order Act 1986 s. 29 (j)), or through accompanying guidance.

10. Extend the existing statutory duty to ensure freedom of speech to include Student Unions, to include decisions on the provision of all facilities and services (as well as premises), including decisions on affiliation and disaffiliation of student societies. Further, the HEP which oversees the Student Union should provide a process by which a student society or other organisation can appeal the decision of the Student Union to refuse access to services, including refusal to affiliate or through disaffiliation.

Comment. As noted, the Section 43 duty in the 1986 Act imposes the duty to ensure freedom of speech to 'every individual and body of persons concerned in the government of any establishment'. This should be extended to the Student Union of each HEP. In amending s. 22 of the 1994 Act, it should be specified that the duty to ensure freedom of speech includes decisions about access to all services provided by a Student Union. This includes use of premises, other facilities, and other services, including presence at Freshers' Fairs, and affiliation of student societies. Student Unions are already subject to a duty to have a stated policy on what grounds decisions are made about access to services for other groups, including student societies who wish to affiliate, which is fair, in writing, and freely accessible to all students. This policy must, in addition, be neutral with regard to viewpoint, both in the policy as stated and as executed

The EHRC guidance makes clear that the legal duties around freedom of speech, as currently established, permit Student Unions to make viewpoint-based decisions to refuse affiliation to student societies, and to refuse access to services, such as having a stall at a Freshers' Fairs.¹²¹ This is subject to the constraint that it should not be discriminatory, as per the protected characteristics of the Equality Act 2010. This constraint provides only limited protection, however. As noted earlier (Part III), the Equality Act 2010 is neither intended to nor has the effect of providing any general protection for free speech.

How the Office for Students can protect academic freedom

As noted, we envisage that the OfS should play an expanded and more engaged role in protecting and promoting academic freedom and freedom of speech on campus. Most centrally, this would be done through the position of a Director for Academic Freedom, who would be responsible for pursuing this goal proactively. In addition to the activities set out in the recommendations 1-3 above, there are some additional actions by which the OfS could actively promote and protect academic freedom and freedom of speech. It is likely that pursuing these actions would be the responsibility of the first Director for Academic Freedom.

Fulfilling regulatory duties and promoting a culture of political non-discrimination

The Office for Students should:

11. Be willing to exercise its existing powers to fine HEPs, for breaches of academic freedom and freedom of speech. This is a power that it already has in law. In practice, this power would be exercised only given the recommendation of the Director for Academic Freedom, and subject to due consideration by the Board.

Comment. At present, there is an incentive problem for those involved in the governance of HEPs, which affects the likelihood of their complying with their legal obligations. Online campaigns against an individual academic are often targeted at that person's institution, and impose a reputational cost on the institution. At present, the only contrary incentive, which counts against complying with the demands of that campaign, is the reputational cost of allegations of censorship. Which incentive weighs strongest depends on which faction is shouting loudest. The situation is complicated here because senior leaders involved in governance in HEPs are often not career academics, and so have no prior, intuitive understanding of the importance of academic freedom.

A better situation is one in which a public body makes an impartial determination as to whether a legal obligation is likely

¹²¹Equality and Human Rights Commission, *Freedom of expression: A guide for higher education providers and students' unions in England and Wales*, February 2019, pp. 41, 42.

to have been breached, and imposes penalties if so. If it finds against the HEP, that imposes significant costs, both financial and reputational, and these are likely to exceed any that come from another tedious skirmish in the culture wars. Such a situation provides the appropriate incentive for the HEP to focus exclusively on fulfilling its legal obligations, and to exclude immediate reputational concerns from consideration. Because going to court is costly for an individual or group, there is much risk that breaches of academic freedom which are unlawful will not be pursued at the courts. An accessible way to make it prudent for universities to focus closely on their legal duties to protect academic freedom and freedom of speech is for it to be probable that the OfS will fine universities which breach those duties.

That the OfS could use its powers for this purpose was specifically envisaged by the Minister for Universities and Science who introduced HERA 2017, Jo Johnson.¹²²

12. Issue updated guidance to HEPs as to how to ensure that their statutes and governance documents and procedures fulfil their duties to uphold academic freedom and freedom of speech. The statutory changes proposed above (recommendations 1-10), if enacted, would render substantial parts of the existing EHRC guidance out of date; this would require updating. There are further areas not covered by the EHRC guidance.

Comment. Updated guidance should address what policies are required by Student Unions to ensure that they fulfil their reformed freedom of speech duties, in relation to who has access to their premises, facilities and services. It should address in more detail what ‘reasonably practicable’ steps entail, in fulfilling the Section 43 duty of free speech. In particular, current EHRC guidance does not address the level of security costs that an HEP can be reasonably expected to incur, in order to ensure that an event should take place. The current Secretary of State for Education, Gavin Williamson, has recently remarked that universities ‘must make clear that intimidation is unacceptable and show a zero-tolerance approach to the perpetrators, applying strong sanctions’.¹²³ This must involve being willing to support events in the face of such intimidation. Guidance on what costs are reasonable, and in the face of what kind of threats, is important. Updated guidance should give indicative examples of the sanctions that an HEP would be expected to impose against those individual members of the University and those groups that fail to uphold the Section 43 duty. This would include disciplinary action for individuals who engage in unlawful intimidation, disaffiliation for student societies who infringe their freedom of speech duties, and fines for Student Unions who discriminate on grounds of viewpoint.

122.<https://www.theguardian.com/education/2017/dec/26/jo-johnson-universities-no-platforming-freedom-of-speech>

123. Gavin Williamson, ‘If universities can’t defend free speech, the government will’. *The Times*, 7 February 2020

Updated guidance would also address how HEPs can proactively seek to protect and promote academic freedom. This is outside the scope of the current EHRC guidance. Such pro-active measures are necessary if a norm of political non-discrimination is to become established within the sector. Best practice for an HEP in protecting and promoting academic freedom will likely involve adoption of the recommendations set out below, as to how universities can help towards this end (see recommendations 21-27). Guidance must address how dismissal and disciplinary procedures must be rendered compliant with academic freedom. In particular, it will involve an HEP establishing a 'due process' clause for all disciplinary and dismissal proceedings, in which those subject to investigation are made aware of their rights to academic freedom, and of the recourses and support which are available within their HEP, as provided by the Director for Academic Freedom at the OfS, and options in law, if they regard the penalty they are subject to as a result of the unpopular nature of their views.

