

Allegation by the UCU against the UK Government in respect to non-compliance with the 1997 UNESCO recommendation concerning the status of higher education teaching personnel

Submission to the UNESCO/ILO committee of experts on the application of the recommendations concerning teaching personnel, by the UK University and College Union



Contents

Executive summary	3
1 The allegation and the nature of the complaint	5
2 De jure: generic constitutional protection	8
3 De jure: specific legislative protection	12
3.1 Legislative protection for the freedom to teach	13
3.2 Legislative protection for the freedom for research	17
3.3 Legislative protection for right to self-governance	18
3.4 Legislative protection for the right to security of employment	21
3.5 De jure protection for academic freedom: summary	23
4 De facto: normative protection for, and experiences of, academic freedom	23
4.1 Generic normative protection for academic freedom	24
4.2 Normative protection for the freedom to teach	27
4.3 Normative protection for the freedom for research	29
4.4 Normative protection for the right to self-governance	32
4.5 Normative protection for the right to security of employment	33
4.6 De facto protection for academic freedom: summary	35
5 Conclusion	36
Notes	38
Bibliography	43



Executive Summary

This submission to the UNESCO/ILO committee of experts on the application of the recommendations concerning teaching personnel report has been made by the UK University and College Union, the largest UK higher education trade union and professional association. **The allegation relates to the low levels of *de jure* protection for academic freedom offered by the constitution and legislative instruments in the United Kingdom, which has led to academic staff experiencing a low level of *de facto* academic freedom in their day to day activities as researchers and teachers.** These low levels of *de jure* and *de facto* protection for academic freedom, which are much below those enjoyed by their peers in other comparable EU states, are such that UCU believes that the UK government is failing to meet its obligations in respect to the 1997 UNESCO *recommendation concerning the status of higher-education teaching personnel*, of which the UK is a signatory state.

The submission assesses the legal protection for the two substantive (the freedom to teach and undertake research) and the two supportive (self-governance and security of employment) elements of academic freedom, by examining the constitutions and relevant legislative instruments in the United Kingdom and other EU states. This appraisal reveals that:

- academic freedom to teach is limited; in England, the legislation gives the duty to the higher education institution as a corporate body, rather than to its individual academic staff, to determine the content of particular courses and the manner in which they are taught, supervised and assessed
- academic freedom for research does exist, but it is being undermined by the repeated national research evaluation exercises and the need to demonstrate that research has impact
- democratic involvement of staff in governance exists, especially in Scotland, but it is generally lower than that recommended in the UNESCO *Recommendation* and in the post-1992 institutions (which comprise more than half of the UK higher education institutions), it is negligible
- tenure has been abolished and fixed-term contracts and casual employment have become routine across the sector, and so there is no real job security for UK academic staff.

This analysis of the *de jure* protection of the four elements of academic freedom is mirrored by an analysis of the normative *de facto* protection using comparable data from over 2000 UK academics and 4000 staff in universities of the European states, gathered by means of similar surveys. It demonstrates that the low level of *de jure* protection for academic freedom in the UK is mirrored by an equally poor (if not worse) level of *de*



facto protection. The reality is that, in the overwhelming majority of instances, UK academics report statistically significantly higher levels of systematic abuse of their academic freedom, than their European counterparts in relation to the four constituent elements, and across a wide array of measures. For example, 23.1% of UK respondents (and 14.1% of EU respondents) reported being bullied on account of their academic views, 26.6% of UK respondents reported being subjected to psychological pressure (EU = 15.7%), while 35.5% of the UK cohort admitted to self-censorship (EU = 19.1%), for fear of negative repercussions, such as loss of privileges, demotion, physical harm, etc. Furthermore, academic staff in the UK are much more likely to agree (or strongly agree) than their European counterparts that the major elements of academic freedom (freedom for teaching and research, shared governance and job security) have declined.



1 THE COMPLAINANT AND THE NATURE OF THE ALLEGATION

This allegation is submitted by the University and College Union (hereafter, UCU), which is a registered trade union under UK law. UCU is the largest trade union and professional association in the UK higher and further education sector, with over 120,000 members on whose behalf it exercises collective bargaining rights. The membership includes over 30,000 lecturers in further education (FE) colleges in England, Wales and Northern Ireland, many of whom teach undergraduate and other higher education level courses. FE colleges are an important provider of higher education programmes – for example, around one in twelve higher education students in England (eight per cent of the HE population) were taught in FE colleges. UCU is an affiliate of the UK Trades Union Congress and is also an affiliate of Education International, which is a formal associate member of UNESCO.

In 1997 the UNESCO *Recommendation* concerning the Status of Higher-Education Teaching Personnel (hereafter, the UNESCO *Recommendation*) was signed by Clare Short, the (then) Secretary of State for International Development, on behalf of the UK government. **It is the contention of UCU that the de jure constitutional and legislative instruments which normally provide protection for academic freedom are either absent or severely defective in the UK, particularly within England, and are insufficient to meet the standards detailed in the 1997 UNESCO Recommendation, of which the UK is a signatory state. This has led to academic staff experiencing a low level of de facto academic freedom in their day to day activities as researchers and teachers, which is much below that enjoyed by their peers in other comparable EU states.** These low levels of *de jure* and *de facto* protection form the basis of this complaint which UCU is submitting to the CEART.

The foundation for this allegation lies in a comprehensive portfolio of previous separate contributory research reports and policy papers produced by UCU on the four salient dimensions of academic freedom (freedom to teach, freedom for research, and the rights to self-governance and security of employment) over the past decade, which are covered in this submission. Hence UCU has highlighted members' concerns about the impact of current legislation and policies on academic freedom, for example, during the passage of the 2017 Higher and Research Act and in official consultations over the development of the research excellence framework (REF) and the teaching excellence framework (TEF), both of which will be considered in this submission. In some areas, such as the role played by the research excellence framework or the impact of fixed-term contracts, the allegation refers to the UK higher education sector as a whole (ie the different jurisdictions in England, Wales, Northern Ireland and Scotland). In other areas, for example, the role of the Office for Students and restrictions on the right to self-governance, the submission focuses primarily on legislation and practice in England. This stems from the impact of devolution on higher education legislation and practice within the UK. For example, the submission will highlight the improvement in the protection for academic freedom and a greater involvement in governance by academic staff in the Scottish legislative framework.

In 2017, UCU commissioned a major report¹ on the legal and normative protection of academic freedom in the UK and communicated the findings to the Minister of State for



Universities, Science, Research and Innovation in England. In the absence of any effective responses from the central government in London to these important issues raised by UCU, in protecting the academic freedom rights of its members, UCU concludes that the only way in which it can mitigate and reverse the decline of academic freedom suffered by its members is to appeal to the UNESCO/ILO committee of experts on the application of the recommendations concerning teaching personnel (CEART). Scrutiny of the 'procedure concerning allegations and reports', issued as part of UNESCO's revised mandate of the Joint ILO/UNESCO committee of experts on the application of the recommendations concerning teaching personnel confirms that this allegation is receivable by the CEART, in that it: is 'related to the provision of either recommendation'; emanates from a national or international teachers' organisation'; and falls outside 'the competence of other bodies of ILO and UNESCO established to monitor conventions of other international instruments'.²

Clearly, the chances of academic freedom enjoying protection are greatly enhanced where an adequate constitutional and legislative framework is provided for, but this will not always be the case. Indeed, practice on the ground may reveal a stronger cultural commitment to freedom than is apparent from perusal of the constitutional and legislative framework. Consequently, any comprehensive picture of the state of the right to academic freedom also has to take its protection in practice – as a result of institutional, faculty, and/or departmental regulations, policies, and customs – into account. Hence this submission examines the *de jure* constitutional and legal protection for academic freedom in respect to teaching, research, self-governance and security of employment, and then examines the *de facto* normative situation in respect to the same elements in the UK, but using EU data as a comparative lens.

The concept and nature of academic freedom are disputed, even among academics, For example Åkerlind and Kayrooz acknowledge that '[d]espite the wide ranging debate about academic freedom in recent times, there is little consensus between parties as to what academic freedom actually means. ... the concept is open to a range of interpretations and has been used at times to support conflicting causes and positions'.³ Hence views about the adequate level of, and requisite protection for, academic freedom are necessarily relative and subjective, such that bench marks determining their sufficiency (or otherwise) are problematic. However, the central importance of academic freedom to universities, and society more generally, has been recognised in the national constitutions of the EU nation states, but also at European level. Hence, to provide a comparative context for the *de jure* and *de facto* analyses of the protection for academic freedom in the UK, comparative data from the other EU states will be used, for the following reasons. First, both the university as a concept and a locus for research and learning, and the principle of academic freedom as an essential pre-requisite for such an institution find their genesis in Europe. Renaut makes clear that 'if there is any institution that Europe can most justifiably claim as one of its inventions, it is the university'.⁴ In support of this view, Goldstein describes how 'the modern development of the doctrine of academic freedom is largely derived from the nineteenth century German concepts of *Lehrfreiheit* and *Lernfreiheit*',⁵ which are associated with the reforms instituted by Wilhelm von Humboldt at Berlin University. Although there are some exceptions, the majority of the EU's



universities followed either the model laid down at the University of Paris, or that of the Humboldtian Berlin University. As Sanz and Bergan point out, the European heritage of universities is complex and multi-faceted, involving 'the principles of academic autonomy, intellectual curiosity, the freedom to teach, pursue research and publish its results and rigorous standards of peer review... (but also)... fundamental societal values such as participation, community and equal opportunity'.⁶

Secondly, the histories of the EU states and their universities have been closely interwoven, for example, scholars escaping the great dispersion from Paris University in 1229 helped to make up the contingent at Oxford. Similarly, in the contemporary era, academic freedom is considered important to the implementation of the Bologna process. As the 2001 Salamanca declaration stated, progress on the Bologna Process requires that 'European universities be empowered to act in line with the guiding principle of autonomy with accountability (and) confirm their adherence to the principles of the Magna Charta Universitatum of 1988 and, in particular, academic freedom'.⁷ For these reasons, when assessing the adequacy of the legal and normative protection for academic freedom in the UK, comparisons are more relevant with respect to the EU states than with (for example) the USA, India, etc.

When considering academic freedom, the following commonly agreed substantive and supportive elements of the concept can be identified. The substantive elements are freedom to teach and research. The former normally includes freedom to determine: what shall be taught (curriculum); how it shall be taught (pedagogy); who shall teach (via transparent selection procedures); whom shall be taught (the right to determine entry standards); how students' progress is evaluated (assessment methods); whether students progress (via marking criteria and grade determination). Freedom to research normally includes the determination of: what shall be researched; the research method; the purpose of the research (and the possible refusal to undertake unethical research); the avenues and modes (conference presentations, journal articles) of disseminating research findings.

These two substantive elements are buttressed and sustained by two supportive elements: self-governance and security of employment. Self-governance comprises the rights to: voice an opinion on the running of the university; democratic participation in decision-making within the university; be able to appoint people to, and dismiss them from, positions of managerial authority within the university. Tenure or its functional equivalent comprises the right to employment security, following a peer-reviewed assessment of academic accomplishments, after the completion of a probationary employment period.

Deficiencies with respect to the *de jure* and *de facto* protection for these four constituent elements of academic freedom (the rights to teach and research, self governance and tenure) form the basis for this complaint. The submission first examines the *de jure* generic protection for academic freedom in the UK under the constitution, and then via specific legal instruments in England and Scotland. Secondly, it addresses the *de facto* realities of the operation of academic freedom in departments in UK universities, as described by the academic staff.



2 DE JURE: GENERIC CONSTITUTIONAL PROTECTION

In legal terms, nations' constitutions are the supreme authority with respect to the canon of civil and criminal law of individual states. For example, in Germany, all appeals in law that go to the federal constitutional court acting as the supreme constitutional court for the Federal Republic, the highest court in the land, do so because the federal constitutional court is the final interpreter of the constitution or 1949 Basic Law of Germany. The court's jurisdiction is focused solely on constitutional issues and the compliance of all governmental institutions with the constitution. Not surprisingly, (given its global acceptance as a fundamental human right) freedom of speech is protected under Article 5 of the Basic Law which states that '[e]very person shall have the right freely to express and disseminate his opinions in speech, writing and pictures'. Such a right has ramifications for academic freedom, in that, as Daughtrey argues, 'The free speech guarantee serves as the basis of the concept of academic freedom',⁸ an opinion shared by Turner who states that '[i]f academic freedom is not simple freedom of speech, it is an extension of the principle of free speech which is an essential prerequisite for the proper performance of the profession'.⁹ Hence academic freedom is protected indirectly in the German constitution, via the protection for freedom of speech.

Table 1: Constitutional protection for freedom of speech¹⁰

NATION	CONSTITUTIONAL PROTECTION FOR FREEDOM OF SPEECH
Austria	Art. 13 'Everyone has the right within the limits of the law freely to express his opinion by word of mouth and in writing, print, or pictorial representation' Basic Law of Austria
Belgium	Art. 19 'Freedom to demonstrate one's opinions on all matters are guaranteed'. Constitution of Belgium
Bulgaria	Art. 39 'Everyone shall be entitled to express an opinion or to publicize it through words, written or oral, sound or image, or in any other way' Constitution of Bulgaria
Croatia	Art. 38 'Freedom of thought and expression shall be guaranteed'. Constitution of Croatia
Cyprus	Art. 19 'Every person has the right to freedom of speech and expression in any form'. Constitution of Cyprus
Czech Republic	Art. 17: 'The freedom of expression and the right to information are guaranteed'. Charter of Fundamental Rights and Basic Freedoms,
Denmark	Art. 77 'Any person shall be at liberty to publish his ideas in print, in writing, and in speech, subject to his being held responsible in a court of law'. The Constitutional Act of Denmark
Estonia	Art. 45 'Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means' Constitution of Estonia.
Finland	Section 12 'Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone' The Constitution of Finland
France	Art. 11 'The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law' Declaration of the Rights of Man and of the Citizen,



Germany	Art. 5 'Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources' Basic Law of the German Federal Republic
Greece	Art. 14 'Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State'. Constitution of Greece
Hungary	Art. IX 'Everyone shall have the right to freedom of speech'. Fundamental Law of Hungary
Ireland	Art. 40.6.1 'The State guarantees liberty for the exercise of the following rights, subject to public order and morality: The right of the citizens to express freely their convictions and opinions' Constitution of Ireland
Italy	Art. 21 'Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication' Constitution of Italy
Latvia	Art. 100 'Everyone has the right to freedom of expression' Constitution of Latvia
Lithuania	Art. 25 'The human being shall have the right to have his own convictions and freely express them. The human being must not be hindered from seeking, receiving and imparting information and ideas'. Constitution of Lithuania
Luxembourg	Art. 24 'Freedom of speech in all matters and freedom of the press is guaranteed', Constitution of Luxembourg
Malta	Art. 41 'no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference' Constitution of Malta
Netherlands	Art. 7 'No one shall require prior permission to publish thoughts or opinions' Constitution of the Netherlands
Poland	Art. 54 'The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone'. Constitution of Poland
Portugal	Art. 37 'Everyone has the right to freely express and divulge his thoughts in words, images or by any other means' Constitution of Portugal
Romania	Art. 30 'Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable' Constitution of Romania.
Slovakia	Art. 26 'Everyone has the right to express his views in word, writing, print, picture, or other means as well as the right to freely seek out, receive, and spread ideas and information'. Slovak Republic Constitution
Slovenia	Art. 39 'Freedom of expression of thought, speech and public appearance, and of the press and other forms of public communication and expression shall be guaranteed. ' Constitution of Slovenia.
Spain	Art. 20 'The following rights are recognised and protected: a) the right to freely express and disseminate thoughts, ideas and opinions through words, in writing or by any other means of communication' Constitution of Spain
Sweden	Art. 1. 'Everyone shall be guaranteed the following : freedom of expression: that is, the freedom to communicate information and express thoughts, opinions and sentiments, whether orally, pictorially, in writing, or in any other way' Swedish Instrument of Government
UK	The UK has no written constitution

Table 2: Constitutional protection for academic freedom¹¹

NATION	CONSTITUTIONAL PROTECTION FOR FREEDOM OF SPEECH
Austria	Art. 81c'.Public universities are places of free scientific research, teaching and development of the arts. They act autonomously within the framework of the laws and can issue statutes. The members of the university collegial bodies are free of instructions'. Federal Constitutional Law
Belgium	Article 24 'Everyone has the right to education with the respect of fundamental rights and freedoms'. Constitution of Belgium
Bulgaria	Art. 53. 'Higher educational establishments shall enjoy academic autonomy'. Art. 54 'Artistic, scientific and technological creativity shall be recognized and guaranteed by the law'. Constitution of Bulgaria
Croatia	Art. 68 'The autonomy of universities shall be guaranteed. Universities shall independently decide on their organisation and operation Art. 69 'The freedom of scientific, cultural and artistic creativity shall be guaranteed. The state shall encourage and support the development of science, culture and the arts'. Constitution of Croatia
Cyprus	No Constitutional Protection
Czech Republic	Art. 15 'The freedom of scholarly research and of artistic creation is guaranteed'. Charter of Fundamental Rights and Basic Freedoms,
Denmark	No Constitutional Protection
Estonia	Art. 38. 'Science and art and their teachings are free. Universities and research institutions are autonomous within the limits prescribed by the law' Constitution of Estonia..
Finland	Section 16 - 'The freedom of science, the arts and higher education is guaranteed'. Constitution of Finland
France	No Constitutional Protection
Germany	Art. 53 'Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution'. Basic Law for the Federal Republic of Germany
Greece	Article 16 'Art and science, research and teaching shall be free and their development and promotion shall be an obligation of the State. Academic freedom and freedom of teaching shall not exempt anyone from his duty of allegiance to the Constitution'. Constitution of Greece
Hungary	Art. X 'Hungary shall ensure the freedom of scientific research and artistic creation, the freedom of learning for the acquisition of the highest possible level of knowledge, and, within the framework laid down in an Act, the freedom of teaching'. Fundamental Law of Hungary
Ireland	No Constitutional Protection
Italy	Art. 33 'The Republic guarantees the freedom of the arts and sciences, which may be freely taught'. 'Higher education institutions, universities and academies, have the right to establish their own regulations within the limits laid down by the law'. Constitution of Italy
Latvia	No Constitutional Protection
Lithuania	Art. 40 'Schools of higher education shall be granted autonomy. Art. 42 'Culture, science and research, and teaching shall be free. Constitution of Lithuania
Luxembourg	Art. 35 'academic freedom is exercised in accordance with the values of a democratic society based on human rights and public freedoms'. Constitution of Luxembourg
Malta	No Constitutional Protection
Netherlands	No Constitutional Protection



Table 2: Constitutional protection for academic freedom (continued)

NATION	CONSTITUTIONAL PROTECTION FOR FREEDOM OF SPEECH
Poland	Art. 72 'The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute'. Art. 73 'The freedom of artistic creation and scientific research as well as dissemination of the fruits thereof, the freedom to teach and to enjoy the products of culture, shall be ensured to everyone' Constitution of Poland
Portugal	Article 43 'The freedom to learn and to teach is guaranteed. The state may not programme education and culture in accordance with any philosophical, aesthetic, political, ideological or religious directives'. Article 76 'As laid down by law and without prejudice to an adequate assessment of the quality of education, universities shall enjoy autonomy in drawing up their own by-laws and in scientific, pedagogical, administrative and financial matters'. Constitution of Portugal
Romania	Art. 32 'The autonomy of the Universities is guaranteed'. Constitution of Romania
Slovakia	Art. 42 'Citizens have the right to free education at primary and secondary schools and, depending on their abilities and society's resources, also at higher educational establishments'. Art. 43 'Freedom of scientific research and in art is guaranteed'. Constitution of the Slovak Republic.
Slovenia	Art. 58 'State universities and state institutions of higher education shall be autonomous'. Art. 59 'The freedom of scientific and artistic endeavour shall be guaranteed'. Constitution of Slovenia.
Spain	Art. 20 'The following rights are recognised and protected: c) the right to academic freedom' Constitution of Spain
Sweden	Art. 18. 'The freedom of research is protected according to rules laid down in law'. Swedish Instrument of Government
UK	No Constitutional Protection

Table 1 (above) shows that all the EU states, except the UK, provide constitutional protection for freedom of speech and, hence indirectly, academic freedom. In addition, some, like the German constitution, provide further direct constitutional protection for academic freedom. Hence, Article 5(3) of the 1949 Basic Law states that 'Arts and sciences, research and teaching shall be free'. Providing constitutional protection for freedom of speech and for academic freedom is the norm in the EU states.