Further, updated guidance must also address what best practice looks like within an HEP, towards developing a culture of political non-discrimination. This will involve training in academic freedom as part of the induction of new members of the university, both student and faculty; and refresher training in academic freedom for existing members, prior to service on appointments committees. It may also involve a code as to how senior leaders within the HEP comment on public controversies.

If an HEP were able to demonstrate that it was compliant with the OfS's guidance in other areas, this would likely mitigate any potential consequences imposed by the OfS for individual instances of breached academic freedom or freedom of speech. It would also render less likely that the Director for Academic Freedom would need to adjudicate in a particular controversy, with the local procedures being first allowed to run their course before OfS involvement might be needed.

Gathering data

The Office for Students should:

13. Establish an annual reporting obligation for HEPs on academic freedom and freedom of speech. This should include a summary of all instances of alleged violations of academic freedom or freedom of speech, and the actions taken in response. It should include a list of all speaker events in which measures intended to mitigate risk have been imposed. It should also include a statement of the resources and individuals available within the HEP who are formally responsible for advocating for academic freedom, and the ways in which these resources and individuals have been

engaged in the past year. It should also include a statement on the actions being taken within the HEP, both in the past year and planned for the coming year, as to how to develop a culture of political non-discrimination and viewpoint diversity.

Comment. Listing which speaker events have had risk-mitigating measures imposed enables an HEP, and the Director for Academic Freedom, to track any patterns in who or which viewpoints are particularly subject to these measures. Such patterns may be indicative of whether there is a culture of political discrimination at a given HEP. Data gathered may be a helpful prompt for reflection internally within an HEP, and externally at the OfS, as to whether academic freedom and freedom of speech is being protected and promoted.

14. Expand the National Student Survey to include questions designed to elicit students' experience of political discrimination, and of a climate of free expression in the classroom. The NSS currently consists of 27 core questions, the answers to only one of which might plausibly relate to a small part of the challenge of political discrimination (Q.9, 'Marking and assessment has been fair'). In an HEP in which academic freedom is robust, there will be few chilling effects in the seminar room. The NSS provides a means of gathering data on student experience.

Comment. Data from the NSS on chilling effects experienced in the classroom would first alert heads of department in a university to a potential problem with academic freedom, and also alert the Director for Academic Freedom at the OfS. This would provide a prompt for remedial action as required.

How civil society can promote academic freedom

As well as primary legislation and government regulation, universities are affected in important ways by two elements of the social context in which they operate. The first is their reputation. The second is their access to funding for research. Universities have a strong focus on ensuring that their reputation is undiminished and that they consistently win research funding.

By establishing academic freedom as a vital factor in a university's reputation, and as a condition on which research funding is disbursed, civil society organisations can help to prevent political discrimination and ensure academic freedom is protected.

15. International rankings of universities should incorporate academic freedom as a criterion against which universities are measured. The key ranking system here is the Times Higher Education's World University Rankings, with the QS World University Rankings also

relevant. The THE's ranking system allocates a 30% weighting to performance indicators that address teaching, and 60% to research, with a reputation survey being the most significant component by weighting in each. The ranking system would be enriched and deepened by incorporating an academic freedom indicator, for both teaching and research (2.5% and 5% weight respectively, perhaps). How these performance indicators were defined would be an important task.

Comment. The intention is to ensure that violations of academic freedom would impact a university's ranking. This is also consistent with the mission of the THE World University Rankings. Indeed, it is surprising that the THE World University Rankings do not already include data on some such performance indicator, as robust academic freedom is an integral component of an excellent university. By including academic freedom as a performance indicator in such rankings, the effect will be to galvanise universities to protect academic freedom.

There is a further means by which civil society can use the concern for reputation, and research funding, to encourage universities to protect academic freedom.

16. Establish an Academic Freedom charter organisation, awarding kitemarks to HEPs for their demonstrated commitment to political anti-discrimination and viewpoint diversity. This organisation should be a charitable corporation, and be independent of government.

Comment. An important example of how to promote norms of anti-discrimination within academia is the Athena Swan charter. This is focused on preventing sex-based discrimination. Under the Athena Swan charter, kitemarks are awarded at Bronze, Silver and Gold levels, to both departments and HEPs, to recognise their commitment to gender equality. It is administered by the Equality Challenge Unit, a subordinate part of AdvanceHE (formerly the Higher Education Academy), which is in turn a professional membership organisation aiming to improve excellence in teaching in higher education. In order to be awarded a kitemark, departments and HEPs must apply for the relevant level, which then initiates a process of internal reflection and scrutiny on measures that are being taken now and in future to promote gender equality. The Athena Swan kitemark affects reputation directly, by giving a public signal regarding a department or HEI's commitment to gender equality. In addition, the UKRI, while not requiring a kitemark to be eligible for funding, does require that those who wish to receive Research Council funding should 'provide evidence of ways in which equality and diversity issues are managed at both an institutional and departmental level'. In

practice, the Athena Swan kitemark is a key piece of evidence for this. Other public bodies, such as the National Institute for Health Research, require an Athena Swan kitemark for a department to be eligible for specified research funding.¹²⁴ The attention to equality and diversity in the ‘environment assessment’, as part of the Research Excellence Framework (administered by UKRI), further embeds this principle.

A parallel body for academic freedom would seek to have the same intended effects on universities’ reputations, and likewise influence funding from UKRI and other public bodies that support research. A benefit of such a body being independent of government is that it would be likely to be able better to maintain its focus on promoting academic freedom, without trade-off against future governments’ other objectives.

How the Department for Education can promote academic freedom

The Office for Students is an independent public body, reporting to Parliament through the Department for Education, but operating at arms-length from the Department. Nonetheless, the Department of Education has some opportunities to support the work of the OfS, and to champion academic freedom and freedom of speech directly.

Supporting the work of the OfS

The Department for Education should:

17. Establish a team to review the performance of the OfS in championing academic freedom and freedom of speech in the sector. The appropriate time for this review to occur would depend in part on what other actions was taken. In the event that Parliament was to legislate and enact some or all of recommendations 1-10 above, an appropriate time-frame would be a year after the post of Director for Academic Freedom was established. This review would be responsible for evaluating the performance of the Director; how the Director’s recommendations had been received by the OfS; and to consider what structural obstacles there were, if any, in inhibiting effective action by the OfS. In subsequent years, this work could fall to the Education Select Committee.