Table 2 shows that the constitutions of 20 of the 28 EU states also provide some form of direct constitutional protection for academic freedom. In summary, in terms of constitutional protection for academic freedom, the situation in the UK is aberrant when compared with the other EU states, as there is no direct constitutional protection for academic freedom, and no indirect protection via the protection for freedom of speech, as the UK does not have a written constitution. Moreover, because there is no constitutional guarantee of academic freedom in the UK, any legal arguments that might be the basis of a challenge in other national jurisdictions (like Germany's) are not possible in the British courts. Hence, unlike their German counterparts, British academics cannot argue that the UK law on academic freedom (considered below) must be interpreted in a particular way in order to comply with their constitutional right to academic freedom and/or freedom of speech – as there is no constitution.



The absence of a British written constitution both removes the possibility of indirect (freedom of speech) and direct constitutional protection for academic freedom and limits the academic freedom arguments that could be made before British courts. In consequence, Farrington and Palfreyman make the point that '[b]y contrast to other countries with a written constitution ... [in the UK] the source of any right to academic freedom in employment is the contract of employment'.¹²

3 DE JURE: SPECIFIC LEGISLATIVE PROTECTION

In considering the legislative protection for academic freedom in the UK, it is worth noting that, despite the dearth of constitutional protection for academic freedom in the UK, there is no compensatory plethora of legislative instruments protecting academic freedom; in fact (and, again, in marked contrast with the EU states) the reverse is the case. In most other EU states, protection for academic freedom is an integral part of a comprehensive higher education act (eg the 1997 Irish Universities Act, the Finnish 2009 Universities Act, etc) which covers all aspects of the workings of national higher education systems and their constituent elements. For example, the Spanish Ley Organica of 2001 states (artículo 33) that 'Teaching is a right and a duty of teachers in universities, which they exercise with academic freedom' and that (artículo 39) 'Freedom of research in universities is recognised and guaranteed'. The comprehensive Ley has 89 artículos covering (inter alia) university functions; university autonomy, recognition and legal status of universities; creation of university departments; appointment, composition, functions and terms of office of the government council; the appointment of the rector, the vice-rectors, the deans of faculty and directors of schools; appointment, composition, functions and terms of office of the university senate; quality assurance mechanisms and university accreditation; the appointment, functions and title of professor. This is not the case in the UK, where there is no comparable comprehensive act which provides such detailed information on the day to day running of all aspects of universities' functions, the rationale for the national system of higher education, and the protection of academic freedom. The current legislative protection is derived from the 1988 Education Reform Act; however, as Farrington and Palfreyman state, the act (unlike legislation in the majority of EU states) 'did not establish any general principle of academic freedom'.¹³

The UNESCO (1997) *Recommendation on the Status of Higher Education Teaching Personnel* is not a stand-alone document but is well-embedded in other international regulations to which the UK is a signatory state - as Beiter points out 'in its preamble the *Recommendation* refers to article 26 of the Universal Declaration of Human Rights ... article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights, to the Convention against Discrimination in Education, (and) to the UNESCO/ International Labour Organisation Recommendation concerning the status of teachers'.¹⁴

In the same way, in addition to the 1988 Education Reform Act (which will be considered in depth below), universities in England and Wales have some additional academic freedom responsibilities which arise under other legislation. Hence universities have a statutory duty under section 43 of the Education (No.2) Act 1986 'to 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. The duty imposed ... includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with (a) the beliefs or views of that individual or of any member of that body; or (b) the policy or objectives of that body'.¹⁵ As part of this statutory duty universities are also required to issue and keep up to date a code of practice to be followed by all members, students and employees of the university for the organisation of meetings and other events whether indoors or outdoors on university premises.

More recently, section 26 of the 2015 Counter-Terrorism and Security Act placed on higher education institutions the duty to 'have due regard to the need to prevent people being drawn into terrorism'.¹⁶ In meeting this duty, section 31 requires that institutions must have 'particular regard to the duty to ensure freedom of speech' and 'particular regard to the importance of academic freedom' and that, in issuing guidance, the secretary of state should pay the same 'particular regard' to freedom of speech and academic freedom. However, a report by the Open Society Justice Initiative found that 'The Prevent strategy, particularly by authorising interventions for individuals at risk of being drawn into non-violent extremism, takes the preventive approach of inchoate offences much further by targeting individuals who may be nowhere near formulating even an intent to commit a terrorist act'. The report provides four illustrative university case studies including the University of Staffordshire at which a student studying for a master's degree in terrorism and security studies was accosted in the university library, while reading a recommended set text (*Terrorism Studies: A Reader*) and questioned by a university employee and a magistrate about: the fact that he had lived in Saudi Arabia; the country's laws and reputation for women's rights' ISIS; his views on Sharia law and homosexuality. One of the women told a library security guard: 'There is a man, who is Asian, and with a beard, who is not a student and is reading a book on terrorism', and asked the security guard to check on the student as she suspected that he was 'a radical terrorist'.¹⁷ Similarly, following a visit to the UK in 2016, the UN *special rapporteur* on the rights to freedom of peaceful assembly and association found that 'it appears that Prevent is having the opposite of its intended effect: by dividing, stigmatizing and alienating segments of the population, Prevent could end up promoting extremism, rather than countering it' and that the Prevent policy had 'created unease and uncertainty around what can legitimately be discussed in public'.¹⁸ In essence, it is difficult to disagree with Gilmore's conclusion that 'The CTSA 2015 represents one of the most significant threats to academic freedom in recent years'.¹⁹

3.1 LEGISLATIVE PROTECTION FOR THE FREEDOM TO TEACH

The right to academic freedom with respect to teaching is protected in paragraph 28 of the 1997 UNESCO *Recommendation* which states: 'Higher-education teaching personnel have the right to teach without any interference, subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching. Higher-education teaching personnel should not be forced to instruct against their own best knowledge and conscience or be forced to use curricula and



methods contrary to national and international human rights standards. Higher-education teaching personnel should play a significant role in determining the curriculum’.

In the UK (England), academic freedom for teaching is protected by Section 2 (8) of the Higher Education and Research Act 2017 (which draws directly from section 202 (2) of the 1988 Education Reform Act) and also section 36. The current act states:

2 General Duties

(8) *‘In this Part, ‘the institutional autonomy of English higher education providers’ means–*

(a) *the freedom of English higher education providers within the law to conduct their day to day management in an effective and competent way,*

(b) *the freedom of English higher education providers–*

(i) *to determine the content of particular courses and the manner in which they are taught, supervised and assessed,*

(ii) *to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and*

(iii) *to determine the criteria for the admission of students and apply those criteria in particular cases, and*

(c) *the freedom within the law of academic staff at English higher education providers—*

(i) *to question and test received wisdom, and*

(ii) *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 the providers.’*

36 Duty to protect academic freedom

(1) *In performing its access and participation functions, the Office for Students has a duty to protect academic freedom including, in particular, the freedom of institutions–*

(a) *to determine the content of particular courses and the manner in which they are taught, supervised and assessed,*

(b) *to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and*

(c) *to determine the criteria for the admission of students and apply those criteria in particular cases.*



(2) In performing those functions, subsection (1) applies instead of section 2(1)(a) (duty of Office for Students to have regard to the need to protect institutional autonomy) in relation to the freedoms mentioned in subsection (8) (b) and (c) of that section.

With reference to these clauses, the following points are worthy of note. First, the protection for individual academic freedom in England is derived from institutional autonomy – the act states that, arising from the ‘institutional autonomy of English higher education providers’, academics may enjoy the ‘freedom within the law of academic staff at English higher education providers’. Hence, protection for the academic freedom of individual academic staff is limited to the context of each academic’s relationship with his or her employing institution. This directly contradicts paragraph 20 of the 1997 UNESCO *Recommendation* which states: ‘Autonomy should not be used by higher education institutions as a pretext to limit the rights of higher-education teaching personnel provided for in this *Recommendation*’.

Second, section 28 of the 1997 UNESCO *Recommendation* states that ‘Higher education teaching personnel have the right to teach without any interference,...Higher education teaching personnel should play a significant role in determining the curriculum’. However, these rights are completely undermined by the 2017 Higher Education and Research Act which states that higher education providers have the right to determine ‘the content of particular courses and the manner in which they are taught, supervised and assessed’. Moreover, the UK situation is in marked distinction with (for example) the 1997 Irish Universities Act which states: ‘[t]eaching is a right and a duty of teachers in universities, which they exercise with academic freedom, with no restrictions other than those set out in the Constitution and the laws and bylaws on the organisation of teaching in universities’. Staff in Ireland’s universities exercise academic freedom to teach, protected by the law and the constitution. Their British counterparts are only granted ‘freedom within the law of academic staff at English higher education providers’.