Comment. The OfS is relatively young, having been established less than three years ago, and has had much to accomplish in that time. It has also received a considerable amount of guidance from different Secretaries of State since being established and, while it has received clear ministerial direction in relation to championing academic freedom and freedom of speech, its efforts have had to be spread across a number of additional priorities.

All this being acknowledged, it remains to be seen how

¹²⁴<https://www.nihr.ac.uk/about-us/our-contribution-to-research/equality-diversity-and-inclusion.htm>

emphatically the OfS will seek to fulfil its guidance on championing academic freedom and freedom of speech within the sector. In evidence to the JCHR, Sir Michael Barber, Chair of the OfS, indicated that the OfS would not be “interfering endlessly on this”, and did not expect it to use the range of powers available to it.¹²⁵ This suggests a ‘hands-off’ approach; we argue that what is needed is a ‘hands-on’ approach. If this is a priority for the Government, as we contend it should be, the Secretary of State for Education should enjoy full assurance that the guidance has been appropriately acted on, and would want to verify this independently.

Catalysing action by civil society to promote academic freedom

The Department for Education has the opportunity to catalyse action by civil society, towards protecting and promoting academic freedom, in the two areas noted above. We recommend that the Department should seek to do so.

The Department for Education should:

18. Initiate and convene a collaborative process, with the aim of establishing a measure of academic freedom as a formal component of international university rankings. This would include a design process, seeking to identify how academic freedom could best be measured and engaging with those organisations who deliver the ranking systems. (This is in support of recommendation 15.)
19. Provide initial funding and administrative support to help create an Academic Freedom kitemark organisation. (This is in support of recommendation 16).

Comment. The Equality Challenge Unit was established with significant financial support from government. The ECU depended on a block grant from the Research Councils during its start-up phase (for instance, in 2012, this grant was £1.25m, supporting more than 21 full-time equivalent staff). As per the Equality Challenge Unit, it would be appropriate for the government to provide block funding to establish this organisation, to the point that it reached financial sustainability.

Supporting the work of UKRI

A key process by which the mission of the higher education sector in the UK is advanced is through disbursing money to support research. Doing so is the responsibility of UKRI, which brought together the various Research Councils with responsibility for supporting research in different areas of enquiry. The evidence identified in Part II of this report suggests that further information is required as to whether there is political discrimination embedded in the process of grant-making. Investigating whether this is the case, and what measures might be needed to stop this,

125. Joint Committee of Human Rights, *Freedom of Speech in Universities*, HC589/HL PAPER 111, 21 March 2018, p. 41

is an important question for future work.

The Department for Education should:

20. In collaboration with UKRI and the Department for Business, Energy and Industrial Strategy, review UKRI's commitment to academic freedom and viewpoint diversity, and work with UKRI to establish procedures which embed political non-discrimination in its operations. The same team that reviewed the performance of the OfS on academic freedom (recommendation 17) could sensibly undertake this task. In subsequent years, this work could fall to the Education Select Committee. Given the sums at stake, a triennial independent statutory review, attentive to concerns over political discrimination, might be considered.

Comment. The work of the UKRI depends in part on academics being willing to review grant-applications, and a general norm of political non-discrimination is important to ensure that this is done in a fair manner. This is all that is required for those grant applications where there is no restriction on content, in which academics are free to submit a proposal for any work they wish. However, other grant applications are assessed according to a set of thematic criteria, which are set in advance of the call. The design and specification of these themes is an important way in which the agenda is set for work across the sector. The process of doing so should be exercised in a non-discriminatory way, including political discrimination. At present, there is no stated commitment to such a standard.¹²⁶ This does not mean that viewpoint-based discrimination is occurring in UKRI's operations. But it does suggest that it should be determined whether the design and management of grant-making procedures are robust against such discrimination. This will be especially relevant for the Arts and Humanities and the Economic and Social Research Councils.

How universities can promote academic freedom

By undertaking the following actions, a university would help effectively to protect the academic freedom of its members. The central proposal is that universities should establish an Academic Freedom Champion, who would report directly to the Vice-Chancellor, and would have a range of responsibilities and powers. The cumulative effect of these responsibilities and powers being exercised, with energy and commitment, would be to entrench habits of political anti-discrimination across the university. Some of the functions fulfilled by an Academic Freedom Champion would be legal or regulatory obligations, to the extent that recommendations above (1-13) were acted on.

¹²⁶<https://www.ukri.org/about-us/policies-and-standards/>

Promoting the norm of political non-discrimination

Universities should:

21. Adopt an academic freedom commitment, such as the Chicago Principles, where they have not already done so. Central to that statement is the contention that ‘debate or deliberation may not be suppressed because the ideas put forth are thought by some or even most members of the University community to be offensive, unwise, immoral, or wrong-headed’. For those who take the view that such ideas are offensive, unwise, immoral, or wrong-headed, the appropriate response is not to seek to suppress such speech, but to contest ‘openly and vigorously’ the ideas they oppose.
22. Undertake training in and promote the visibility of academic freedom as a concern for the university.

Comment. This is of particular relevance at the ‘entry points’ to membership of a particular university, namely students starting courses, researchers and teachers taking up temporary posts, and permanent faculty. This is perhaps one of the most important actions that an HEI can take, towards inculcating freedom of expression and debate as a norm within both the institution, and the sector more widely; the principle of political non-discrimination follows from this.

In addition, training on academic freedom is appropriate for those engaged in administering who is admitted to the university. This is relevant most directly to those serving on appointment committees, making job offers to academics on temporary and permanent contracts. The other gateway is offers to students. Those responsible for evaluating applications for undergraduate and postgraduate courses should be aware of their responsibility not to discriminate on political grounds. Mandatory training for those undertaking these responsibilities, with refresher training as appropriate after intervals, would further promote the norm of political non-discrimination.

Comment. Most universities require training in equality, diversity and inclusion as part of the induction into membership of the university, and for those responsible for deciding who should become members. The aim is to prevent discrimination on the basis of the protected characteristics identified by the Equality Act 2010, and further to promote norms of non-discrimination. This proposal is parallel, with the aim of preventing political non-discrimination and viewpoint diversity.

There is evidence that this training would be welcomed. In the 2017 survey of over 2000 members of the UCU, only 41.7% claimed to have adequate working knowledge of academic freedom, and 81.6% stated that they would welcome additional information on the concept and its rights and responsibilities.

The authors of the study, Terrence Karran and Lucy Mallinson, remarked that ‘UCU members have a limited, barely adequate knowledge of the concept’.¹²⁷ Remedying this lack of knowledge would have wide benefits for individuals in the sector, who would thereby be better equipped to identify their rights and responsibilities.

23. Identify how those involved in its leadership can best promote a work environment in which diverse viewpoints are welcomed, and that those who advocate or discuss unpopular views are assured of their freedom to do so. This may involve developing a code of practice for senior leadership regarding how statements are made publicly when controversies arise, and how informal support should be offered to academics who are targeted on the basis of their viewpoint.

Comment. The departments and component bodies of a university, when they are healthy, host a collegial environment in which there is a sense of shared intellectual engagement and the possibility of collaborative work. For academic freedom to be protected and promoted, it should be possible for someone both to espouse an unpopular view and question any consensus, and also be made welcome and regarded as a colleague in good standing. There is an evident tension in achieving this. Nonetheless, it is not impossible, and senior leadership (heads of departments; university leadership, including Vice-Chancellors) have a particular responsibility for facilitating it. Public statements and informal interaction both have a role to play in ensuring that academic freedom is protected, and consideration by a university’s senior leaders as to how to lead by example would be welcome.

Protecting university members from ‘sousveillance’

Universities should:

24. Consider whether to adopt a version of the ‘Chatham House Rule’ as an institutional code of practice for teaching and research seminars. The Chatham House Rule permits the information received or opinions expressed in a given meeting to be used by participants in other public contexts. But it should be expected that the source is not revealed publicly, other than with express permission from the speaker. Breaches of the Chatham House Rule (including re-broadcasting of material made available by someone else’s breach), which are reasonably understood to be deliberate, should be subject to appropriate internal penalties.

Comment. As noted in Part I, Turning Point UK operate ‘Education Watch’, which encourages students to report on ‘political bias’ in the education system. In practice, this consists in digital collection of emails, PowerPoint slides, and video/audio of teaching

¹²⁷Terrence Karran and Lucy Mallinson, ‘Academic freedom in the UK: Legal and normative protection in comparative context. Report for the University and College Union’, 7 May 2017, pp. 1, 80.

sessions.¹²⁸

We are opposed to political bias in teaching. Nonetheless, these activities raise serious questions of academic freedom. The contrasting vision, which we espouse, is that the teaching environment should be one in which everyone—students and faculty—are free to explore ideas. This must include permission to make mistakes, learning through others' correction or rebuttal. For this to be so, there must be an assurance that the people present in the meeting are engaged in intellectual exploration, and are not activists looking for a 'gotcha' moment they can take to social media and try to smear you publicly.

The Chatham House Rule provides a way of protecting teaching and research environments from sousveillance-based activism. It protects the ability of academics and students to focus on learning and ideas, rather than worrying about how to protect their reputations. The Chatham House Rule does not provide protection from discriminatory or harassing speech. That should be properly called to account, with the formal disciplinary mechanisms of the university available to do so.

Counteracting viewpoint-based exclusion

Universities should:

25. Appoint an Academic Freedom Champion, who would report directly to the Vice-Chancellor, with support staff as appropriate. This post would be responsible for championing academic freedom and freedom of speech in the HEP, with powers as follows. The Academic Freedom Champion would have power to investigate complaints of political discrimination across the HEP, and to recommend actions as appropriate. All members of the HEP—academic faculty, students, staff—would be able to alert the Champion to such violations. In addition, all individuals who are not members of the HEP, but who are the alleged victims of political discrimination by members of the HEP, to have a right of complaint to the Champion. The Champion would have power to investigate allegations, by whistle-blowers, of political discrimination in academic appointments and promotion committees; would be responsible for compiling an annual report on the state of academic freedom in their HEI, listing allegations of academic freedom violations, the conclusions of any investigation, and actions taken; and would have power to examine and as appropriate revise existing policies and codes of practice in force at the HEI, to ensure compatibility with academic freedom.
26. Identify a post which would have lead responsibility within an HEP for ensuring compliance with the s. 43 freedom of speech duty. Where the above recommendation was adopted, this would

128. <https://tpointuk.co.uk/education-watch/>

be the Academic Freedom Champion. The post-holder would be responsible for taking reasonably practicable steps to ensure that events go ahead, with appropriate protections and mitigating measures as required. The post-holder would also be responsible for ensuring that an event goes ahead with a back-up chair, if an invitation to a speaker is rescinded by a body either representing the HEP or using the HEP's premises for an academic purpose, and would be responsible for deciding appropriate sanctions when members or bodies within the HEP breach the Section 43 duty to ensure freedom of speech. This post would also involve being responsible for adjudicating allegations that the Student Union at an HEP had discriminated in who has access to its premises, facilities or services on the basis of viewpoint, and determining measures as appropriate.

Comment. This reiterates and expands (in line with recommendations 9 and 10) an element of the free speech duty included in the EHRC's guidance, namely that an HEP must take reasonably practicable steps to ensure that an event with a given speaker can go ahead, in the event that a Student Union rescinds an invitation.¹²⁹

27. Amend disciplinary and dismissal procedures so that panels are expressly compelled to take academic freedom and freedom of speech considerations into account, and must engage the Academic Freedom Champion as appropriate. Members of the HEI subject to such proceedings and who allege that an academic freedom is at stake to have the same permission to engage the Academic Freedom Champion. This would apply to disciplinary as well as dismissal proceedings, and the Champion would be responsible for determining whether an academic freedom violation was at risk. In fulfilling this duty, a responsibility of the Champion would be to ensure that there is a prompt, preliminary consideration of harassment allegations, to identify if there is a case to answer. This would be aimed at minimising the impact of vexatious allegations of harassment. In addition, concern that a member of staff has brought the university into disrepute cannot be grounds for limiting academic freedom, and university codes should be amended to reflect this. In addition, alter complaints procedures such that complaints from inside or outside the university (including via HEI social media feeds) pertaining to speech should have to meet a high threshold for their likelihood to succeed in overriding academic freedom and protected speech provisions before they are conveyed to the accused party. This minimises the chill effect of complaints pertaining to speech, and removes the incentive to harass staff and students created by the prevalent practice of HEIs reporting charges to the accused.