Third, in addition to legislating to protect academic freedom, the 2017 Higher Education and Research Act had further important ramifications for academic freedom for teaching. The act established the Office for Students (OfS) and in Section 23 gave the OfS the powers to ‘assess, or make arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by English higher education providers’ (it was left optional as to whether Scotland, Wales and Northern Ireland wished to join). The legislation also provides the OfS with the duty to protect academic freedom in England. However, early indications suggest that the OfS is in a weak position to perform this particular duty. For example, there is no representative of academic staff on the OfS board, while at the same time evidence has emerged of political interference by ministers and special advisers in the appointment of the student member of the board.²⁰ Above all, it is difficult to see how a commitment to protect academic freedom aligns with the core OfS duties of promoting competition and choice and value for money for students. For example, the official policy of promoting competition – a policy that predates the establishment of the OfS – has resulted in growing numbers of for-profit higher education providers in England. These types of providers, however, are generally characterised by



limited opportunities for academic staff to undertake self-directed research and weak supportive structures for protecting academic freedom, for example, in the form of higher levels of casualised employment and more corporate forms of institutional governance.²¹ In contrast with most UK (and EU) nations, for-profit providers are much more common in the USA. Indeed of the nearly 5000 higher education institutions in the USA listed in the Carnegie classification of institutions of higher education, 35.2% were public institutions, 37.1% were private not-for-profit and 27.6% were private for-profit.²² Tierney and Lechuga's study of academic freedom in for-profit colleges and universities found that 'those who lead for-profit colleges argue that academic freedom is of no use for what they are attempting to.'²³ Additionally, the American Association of University Professors produces an annual censure list of universities who have violated the generally recognized principles of academic freedom and tenure approved by the association. Of the 56 institutions on the AAUP 2018 censure list, 64% were private universities.²⁴

Fourth, section 25 of the act established the principle of the teaching excellence and student outcomes framework (TEF) in primary legislation, while section 24 details the constitution of any bodies designated by the OfS to assess quality within the HE sector. The TEF is designed to provide universities, and their potential students, with an assessment of the quality of university teaching. The establishment of the OfS and the use of the TEF were designed to meet 'the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers'.²⁵ The TEF panel – comprising academics, students, and employers – considers evidence from a set of metrics using national data as well as a written statement submitted by the institution. The TEF grades are based on six cores scores, drawn from three data bases.²⁶

1) *The National Student Survey provides data on:*

- i) *Students' satisfaction with the quality of teaching on their courses*
- ii) *Students' satisfaction with the quality of assessment and feedback*
- iii) *Students' satisfaction with academic support*

2) *The Higher Education Statistics Agency provides data on*

- iv) *The institutional drop out/retention rate*

3) *The Destination of Leavers from HE survey provides data on:*

- v) *The proportion of students in employment or further study six months after graduation*
- vi) *The proportion of students who are in highly skilled employment or further study in months after graduation*



These data are then benchmarked to take account of differences in students' characteristics, entry qualifications, and subjects studied. Across the UK, participation in the TEF is voluntary, but in England, participation in the TEF has since become a registration requirement by the Office for Students. In June 2017, the TEF panel published the results of its first assessment. 295 higher education providers participated in the TEF, and 231 applied for a TEF assessment. Using an Olympics-style classification system (gold, silver, and bronze), 26% obtained a gold award, 50% were awarded silver, and 24% received a bronze. The impact of the TEF on academic freedom for teaching will be considered in more detail in section 4.2, as part of the analysis of *de facto* normative protection.

3.2 LEGISLATIVE PROTECTION FOR THE FREEDOM TO RESEARCH

The right to academic freedom with respect to research is protected in paragraph 29 of the UNESCO *Recommendation* which states: 'Higher-education teaching personnel have a right to carry out research work without any interference, or any suppression, in accordance with their professional responsibility and subject to nationally and internationally recognized professional principles of intellectual rigour, scientific inquiry and research ethics. They should also have the right to publish and communicate the conclusions of the research of which they are authors or co-authors'. As with the protection for academic freedom for teaching in the UK, the only legislative protection for academic freedom for research, arises from paragraph 2 in the 2017 Higher Education and Research Act (considered above). This offers some protection for academic freedom for research, viz: 'to question and test received wisdom, and to put forward new ideas'. However, this provision is much less explicit and comprehensive than most of the other EU states such as, (for example) Belgium, in which the 1953 Higher Education Decree states: 'Academic freedom expresses the principle that teachers and researchers must, in the very interest of the development of knowledge and the pluralism of opinions, enjoy a very wide freedom to carry out research and to express their opinions in the performance of their duties. Academic freedom therefore constitutes an aspect of freedom of expression (article 19 of the constitution) and forms part of freedom of education (Article 24.1 of the Constitution)'.

When considering academic freedom to undertake research, the impact of the UK national research evaluation exercise is worthy of note. Since 1986 all academic staff at UK universities have had their research evaluated at periodic intervals (in 1989, 1992, 1996 and 2001, 2008, 2014, 2021). However, although there is no legal obligation for universities to participate in this evaluation process, the results of it are used to determine the disbursement of national research funds. Hence the costs, in terms of university financial resources, and damage to institutional reputation, of not participating in these exercises are so punitive that, excepting specialist institutions with very low student numbers, all UK higher education institutions feel obligated to take part. It is at the discretion of the individual universities to determine which subjects will be put forward for evaluation; within these chosen subject domains, the decision as to which personnel shall be included lies with the heads of subject departments and not the individual academics. For each exercise, the UK higher education funding bodies have determined the nature of the required submission. Hence for the forthcoming 2021 research excellence framework, each academic included will be required to submit a minimum of one and a maximum of five



publications. These publications are then assessed by expert panels in terms of their originality (whether the research constitutes an intellectual advance or an important and innovative contribution to understanding and knowledge); significance (the degree to which work has enhanced, or is likely to enhance knowledge, thinking, understanding and/or practice in its field); and rigour (intellectual coherence, methodological precision and analytical power). The impact of the research excellence framework on academic freedom is considered in greater depth as part of the analysis of *de facto* normative protection in section 4.3 below.

3.3 LEGISLATIVE PROTECTION FOR THE RIGHT TO SELF-GOVERNANCE

The right to academic freedom with respect to self-governance is protected in paragraph 31 of the 1997 UNESCO *Recommendation* which states: 'Higher-education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution'. This description has broad symmetry with Eustace's description of the English ideal of university governance 'that universities (and other academic bodies) should be composed of scholars not as individuals but as a body – literally, a clerisy ... -a body formed as equal scholars who are able to order their own affairs',²⁷ but which is at variance with the majority of UK universities.

Owing to historical circumstances, there are two distinct types of UK universities, and different laws and governance structures apply to each. As of 2017, there were 167 identifiable institutions with university status in the UK; of these 73 are pre-1992 institutions (with a total of 1.242 million students) and 84 are post-1992 institutions (with 1.057 million students). The first group comprises all those institutions founded before 1992, more usually by Royal Charter. This group includes medieval universities like Oxford, 19th century civic 'redbrick' universities like Manchester, and 20th century (so-called) 'plate-glass' universities like Warwick. The charter specifies the university's powers: to grant and confer degrees; to institute professorships, readerships, lectureships; to appoint university staff (the chancellor, pro-chancellors; deputy pro-chancellors and the vice-chancellor); to establish regulatory and administrative bodies (the university court, council, senate); to create statutes and ordinances, which specify the detail of these powers. As Knight notes, 'the standard model of UK governance of most UK universities during the twentieth and twenty-first centuries has been a bicameral system consisting of an academic body, usually called the senate, comprised largely of academics, and a governing body, usually called the council and with a preponderance of non-academic lay members'.²⁸

The second group comprises all those institutions (predominantly polytechnics) granted university status under the 1992 Further and Higher Education Act. Prior to this, the Polytechnics were removed from local authority control to become higher education corporations, by the 1988 Education Reform Act. The governance structures of these



institutions were specified in a ministerial memorandum (Notes for Guidance on the Government and Academic Organisation of Polytechnics, DES Administrative Memorandum 8/67) at the time of their creation, and received endorsement by the 1988 Education Reform Act (Part II Higher and Further Education, Chapter II Reorganisation of Provision and Funding of Higher Education). With respect to these specific acts of parliament, Farrington noted '[i]n those institutions with an instrument of government made under this legislation the extraordinary situation has arisen in which there is no legal requirement for any staff or student governors'.²⁹ Indeed, Hall and Hyams note that 'it has been suggested that the constitutional structure of the statutory universities, with its stress on corporate managerialism, a mainly 'lay' board and optional staff and student board members, make those institutions particularly susceptible to misgovernance'.³⁰ This group includes all the English ex-polytechnics and providers of technical and vocational education in Scotland, plus smaller specialist colleges that have been given university status.

The differences between the two governance types are best explained by means of examples.

Durham University is a pre-1992 university. Its statutes specify that the university is governed by a visitor, chancellor, vice-chancellor, convocation, council, senate and boards of studies. Convocation comprises all members of the university, ie the chancellor, vice-chancellor, pro-vice-chancellors, the teaching staff, the heads of colleges and halls of residence, and all Durham alumni. It meets annually to debate any business relating to the university, and can call additional meetings if a minimum of 50 members desire. It has the power to appoint the chancellor (on the nomination of council and senate) and make representations to the university on any business debated. University council is the executive body, with 24 members, maximum [the chancellor, the vice-chancellor, the deputy vice-chancellor, up to 12 external lay members, seven members of the university staff (five of whom are academic staff with research and teaching responsibilities), the Dean of Durham and the president of the students' union]. The council has the authority to: review the work of the university: take such steps as necessary to advance the university's interests: fix the salaries and conditions of tenure of posts to which they appoint; establish budget centres within the university for the efficient management of resources. Senate is the supreme governing body of the university in academic matters, and comprises seven staff from the vice-chancellor's office, 16 heads of college, 23 heads of department, three student's union representatives, 17 members elected by the academic electoral assembly, six co-opted members, the librarian and the head of IT. It nominates the vice-chancellor and pro-vice-chancellors to council, recommends the establishment of faculties and boards of studies and grants degrees. Hence, in pre-1992 universities like Durham, the powers of governance are shared between convocation, council and senate, and their compositions are such that academic staff have an input into all the decisions that these bodies make.

Leeds Beckett University is a post-1992 institution with two governance bodies. The board of governors is the university's governing body, responsible for: determining the university's educational character and mission; overseeing all of its activities (including



appointing the vice-chancellor); the effective, efficient and economical use of the university's funds. The board has 20 members: the vice-chancellor; 12 independent lay governors; three co-opted governors (one from the academic staff); two academic board nominees; and two student representatives. The academic board is the university's principal academic authority and is responsible for: overseeing and regulating all academic activities; maintaining the academic standard of awards; enhancing the quality of educational provision. The board has a membership of 40: the vice-chancellor; eight deputy and pro-vice-chancellors; 13 deans of schools; the university's secretary, librarian and director of research, all of whom are ex-officio. The remaining minority are: four nominated student representatives; and 11 elected from among the professors (two), research staff (one), academic staff (two), service staff (three) and course directors (three).