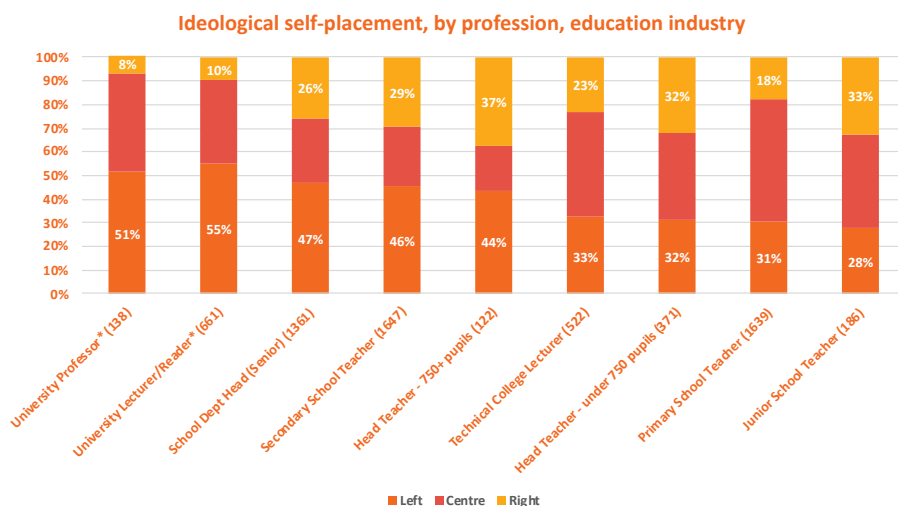
¹²⁹Freedom of expression: A guide for higher education providers and students' unions in England and Wales, Equality and Human Rights Commission, February 2019, p. 27.

The recommendations set out above, for actions that Parliament and the Office for Students can take, are designed to ensure that an individual's academic freedom is protected even where there is a lack of willingness on the part of that person's colleagues and institution to do so. However, a constructive engagement by the UK's universities with the current challenges would mean that the formal powers envisaged above need not be used. An ideal outcome would be a situation whereby those responsible for championing academic freedom within a given institution would work constructively with the Office for Students. The lack of exercise of formal powers by the OfS need not be a sign that a bureaucracy is 'going slow', in hope that attention will divert elsewhere, but could be a sign of success. However, it is vital that the formal powers are also established, both to counter the situation in which there is a lack of willingness to protect individuals' academic freedom, and to make it more likely that universities are indeed willing to engage.

Annex 1 – Statistical analysis

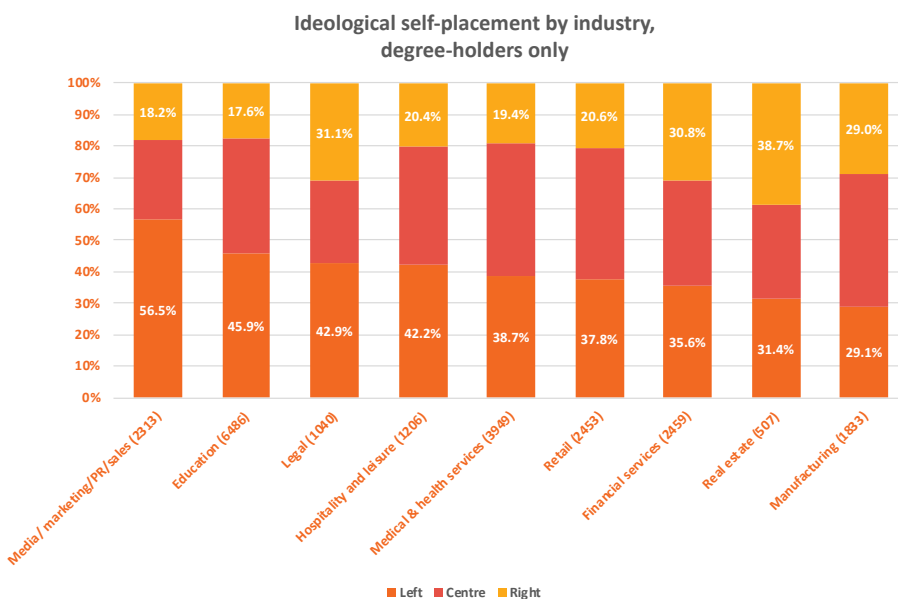
Eric Kaufmann

Figure 3A (corresponding to discussion around figure 3).



Source: YouGov Profiles data, accessed 19 April, 2020. Unweighted sample size in brackets. 'Don't knows' counted as centrist. *Denotes data from our YouGov survey.

Figure 3B (corresponding to discussion around figure 3).



Source: YouGov Profiles data, accessed 19 April 2020, number of respondents in brackets. Universities included under Education sector. Only includes university graduates.

Table 4A (corresponding to figure 4).

Predictors of saying a 'hostile climate' for beliefs	
Age	-0.009 (.011)
Female	-0.073 (.217)
Lecturer (not Professor)	-0.052 (.304)
PhD holder	.386 (.331)
Active (not retired)	-.110 (.343)
Ethnic minority	.194 (.315)
Ideological self-placement (compared to 'Very left'):	
Fairly left	-.849* (.363)
Centrist	-.128 (.349)
Right	1.626*** (.386)
Constant	-1.26 (.689)
Pseudo R ²	.101
N	799

* $p < .05$, ** $p < .01$, *** $p < .001$

Figure 4A (corresponding to table 4A).