The 1997 UNESCO recommendation requires higher-education teaching personnel to have the right to elect a majority of representatives to academic bodies within the higher education institution. Within Durham University seven (29%) of the 24 council members, and 17 (20%) of the 84 senate members are elected by the academic staff. In Leeds Beckett University, two (10%) of the 20 Board of Governors and five (14.5%) of the 40 members of the academic board are elected by the academic staff. Hence in neither case do either of these institutions (whose governance structures are typical across the UK HE community) come close to meeting the requirements of the recommendation. Clearly, the presence of elected members on governing bodies in pre-1992 universities makes more likely greater collegiality in decision-making and better protection for academic freedom, than exists in the post-1992 universities, which have decision-making structures that are managerial, rather than collegial. In assessing past governance problems in UK higher education, Farrington and Palfreyman pinpoint 'the dangers of the 'cabinet' undergoing metamorphosis into a small and powerful cadre of governors and staff'³¹ in the post-1992 universities; of the eight institutions they cite which have experienced governance problems, all are post-1992 universities. More recently, governance failures have emerged at a number of pre-1992 universities. For example, the University of Bath was recently criticised by the HE regulator for its inadequate governance arrangements regarding senior staff pay, including the exclusion of staff and student representatives from the university remuneration committee.³²

However, the situation in Scotland has changed recently with passing of the Higher Education Governance (Scotland) Act of 2016. The legislation followed a research review chaired by Ferdinand von Prondzynski, the VC at Robert Gordon University, but who was formerly President of Dublin City University in Ireland. The research review team were of the opinion that 'a core principle of higher education is the protection of academic freedom, in accordance with the UNESCO *Recommendation* concerning the status of higher-education teaching personnel, made in Paris on 11 November 1997'.³³ Additionally, the review team recommended that a definition of academic freedom be incorporated in the statute governing higher education, based on the definition contained in Ireland's Universities Act 1997. The new act does not adhere to the UNESCO *Recommendation* directly, but is similar to the Irish legislation. Part 2 of the new act deals specifically with



academic freedom and, borrowing from the Irish legislation, allows academics 'freedom within the law to do the following things-

- (a) hold and express opinions,*
- (b) question and test established ideas or received wisdom,*
- (c) develop and advance new ideas or innovative proposals,*
- (d) present controversial or unpopular points of view'.*

Also, the legislation considerably broadened the membership of the governing body, which now has to include:

2 staff representatives elected by the staff;

1 representative nominated by the academic staff who are members of an academic trade union that has a connection with the institution;

2 representatives nominated by a students' association of the institution from among the students of the institution.

These reforms represent an improvement in the protection for academic freedom and a greater involvement in governance by the academic staff, but only relate to 15 Scottish higher education institutions.

3.4 LEGISLATIVE PROTECTION FOR THE RIGHT TO SECURITY OF EMPLOYMENT

Paragraph 45 of the 1997 UNESCO *Recommendation* states that: 'Tenure or its functional equivalent...constitutes one of the major procedural safeguards of academic freedom and against arbitrary decisions'. The right to employment stability is also protected in paragraph 46 of the 1997 UNESCO *Recommendation* which states: 'Tenure or its functional equivalent, where applicable, should be safeguarded as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body, and/or extension work to the satisfaction of the institution of higher education'.

Prior to the 1988 Education Reform Act, full time university teaching staff at pre-1992 universities had the right to tenure written into their statutes. Hence in 1988, Cambridge University's Statute D (The University Officers) Chapter XVII (the University Lecturer) stated: 'A university lecturer shall be appointed in the first instance for three years ... If he is reappointed ... he shall hold the office so long as he satisfactorily performs the duties of his office until the retiring age'. Broadly similar rights existed at all other pre-1992 universities; by contrast the contracts for staff at the post-1992 ex-polytechnic institutions had never contained any provision for tenure. However, section 202 of the 1988 Education Reform Act removed tenure by requiring that the statutes of each pre-1992 chartered university should be changed to include:

- (a) provision enabling an appropriate body, or any delegate of such a body, to dismiss any member of the academic staff by reason of redundancy;*



(b) provision enabling an appropriate officer, or any delegate of such an officer, acting in accordance with procedures determined by the Commissioners, to dismiss any member of the academic staff for good cause’.

In answer to criticisms that the abolition of tenure might undermine academic freedom, an additional clause was introduced into the bill which states:

‘There shall be a body of Commissioners known as the University Commissioners who shall exercise, the functions assigned to them by those sections.

(2) In exercising those functions, the Commissioners shall have regard to the need—

(a) to ensure 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;

(b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically; and

(c) to apply the principles of justice and fairness.

It was the job of the commissioners to ensure that the pre-1992 universities altered their statutes to include paragraphs (2) (a), (b), and (c) from the act. Once established for three years following the 1988 ERA, the duties and powers of the commissioners were confirmed annually thereafter by means of a statutory instrument; the last such was signed in March 1995, continuing the commissioners’ responsibilities until 1 April 1996 after which, as no further statutory instruments were signed, the commissioners ceased to operate. Hence there is no legal provision (as exists in, for example, the 1997 Irish Universities Act) or specifically designated personnel, to protect the academic freedom of UK higher education staff in their day-to-day activities of teaching and research. Under the 1988 Education Reform Act the legal protection for academic freedom takes the form of a right to a retrospective review for remedial redress by individuals; that is, an appeal against personal abrogation of academic freedom can only occur when an individual academic claims that s/he has been made redundant on grounds other than ‘just cause’.

Most post-92 universities have incorporated the definition of academic freedom in the 1988 Education Reform Act into the institution’s articles of government. These Articles are legal documents which determine how the university is to be run. The board of governors is charged, after consultation with staff, with making the rules relating to the conduct of staff, including redundancies. Although the board is obliged to have regard to academic freedom in relation to redundancies, there are no additional protections for academic staff in post-92 universities (ie. compared to the pre-92 universities). In addition, the corporate governance structures within post-92 universities – in which academic boards are completely subordinate to their vice-chancellors and governing bodies – makes it harder to ensure that academic freedom is protected. In most pre-92 universities, the rules of the university are set out in charters and statutes (rather than instruments and articles). This will include a statute that enshrines the principle of academic freedom



and sets out how redundancies, disciplinarys, grievances and other dismissals are handled. This is often referred to as the 'model' statute or the 'employment' statute. Unlike in the post-92 universities, there is sometimes an additional protection for academic staff such as a requirement for a university redundancy committee to include a member of academic staff, or to allow for an independent legally qualified chair to review dismissal appeals.

3.5 DE JURE PROTECTION FOR ACADEMIC FREEDOM: SUMMARY

In summary, when examining *de jure* constitutional and legislative protection for academic freedom in the United Kingdom, using the 1997 UNESCO *Recommendation* as a yard stick, it is evident that:

- academic freedom to teach is limited; in England, the legislation gives the duty to the university as a corporate body, rather than to its individual academic staff, to determine the content of particular courses and the manner in which they are taught, supervised and assessed
- some academic freedom for research exists, but it is being undermined by the repeated national research evaluation exercises and the need to show that research has impact
- democratic involvement of staff in governance exists, especially in Scotland, but it is generally lower than that recommended in the UNESCO *Recommendation* and in the post-1992 institutions (which comprise more than half of the UK higher education institutions), it is negligible
- tenure has been abolished completely and fixed-term contracts have become routine throughout the sector, and so there is no real job security for UK academic staff.

The next section addresses the *de facto* realities of the operation of academic freedom in departments in UK universities, as described by the academics themselves.

4 DE FACTO NORMATIVE PROTECTION FOR, AND EXPERIENCES OF, ACADEMIC FREEDOM

To assess the normative protection for academic freedom in the UK, data were obtained from two sources. First, data from the EU states was gathered via an on-line survey, created following research funded by an EU Marie Curie Intra-European Fellowship. The total number of responses to the European survey exceeded 5300, of which those from the UK were excluded. Second, an online survey containing identical questions on academic freedom aimed at academic staff working in UK higher education was launched in December 2016, which resulted in 2239 responses from UCU members. The sample sizes are such that they represent an accurate snap-shot of the state of academic freedom in the majority of EU states, which can therefore act as a good comparator against which to bench mark the equivalent data obtained from UCU staff in the UK. ANOVA and



Chi-square (χ^2) statistics were calculated to enable comparisons between the EU and UK cohorts with respect to the responses to questions in the academic freedom survey.

4.1 GENERIC NORMATIVE PROTECTION FOR ACADEMIC FREEDOM

Table 3 below shows the results obtained when respondents were asked to score the level of protection for academic freedom within their higher education institution on a scale of 1 (very low) to 9 (very high).

There are stark differences between the results for the two cohorts. 10.9% of the UK cohort reported the lowest level of protection possible, while the comparable figure for the EU respondents was 3.4%. At the other end of the scale, the positions are reversed, with only 3% of UK respondents believing that the protection for academic freedom in their institution was very high, compared with 9.9% in the EU nations. In general, UK respondents report a lower level of protection than their EU counterparts, and these differences are statistically significant at the 1% level.

Table 3: Level of protection for academic freedom in respondents' HE institutions

RESPONSE	% EU	% UK
1 = Very low level of protection	3.4	10.9
2	4.0	7.4
3	5.6	9.4
4	6.3	9.9
5 = Average level of protection	20.6	30.7
6	11.0	9.9
7	20.8	11.3
8	18.5	7.5
9 = Very high level of protection	9.9	3.0
All (n=6483)	100 (n=4172)	100 (n=2311)

One way ANOVA: F =593.854 1 df Significant at 1% level

Calculating the mean scores reveals similar differences – the mean scale score for UK respondents was 4.7 out of 9, ie below the central scale point, while that for the EU was 6.0, ie above the central scale point. Similarly, collapsing the nine point scale into three categories produces an enhanced picture of the difference between the EU and UK data, as shown in [Table 4](#). Nearly half of the EU respondents believe that there is an above average level of protection for academic freedom in their institutions, which was more than twice the figure reported by the UK respondents. Conversely, the proportion of UK respondents (one in four) who consider the level of protection to be generally low is more than twice that of their EU counterparts. The calculation of the χ^2 value for the aggregated raw data for these collapsed categories shows these differences between the UK and EU respondents to be significant at the 1% level.



Table 4: Level of protection for academic freedom in respondents' HE institutions: collapsed categories

RESPONSE	% EU	% UK
Generally low level of protection (categories 1 to 3)	12.9	27.7
Average level of protection (categories 4 to 6)	37.9	50.5
Generally high level of protection (categories 7 to 9)	49.2	21.8
All (n=6483)	100 (n=4172)	100 (n=2311)

$\chi^2 = 515.282$ 2 df Significant at 1% level

To examine the situation more thoroughly, respondents were asked to consider whether the protection for academic freedom in their department and university had fallen, remained constant, or risen, in recent years. As can be seen from [Table 5](#), many respondents in both UK and EU cohorts were unable to say, or did not know, whether the protection for academic freedom had changed (35.2% and 29.6% respectively). However, a much greater proportion (52.1% - more than half) of UK than EU respondents (33.9%) thought that the protection for academic freedom had diminished or greatly diminished. Not surprisingly, relatively few respondents thought that protection for academic freedom had increased; however, there was a difference between the EU and UK respondents, as 6% of the EU respondents considered that protection for academic freedom had increased, compared with just 1.1% of UK respondents. These figures are indicative of a lowering of protection for academic freedom across all EU states, but which is particularly noticeable in the UK; moreover, the difference between the two cohorts is significant at the 1% level.

Table 5: Changes in the protection for academic freedom.

RESPONSE	% EU	% UK
I don't know/cannot say	29.6	35.2
Greatly diminished	8.4	20.5
Diminished	25.5	31.6
Remained unchanged	30.6	11.7
Increased	5.3	0.9
Greatly increased	0.7	0.2
All (n=6534)	100 (n = 4207)	100 (n = 2327)

$\chi^2 = 519.341$ 5 df Significant at 1% level

These generic responses were buttressed by specific experiences reported by respondents to the survey. As can be seen in [Table 6](#), 14.1% (one in seven) of the EU respondents reported being subjected to/threatened with bullying because of academic views expressed in teaching, and 23.1% (almost one in four) of the UK respondents reported similar occurrences. The χ^2 test shows that the difference between the EU and UK cohorts is statistically significant. Given that a major premise of academic freedom (and, moreover, freedom of speech) is the freedom to express one's professional opinion,



the presence of such statistics with respect to seats of higher learning should be of real concern to government ministers and university vice-chancellors across the EU, and more particularly in the UK.

Table 6: Have you been subjected to/threatened with bullying because of academic views expressed in teaching?

	RESPONSE	% EU	% UK
Bullying by academic colleagues	Yes	14.1	23.1
	No	85.9	76.9
All (n=6396)		100 (n = 4106)	100 (n = 2290)

$\chi^2 = 82.887$ 1 df Significant at the 1% level

As well as being asked about bullying, staff were also questioned about being subjected to psychological pressure. Table 7 shows that 15.7% (1 in 7) of the EU cohort, and 26.6% (circa 1 in 4) of the UK cohort report being subjected to psychological pressure.

Table 7: Have you been subjected to/ threatened with psychological pressure because of your academic views?

	RESPONSE	% EU	% UK
Subjected to psychological pressure	Yes	15.7	26.6
	No	84.3	73.4
All (n= 6422)		100 (n = 4111)	100 (n = 2311)

$\chi^2 = 111.906$ 1 df Significant at 1% level

Comparing Table 6 and Table 7 shows that psychological pressure is more common than bullying (indeed, there is probably an overlap between these, as psychological pressure is a form of bullying). As with most of the analyses reported, respondents in the UK cohort demonstrate a greater familiarity with this form of indefensible behaviour, than their EU counterparts – reports of psychological pressure are nearly twice as prevalent among UK respondents as their EU counterparts. Rather than risk suffering from the pain of bullying or psychological pressure, it is not surprising that most academics preferred to say nothing. The results in table 8 below show that self-censorship is very common, with 19.1% of EU respondents admitting to have subjected themselves to self-censorship at work, while the comparative figure for the UK staff was significantly higher at 35.5%. The results in Table 8 (below) suggest that it is only self-censorship by a sizeable cohort of staff that prevents the incidence of bullying, psychology pressure and other unconscionable behaviour from being even higher.

Self-censorship to this degree severely challenges the notion of UK universities as being paragons of free speech and of being advocates of unhindered discourse in the pursuit of knowledge and academic freedom.



Table 8: Have you ever subjected yourself to self-censorship?

	RESPONSE	% EU	% UK
Practiced self-censorship	Yes	19.1	35.5
	No	80.9	64.5
All (n=6292)		100 (n = 3982)	100 (n = 2310)

$\chi^2 = 209.104$ 2 df Significant at 1% Level

One of the specific factors that contributes to a climate of 'self-censorship' amongst staff and students is the UK government's anti-terrorism legislation and in particular the requirements of the Prevent duty in higher education (see page 13). Despite a statutory requirement for higher education institutions to have 'particular regard to the duty to ensure freedom of speech' and 'to the importance of academic freedom', a recent report published by the parliamentary Joint Committee on Human Rights found that 'The fear of being reported for organising or attending an event, combined with the increased levels of bureaucracy following the introduction of the Prevent duty, is reported to be having a "chilling effect" on freedom of speech'.³⁴ While the main concern here revolves around the impact on student activities on campus, there is evidence to suggest that academic staff are now more reluctant to discuss controversial topics such as immigration, Israel/Palestine, terrorism, and Western foreign policy.³⁵

Having considered opinions on the general protection for academic freedom, the individual elements of academic freedom will now be examined.

4.2 NORMATIVE PROTECTION FOR THE FREEDOM TO TEACH

Table 9 (below) details responses that participants gave to the statement 'my individual academic freedom for teaching has declined in recent years'. 14.0% of the UK respondents strongly agreed that academic freedom for teaching has declined, which is nearly three times the comparable figure for the EU respondents. At the other end of the scale, only 14% of UK respondents disagreed/ strongly disagreed that academic freedom for teaching had declined, compared with 41.6% of European respondents. The ANOVA statistic reveals that the differences between the UK and EU cohorts are significant at the 1% level.

Mention was made in section 3.1 of the impact of the newly introduced UK national teaching excellence framework. The implementation of the TEF occurred after the survey was distributed, although much of the detail was known by then. As **Table 10** (below) shows, the majority (69.7%) of respondents agree/strongly agree that the teaching excellence framework would diminish their academic freedom.



Table 9: Individual academic freedom for teaching has declined in my institution in recent years

RESPONSE	% EU	% UK
Strongly agree	5.6	14.0
Agree	19.5	29.0
Neither agree nor disagree	33.3	43.0
Disagree	31.8	11.1
Strongly disagree	9.8	2.9
All (n= 6388)	100 (n = 4081)	100 (n = 2307)

Welch ANOVA: $F=556.915$ 1 df Significant at the 1% level

Table 10: I am concerned that the proposed TEF will diminish my individual academic freedom

RESPONSE	UK (%)
Strongly agree	40.2
Agree	29.5
Neither agree nor disagree	24.5
Disagree	4.7
Strongly disagree	1.1
All (n= 2309)	100 (n = 2309)

The current TEF exercise is supposedly designed to assess teaching quality at institutional level, but the government's intention is to apply it at subject level. In the 2017-18 academic year, the OfS carried out subject pilots on behalf of the Department for Education (DfE) to determine the most effective way of producing TEF ratings at the subject level and from 2019-20, TEF will be assessed and ratings will be published at subject and institutional level. As has been seen in section 3.4, the calculation of the TEF includes the institutional drop-out rate, the proportion of students who are in employment or further study six months after graduation and the proportion of students who are in highly skilled employment or further study in months after graduation. These major elements of the TEF calculation are completely outside of the control of individual lecturing staff. Hence there is a real risk that, once subject departmental TEF ratings are published, academic staff will be criticised for poor TEF ratings, despite the fact that these are ratings are the reflection of graduates' inabilities to enter the job market, rather than an appraisal of the quality of teaching offered in individual departments. In such circumstances, the impact of the TEF will be to make teaching staff risk averse, and less likely to experiment with innovative teaching techniques, or extend the curriculum to new areas of study within their discipline, which may be viewed as controversial.

The TEF has been subjected to criticism on methodological and other grounds by individual academics, but also by both the University and College Union and the UK National Union of Students. For example, Rudd makes the telling point that it will undermine



professional autonomy, and teaching innovation, creativity and excellence because 'students may receive a less innovative educational experience as teaching will be oriented toward those criteria exemplified in the TEF' while 'academic staff may have their professional autonomy undermined as they are conditioned to teach to external measures that may not fully reflect wider aspects of their pedagogic practice'.³⁶ More critically, Heaney and Mackenzie argue that the dependence on employment metrics means that 'the Teaching Excellence Framework will constitute a set of mechanisms of perpetual pedagogical control'.³⁷ Additionally, Perkins' appraisal of the impact of the TEF on academic identity in a research intensive university found that academics thought that '[TEF] is going to add to what is already a very difficult job. Expectations will rise and it is going to cause more conflict around identity. [It will] just exhaust people really in terms of they thought they had it sorted (...) in their heads, they knew how to do well, (...) [TEF] comes in, student expectations change, they (students) are more challenging, they know about the excellence framework, they may have some sort of feed-into that process somehow, therefore suddenly they start to view the content of each module differently, each programme differently, they start to find dissatisfaction where previously they were satisfied'.³⁸

Much of the criticism of the TEF relates to its methodology, and its over-riding assumption that student satisfaction equates with teaching quality. Brown et al. found that 'satisfaction ratings and quality of provision are different quantities, particularly when the implicit context of comparison includes beliefs about provision at other universities. Quality and satisfaction should be assessed separately, with objective measures (such as actual times to feedback), rather than subjective ratings (such as satisfaction with feedback promptness), being used to measure quality wherever practicable'.³⁹ Similarly, Tatlow and Phoenix argue that 'the reality is that the outcomes of university teaching cannot simply be evaluated by degree outcomes or graduate earnings. Teaching and learning are complex, multi-faceted and dynamic and linked with a wide-range of different qualifications and study routes'.⁴⁰ More damningly, Professor Chris Husbands, who was appointed as the first Chair of the TEF Panel, told an audience at the UK Parliament, 'I do not think student satisfaction is an accurate proxy for teaching quality'.⁴¹ The implementation of the TEF, despite its acknowledged methodological flaws, adds support to the view expressed by a participant in Wood and Su's study of teaching excellence in higher education, viz: 'the TEF is just another example of a rhetoric about quality, choice, rigour which is anything but. At best it is an attempt to get universities to focus on the student experience and produce quality outputs; at worst it is a stick to beat higher education with'.⁴²

4.3 NORMATIVE PROTECTION FOR THE FREEDOM TO RESEARCH

Table 11 details responses that participants gave to the statement 'my academic freedom for research has declined in recent years'. The table shows that 45.6% of UK respondents agree/strongly agree that academic freedom had declined, compared with 29.3% of European respondents. Conversely, only 12.8% of UK respondents disagreed/ strongly disagreed that academic freedom for research had declined, the comparable figure for EU respondents as 39%. Again, ANOVA reveals that the differences between the UK and EU cohorts are significant at the 1% level.