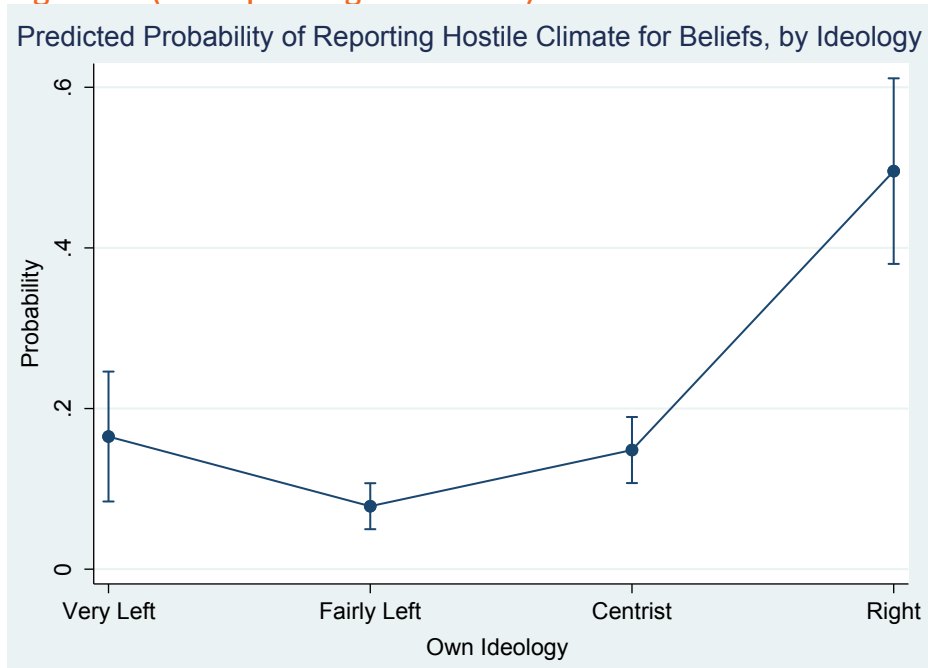


Table 5A (corresponding to figure 5).

Predictors of reporting self-censorship	
Age	-.010 (.010)
Female	.154 (.211)
Lecturer (not Professor)	-.391 (.282)
PhD holder	.341 (.330)
Active (not retired)	-.438 (.333)
Ethnic minority	-.175 (.318)
Ideological self-placement (compared to 'Very left'):	
Fairly left	-.572 (.348)

Centrist	-0.052 (.345)
Right	1.100** (.393)
Constant	-5.23 (.673)
Pseudo R ²	.058
N	799

* $p < .05$, ** $p < .01$, *** $p < .001$

Figure 5A (corresponding to Table 5A).

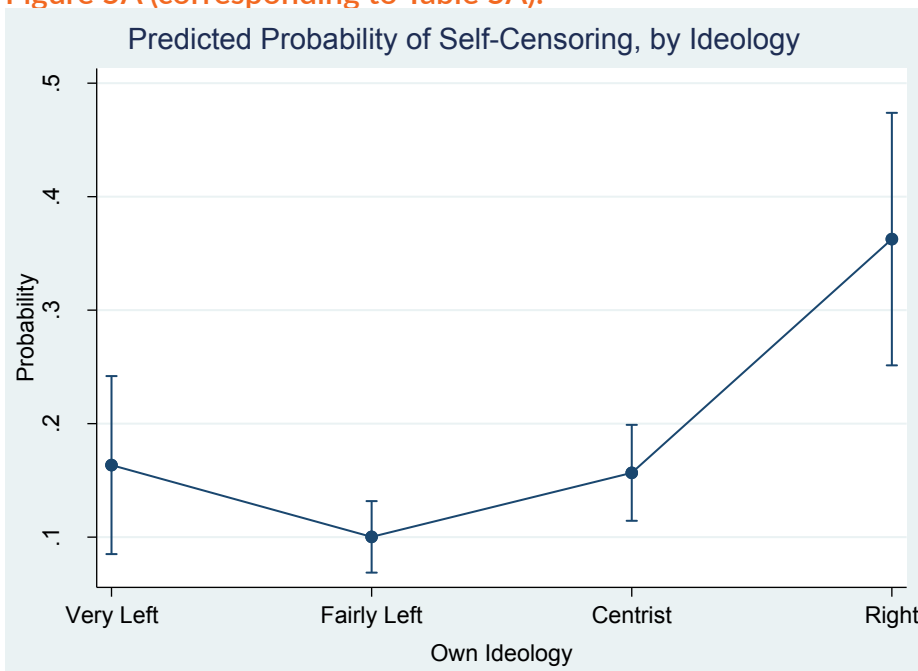


Table 6A (variation on Figure 6).

Predictors of saying Leave supporter would be comfortable expressing views to colleagues	
Age	.020 (.008)
Female	.092 (.199)
Lecturer (not Professor)	.097 (.273)
PhD holder	-.432 (.283)
Ethnic minority	.306 (.414)
Social Science and Humanities (SSH)	-.681** (.209)
Leave	-.658‡ (.352)
Leave x SSH	-.052 (.345)
Constant	-8.78 (.634)
Pseudo R ²	.040
N	484

‡ $p < .1$, * $p < .05$, ** $p < .01$, *** $p < .001$

Figure 6A (corresponding to Table 6A).

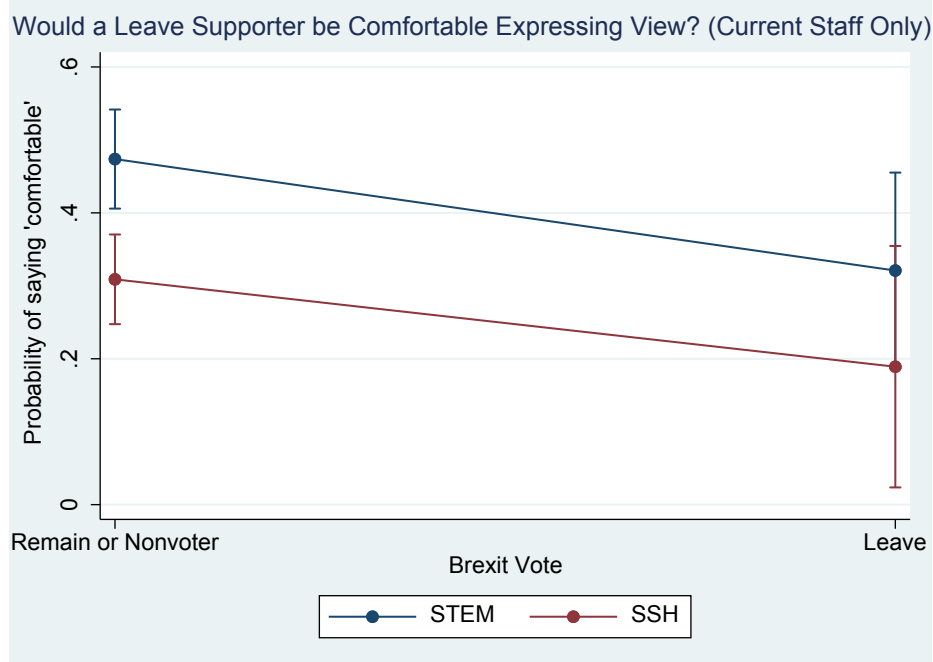


Table 6B (Corresponding to discussion after figure 6).