Table 11: Individual academic freedom for research has declined in my HEI in recent years

RESPONSE	% EU	% UK
Strongly agree	6.0	16.6
Agree	23.3	29.0
Neither agree nor disagree	31.7	41.6
Disagree	29.4	10.1
Strongly disagree	9.6	2.7
All (n= 6379)	100 (n = 4079)	100 (n = 2300)

Welch ANOVA: F=525.162 1 df Significant at the 1% level

Mention was made in section 3.2 of the impact of the UK national research excellence framework (REF). The precursor of the REF, the research assessment exercise (RAE), was first introduced in the UK in 1986. Subsequent RAE reviews took place in 1989, 1992, 1996, 2001, and 2008. The REF replaced the RAE for the 2014 exercise, and the next such exercise is due to take place in 2021. As can be seen from [Table 12](#) below, the majority (56.6%) of respondents agree/ strongly agree that the REF had diminished their academic freedom and, although over 30% were undecided as to its effect, only 11.7% thought that the REF had not adversely affected their academic freedom. Not surprisingly, the impact of the RAE and REF has been debated widely within academia and beyond. Elton, for example, noted that the RAE had led to 'a proliferation of new journals, and the growth of undesirable practices, such as the publication of essentially the same work in different guises in different journals and the splitting up of research papers into several smaller ones' and further found disquieting evidence of 'reinforced academic traditionalism in research, often in the very areas where it ought to be lessened, have discouraged new developments and interdisciplinary work, and have isolated researchers from practitioners'.⁴³

This analysis of the previous RAE chimes with the results of a major survey of academic staff conducted by UCU in the run up to the 2014 REF. Around 7,000 responses were received from staff across academic grades and in 153 higher education institutions. The survey found that 40% of respondents felt that certain types of research were favoured over others in deciding which individuals were to be included in the REF submission, irrespective of academic quality. Over a quarter of respondents indicated that journal rankings were used by their institutions in deciding whether their outputs should be included in the REF submission, despite assurances from the funding bodies that these will not be used as a criterion in the assessment of outputs. Moreover, a number of higher education institutions warned academic staff not included in the 2014 REF that they would face capability procedures, denial of promotion or progression to the next grade, withdrawal of support to undertake research or transfer to a teaching-focused contract.⁴⁴



Table 12: I believe that the REF has diminished my individual academic freedom

RESPONSE	% UK
Strongly Agree	30.3
Agree	26.3
Neither agree nor disagree	31.8
Disagree	9.2
Strongly disagree	2.5
All (n= 2300)	100 (n = 2300)

At individual level, Watermeyer and Olssen, pointed to ‘reports of individuals whose exclusion from it has resulted not only in a sense of professional failure and degradation but fear of and subjection to intimidation and bullying’, along with academic managers arguing that ‘in responding to the terms of research evaluation, when a book has equal weighting with a journal publication, academics should abandon the first and focus on the latter because the cost-benefit ratio is more favourable’.⁴⁵

Murphy and Sage’s exploration of UK academics’ perceptions of the REF found ‘[a] number of respondents were concerned that REF narrowed the type of research being conducted and the type of publications encouraged within departments’. One respondent pointed out that the REF: ‘dictates what people write and research, under-values theoretical work... and deters academics from embarking on major long-term projects’, while another stated ‘I have published a book with a top publisher in the current REF period, I have been deterred from publishing another book because of the need to get articles in top journals’. More fundamentally, one respondent complained that ‘the measurement of research’ inherent in the REF was, in her eyes, ‘distasteful, difficult and against the principle of academic freedom’, while another argued that ‘the REF has produced greater attempts at managerial/top-down influence on research direction. It skews the balance between teaching and research, effectively dumbing down both’.⁴⁶ The results in Tables 11 and 12, along with the testimonies of individual academics reported here, endorse Watermeyer’s assessment that the REF ‘is viewed by academics as an infringement to a scholarly way of life; as symptomatic of the marketisation of higher education; and as fundamentally incompatible and deleterious to the production of new knowledge’.⁴⁷

The 2014 REF exercise introduced additional impact metrics which further undermined personal academic freedom. The initially stated aims of the research assessment exercise were ‘to develop and sustain a dynamic and internationally competitive research sector in [each] country or territory [of the UK] that makes a major contribution to economic prosperity, national wellbeing and the expansion and dissemination of knowledge’.⁴⁸ However, the subsequent research excellence framework introduced the need for research to demonstrate impact and the requirement ‘to develop and sustain a dynamic and internationally competitive research sector in [each] country or territory [of the UK] that makes a major contribution to economic prosperity, national wellbeing and the expansion and dissemination of knowledge’. In December 2009, a petition



established by the University and College Union calling on the UK funding councils to remove impact assessment from the REF proposals was signed by 17,000 academics, including six Nobel Laureates, 80 fellows of the Royal Society and over 3000 professors.⁴⁹

Despite such concerns, the 2014 REF introduced impact case studies which are narratives which describe how research, conducted during a specific time-frame at a named institution, resulted in a change, which had a discernible effect on or benefited culture, the economy, the environment, health, public policy, quality of life or society, as demonstrated by using qualitative and quantitative evidence. Impact was judged in terms of reach: the spread or breadth of influence or effect on the relevant constituencies and significance: the intensity of the influence or effect. In the REF 2014, impact was worth 20% of the overall REF score; for the 2021 REF this has been increased to 25%. Arguably, the demands of the UK government for such short term research 'impact' has further encroached on academic freedom – Watson makes the point that such demands have moved the position 'from government attempts to control the research arena (arguably the aim of RAE 2008) to the attempt to control research outputs'.⁵⁰ Prior to such developments, the explicit premise of universities' research activities was the creation of knowledge for its own sake, irrespective as to its utility. This modus operandi enabled the genesis of knowledge, the production of which may have had negligible (if any) immediate commercial value. In 1953, Francis Crick and James Watson mapped the structure of DNA,⁵¹ for which they were awarded the Nobel prize in 1962. Prima facie, this research had no significant fiscal value or discernible REF impact; however, thirty years after this discovery, Alec Jeffries⁵² used the unique structure of DNA to develop the process of genetic fingerprinting, which has completely revolutionised forensic medicine. The emphasis on maximising short term research impact, which is at the heart of the REF, has undermined academic freedom and made discoveries like the structure of DNA less, not more, likely.

4.4 NORMATIVE PROTECTION FOR THE RIGHT TO SELF-GOVERNANCE

As with most of the elements of academic freedom previously considered, there are large differences between the two EU and UK groups in terms of their perceptions of changes in academic self-governance. Table 13 reveals that while 40.9% of the European respondents agreed/strongly agreed that self-governance had declined, this figure is much lower than that of 60.2% for the UK cohort, and hence the ANOVA test is significant at the 1% level. Moreover, one in three of all UK respondents strongly agreed with this sentiment, compared with one in seven of the European respondents. At the other end of the scale, 7.1% of UK respondents disagreed/strongly disagreed that self-governance had declined in their universities, while the comparable figure for the EU cohort was 25.9% - three times that of the UK figure.



Table 13: Self-governance has declined in my institution in recent years

RESPONSE	% EU	% UK
Strongly agree	14.4	33.5
Agree	26.5	28.5
Neither agree nor disagree	33.3	30.9
Disagree	20.1	5.8
Strongly disagree	5.8	1.3
All (n= 6363)	10 (n = 4074)	100 (n = 2289)

Welch ANOVA: $F=556.858$ 1 df Significant at the 1% level

4.5 NORMATIVE PROTECTION FOR THE RIGHT TO SECURITY OF EMPLOYMENT

The final element of academic freedom to be considered is security of employment – Table 14 demonstrates that 66.6% of UK respondents agreed that employment protection had declined (with 36.5% strongly agreeing), compared to 53.6% for the European cohort (with 23.5% strongly agreeing), but the ANOVA test is still significant at the 1% level. It is worth noting that some form of academic tenure still exists in many EU nation states. By contrast employment security disappeared from all pre-1992 universities in the UK, following the 1988 Education Reform Act, while academic staff in post-1992 universities had never enjoyed tenure, as this had not existed in the old polytechnics.

Table 14: Employment protection for academic staff in my institution has declined in recent years

RESPONSE	% EU	% UK
Strongly agree	23.5	36.5
Agree	30.1	30.1
Neither agree nor disagree	23.6	25.0
Disagree	17.9	6.8
Strongly disagree	4.9	1.6
All (n= 6381)	100 (n = 4074)	100 (n = 2307)

Welch ANOVA: $F=246.210$ 1 df Significant at the 1% level

As was considered in section 3.4 above, the effect on academic freedom of the removal of tenure under the 1988 Education Act was meant to be mitigated by the insertion of an additional model statute, the implementation of which the commissioners appointed under the Act were meant to supervise and monitor. However in practice, there are two main weaknesses with the protection of academic freedom in the operation of the model statute. Firstly, the model statute only applies to employees who are defined by the university as academic staff, and in some universities this is narrowly defined as lecturers, senior lecturers, readers and professors (thus excluding research staff and academic-related staff such as senior library and computing staff). This contravenes the broad definition of ‘higher-education teaching personnel’ in Section 1 of the UNESCO *Recommendation* which includes ‘all those persons in institutions or programmes of



higher education who are engaged to teach and/or to undertake scholarship and/or to undertake research and/or to provide educational services to students or to the community at large'. Secondly, the provisions in the model statute are now under attack with many pre-92 universities seeking to weaken the process, by making it easier to dismiss academic staff (for example, the recent changes to the employment statute at the University of Leeds).

Moreover, the implementation of procedures that are designed to make it easier to dismiss academic staff cannot be divorced from the wider higher education policy environment. Alongside the formal abolition of tenure, the separation of public funding for teaching and research and a raft of government policies to promote greater competition between higher education providers have resulted in greater job insecurity in UK higher education. In recent years, a number of academics on so-called 'open-ended' contracts have lost their jobs, primarily on the basis of factors such as student enrollment data, student satisfaction surveys and individual staff performance in national research assessment exercises and institutional research funding targets.