Predictors of feeling comfortable sitting with gender-critical scholar	
Age	-0.002 (.007)
Female	.244 (.151)
Lecturer (not Professor)	-.391 (.282)
PhD holder	-.119 (.117)
Active (not retired)	.115 (.208)
Ethnic minority	.187 (.347)
Ideological self-placement (compared to 'Centrist'):	
Very left	-.362 (.264)

Fairly left	-.176 (.165)
Right	.428 (.264)
Constant	-1.53 (.854)
Pseudo R ²	.010
N	799

‡p<.1, *p<.05, **p<.01, ***p<.001

Figure 6B (Corresponding to figure 6B).

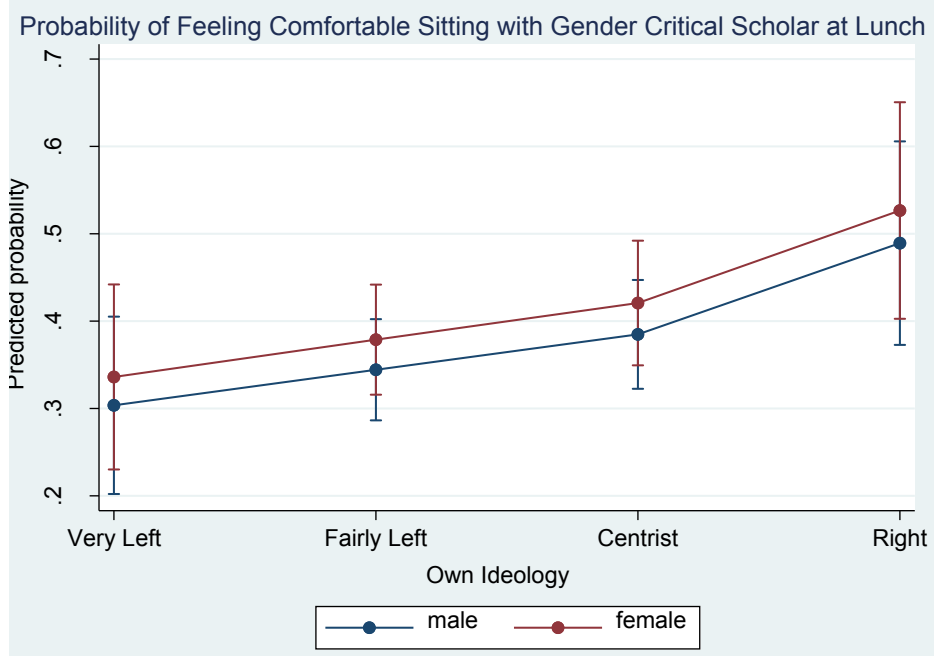
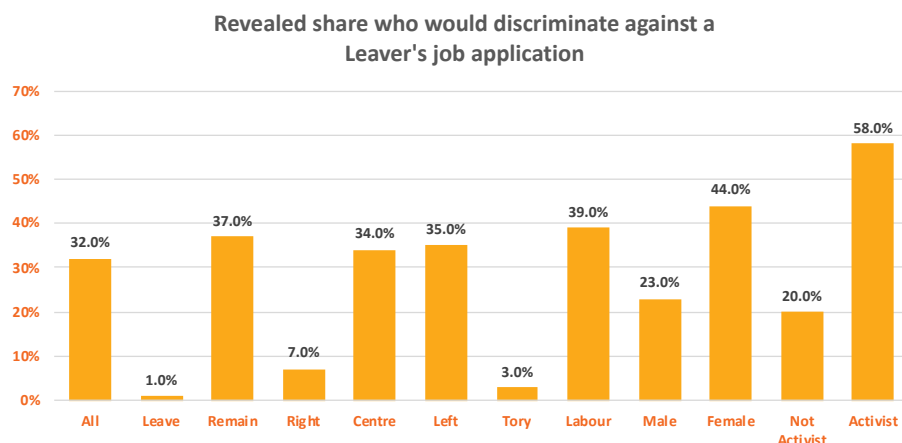


Figure 7A (Corresponding to discussion around Table 1 and Figure 7).



* $p < .05$, ** $p < .01$, *** $p < .001$.

$N=820$ for 'All' category. For size of other groups, see:

https://docs.cdn.yougov.com/4lwd0ybm5c/BBResults_200423_Academics.pdf.

Note that figures in results vary slightly due to weights. Due to error in small sub-samples when using weights, we present raw data in the report

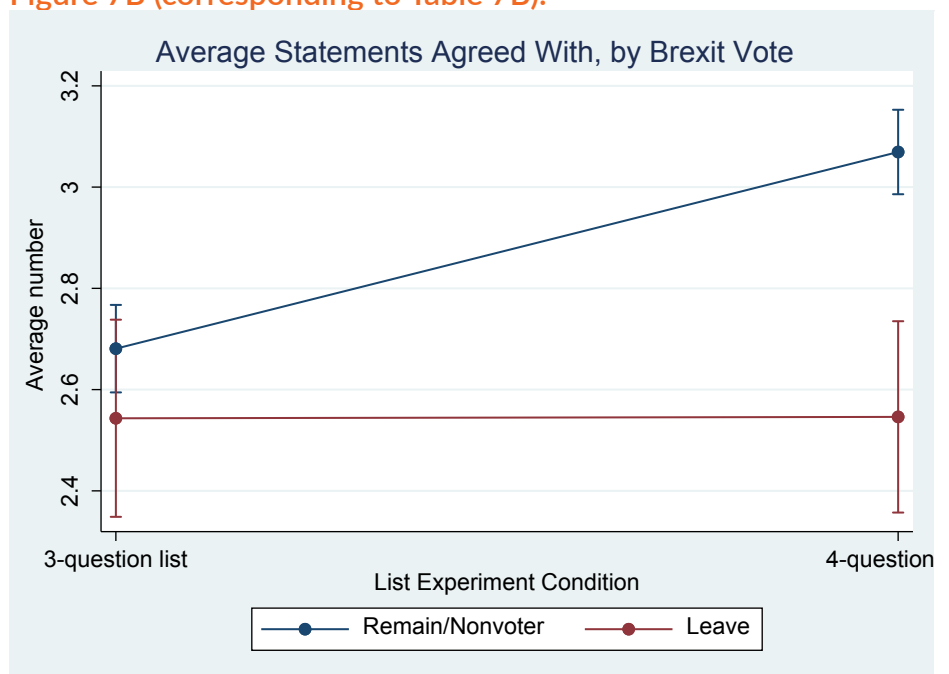
Note 2: Chi2 test of crosstabulation shows significance of list experiment treatment for 'All' at $p < .001$. Variables which showed significant interaction effects with treatment, controlling for age and gender (apart from gender variable, where only age is included in model) are also starred as appropriate.

Note 3: The 32% figure for 'all' is 3.2 times the 10% figure for the same question when asked directly. This implies a multiplier of 3 to be applied to discrimination questions to derive the unconcealed (true) figure. However, our other discrimination questions use a 5-point or 3-point rather than 2-point scale. In our data we note that 5-point scale questions (i.e. grants) report more discrimination than 3-point questions (papers, promotions). We believe a multiplier of 1.5-2.25 is therefore more appropriate for 5-point questions. Our 15-23% estimate for Leave-voting academics discriminating in favour of a centrist over a leftist in a job therefore uses this latter multiplier (10% reported \times 1.5-2.25). So too does our estimate of 'around half' (44%) for discrimination against right-leaning grants (i.e. 22% reported \times 1.5-2.25 = median of 33-55%).

Table 7B (corresponding to part of figure 7A).

Predictors of average number of list statements	
Age	-0.003 (.002)
Female	.065 (.057)
Leave	-.125 (.109)
Saw List of 4 Items (v. 3-items)	.388*** (.061)
Saw List of 4 x Leave Voter	-.386* (.151)
Constant	2.837*** (.122)
R ²	.067
N	820

Figure 7B (corresponding to Table 7B).



NB: controls for age and gender.

Figure 7C (corresponding to part of figure 7A).



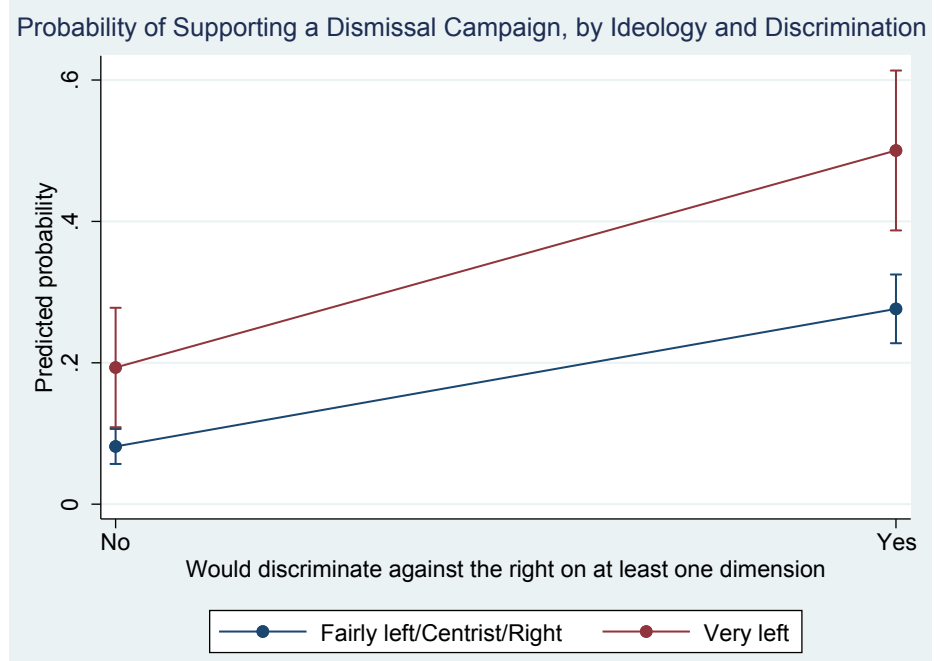
NB: Controls for age and gender. List of 4 x Activist interaction significant at $p < .05$ level.

Table 9A (related to figure 9 discussion)

Predictors of supporting at least 1 of 4 dismissal campaigns	
Age	-.026** (.009)
Female	.241 (.198)
Active (not retired)	.323 (.283)
Very Left	.754** (.273)
Would discriminate against right on at least 1 dimension	1.499*** (.207)
Ethnic minority	.639 (.397)
Attention paid to 2017 election	.110 (.068)

Ideological self-placement (compared to 'Centrist'):	
Social Science and Humanities	.009 (.200)
Constant	-1.53 (.854)
Pseudo R ²	.134
N	820

Figure 9A (corresponding to Table 9A).



Rt Hon Ruth Kelly, former Labour Education Secretary:

“The self-censorship going on among academics revealed by Policy Exchange’s research is real cause for concern. Universities should not only welcome debate and dissent from established ways of thinking – they should actively encourage it, because that’s how we achieve progress and change. If universities were only to allow the regurgitation of the received wisdom, what would be the point of them?”

Lord Sumption, former Supreme Court Justice:

“This is a timely and important study. It examines a real problem with impressive objectivity and none of the partisan rhetoric that we have learned to associate with the issue of academic freedom.”

Trevor Phillips, Senior Fellow at Policy Exchange:

“A thoughtful and revealing survey, and deeply disturbing. The very purpose of higher education is to encourage our brightest minds to expand the bounds of human understanding. Dismayingly, it seems that many academics are being guided more by prejudice than by curiosity.

“Worse still, far from espousing genuine diversity of thought, higher education is retreating into a formal bean counting of race and gender. No-one fought for diversity and inclusion in order to create universities staffed by a faculty who may look representative, but are to all intents and purposes, intellectually identical robots.”