Some of these have been in the form of compulsory redundancies, whereas in many instances, the process has resulted in early retirement and voluntary severance. Irrespective of the process, academic considerations can play a key role in determining the selection criteria (eg where an individual's specialist subject area or research perspective does not fit into institutional or governmental priorities). One of the key drivers in this process has been the research excellence framework (REF) and the impact of the REF on academic freedom is considered in greater depth as part of the analysis of *de facto* normative protection in Section 4.3 above.

At the same time, the rapid growth of fixed-term and hourly-paid academic jobs poses an even more potent danger to academic freedom. Firstly, it is important to acknowledge the scale of casualisation in UK higher education. Analysis of official data from 2016/17 show that almost 33.8% of academics employed in the UK higher education sector are on 'fixed-term' as opposed to 'open-ended' contracts and the percentage of academic staff on some form of insecure contract rises to 50.9% of academics if we include staff on so-called 'atypical contracts'.⁵³ The lack of job security is particularly acute amongst research staff. According to the latest data, 66.2% of 'research only' staff in UK higher education are on fixed term contracts, with many more dependent on short-term funding for continued employment.

Secondly, the UK government has made it easier for universities to dismiss academic staff employed on fixed-term contracts. For example, the law was amended in 2013 so that employees on fixed term contracts that expire at the end of the agreed term are now expressly excluded from the redundancy collective consultation obligations.

Thirdly, because of their precarious employment situation, academic staff on fixed-term contracts are in a much weaker position than colleagues on 'open-ended' contracts to exercise their freedom '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 the providers'. In some universities, this reflects their exclusion from coverage by the model statute but more widely it reflects a greater reliance on senior colleagues for their continued employment or career advancement. Therefore, the removal of tenure held by academic staff at pre-1992 universities by the 1988 Education Reform Act and the scale of casualisation across the sector means that there are no academic staff within higher education institutions in the United Kingdom who enjoy proper job security, which is in direct contravention of the 1997 UNESCO *Recommendation*.

Furthermore, over the past few decades there has been a large increase in the number of academics on fixed-term and casual contracts employed in UK higher education. As a result, fixed-term contracts have become the norm for 'early career' academics. And while the main detriment is in relation to staff health and well-being, job insecurity also has an impact on their ability to exercise individual academic freedom (for example, the power imbalances that post-doctoral researchers face regarding authorship claims).

Finally, the use of fixed-term contracts is likely to have negative consequences for the quality of higher education teaching and research. For example, in 2015, UCU surveyed research staff asking them about the impact of short-term funding and contract structures on the creation of knowledge. More than 70% of respondents agreed that funding research through short-term grants was ineffective and prevented the accumulation of knowledge, while 83% said that it geared research toward short-term results rather than longer-term impact. Most alarming of all, one third said that they believed it created a culture in which unethical research practice was likely.⁵⁴

4.6 DE FACTO PROTECTION FOR ACADEMIC FREEDOM: SUMMARY

In summary, when examining the *de facto* constitutional and legislative protection for academic freedom in the United Kingdom, using comparable data from academic staff in the other EU states and utilising standard statistical techniques, it is evident that:

- a greater proportion of respondents in UK universities report a lower level of academic freedom and believe that academic freedom has diminished further than their counterparts working in universities in the EU states
- a greater proportion of respondents in UK universities reported being subjected to bullying, psychological pressure and admit to self-censorship than their counterparts in universities in the EU states
- with respect to the substantive elements of academic freedom, a greater percentage of respondents in UK universities believe that their academic freedom for teaching and learning has declined, when compared with their counterparts working in universities in the EU states



- with respect to the supportive elements of academic freedom, a greater percentage of respondents in UK universities believe that their level of self governance and employment protection has declined, when compared with their counterparts working in universities in the EU states.

5 CONCLUSION

This submission has shown that the *de jure* constitutional and legislative protection for academic freedom is noticeably weaker in the United Kingdom, especially in England, than in the overwhelming majority of EU states. This weakness in *de jure* legal protection is mirrored by a low level of *de facto* academic freedom, as expressed in survey of over 2000 UK academics. **Table 15** summarises the data for the UK cohort. As can be seen, with respect to every element of academic freedom, the % of staff agreeing or strongly agreeing that academic freedom has fallen for each of the four elements dwarfs the % of staff who disagree/strongly disagree that academic freedom has declined. Furthermore, scrutiny of the previous tables shows that, with respect to every facet of academic freedom examined, in every instance, the proportion of UK respondents who agreed/strongly agree that academic freedom has declined exceeds the comparable figure for the EU cohort. For example, 43% of the UK respondents felt that academic freedom for teaching had declined, the comparable figure for the EU cohort was 25.1%.

Table 15: Summary table for UK data

'FREEDOM HAS DECLINED IN ...'	TEACHING	RESEARCH	GOVERNANCE	TENURE
% Strongly Agree/Agree	43.0	45.6	62.0	66.6
% Neither agree nor disagree	43.0	41.6	30.9	25.0
% Strongly Disagree/Disagree	14.0	12.8	7.1	8.4

The submission also demonstrates clearly that although the UK is a signatory of the 1997 UNESCO *Recommendation*, it is in direct non-compliance with the UNESCO document in respect to the freedom to teach, self-governance and security of employment, while academic freedom for research is being steadily, and ever more quickly, eroded by successive national research evaluation exercises. Writing in 2007, on the basis of a simple preliminary analysis of legal protection for academic freedom in the EU states, Karran pronounced that 'in terms of the health of academic freedom, the UK is clearly the sick man of Europe',⁵⁵ an appraisal endorsed by Farrington and Palfreyman in their definitive text on *The Law of Higher Education*.⁵⁶ A decade on from Karran's preliminary study, this research confirms, rather than negates, this earlier prognosis on the legal situation, while also showing that the low level of *de jure* protection is paralleled by a high level of *de facto* decline in academic freedom, as experienced by staff in the UK's higher education sector. In essence, in the overwhelming majority of instances, UK academics report statistically significantly higher levels of systematic abuse of their academic freedom, across a wide array of measures, than their European counterparts. Farrington and Palfreyman accurately chronicle the path of attritional UK government legislation on universities which have resulted in the subsequent downward trajectory of academic



freedom, under both Conservative and Labour administrations over the last 30 years since the 1988 Education Reform Act, reported here.⁵⁷ Their study confirms the accuracy, in the British context, of Barnett's observation that 'In such an environment academic freedom is not taken away; rather, the opportunities for its realisation are reduced'.⁵⁸ This analysis has shown how limited such opportunities are for staff in the universities in the UK, especially in England and the reality that, lacking either constitutional protection or adequate legislative safeguards, the level of *de facto* academic freedom in the UK is much below that of other EU nations.

Paragraph 27 of the 1997 UNESCO *Recommendation* states: 'the principle of academic freedom should be scrupulously observed. Higher education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies'. It is the contention of UCU that this submission demonstrates, via both *de jure* and *de facto* evidence, that the principles of academic freedom described in paragraph 27 are absent from UK higher education. Paragraph 74 of the UNESCO *Recommendation* calls upon 'Member States and higher education institutions [to] take all feasible steps to apply the provisions [of the *Recommendation*] to give effect, within their respective territories, to the principles set forth in [the] *Recommendation*'. Consequently, UCU, as complainant, requests that UNESCO/ILO CEART carefully examines the case presented here, and provides definitive guidance, to ensure that the complaint is remedied, and academic freedom in the UK is afforded protection as good as, if not better than, that which exists in the other states of the EU. Clearly, CEART needs to adhere to the requisite protocols in examining the evidence presented here, but given the significance of the allegations made, UCU would welcome a prompt response from the CEART as to their opinion of the validity of the claims made in this submission. The *de jure* and *de facto* evidence presented here is part of a larger in-depth study of academic freedom in the UK commissioned by UCU. As necessary, UCU can supply CEART with a copy of the study, and any other ongoing or previous studies undertaken by UCU in its work in protecting the academic freedom of its members.⁵⁹



NOTES

- ¹ T. Karran and L. Mallinson, (2017) *Academic Freedom in the U.K.: Legal and Normative Protection in a Comparative Context*. Report for the University and College Union, London: UCU
- ² CEART (undated) *Revised Mandate of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel - Procedure concerning allegations and reports*, mimeo, Paris: CEART
- ³ G. Akerlind and C. Kayrooz, (2003) 'Understanding academic freedom: the views of social scientists', *Higher Research and Development*, 22(3): 330
- ⁴ A. Renaut, (2006) 'The role of universities in developing a democratic European culture', in (eds.) N. Sanz and S. Bergan, *The Heritage of European Universities* (Strasbourg: Council of Europe), 121
- ⁵ S. Goldstein, (1976) 'The Asserted Constitutional Right of Public School Teachers to Determine What They Teach', *University of Pennsylvania Law Review* 124(6): 1293
- ⁶ N. Sanz, and S. Bergan, (2006) 'Introduction: a word from the editors', in N. Sanz and S. Bergan (eds.) *The Heritage of European Universities*, Strasbourg: Council of Europe, 16
- ⁷ European Universities Association, (2001) *Salamanca Declaration: Shaping the European Higher Education Area*, Brussels: EUA
- ⁸ W. Daughtrey, (1990) 'The legal nature of academic freedom in United States colleges and universities', *University of Richmond Law Review*, 25(2): 267
- ⁹ J. Turner, (1988) 'The Price of Freedom', in M. Tight (ed.) *Academic Freedom and Responsibility*, Buckingham: SRHE/OU Press, 106
- ¹⁰ The information in this table is taken from the Constitute website – see at: <https://www.constituteproject.org/search?lang=en>
- ¹¹ The information in this table is taken from the Constitute website – see at: <https://www.constituteproject.org/search?lang=en>
- ¹² D. Farrington, and D. Palfreyman, (2012) *The Law of Higher Education* (2nd Edition), Oxford: Oxford University Press, 456
- ¹³ D. Farrington, and D. Palfreyman, (2012) *The Law of Higher Education* (2nd Edition), Oxford: OUP, 456
- ¹⁴ K. Beiter, (2005) *The Protection of the Right to Education by International Law*, Leiden/Boston: Martinus Nijhoff Publishers, 278



- ¹⁵ Education (No. 2) Act 1986 c. 61 Part IV Section 43
- ¹⁶ Counter-Terrorism and Security Act, 2015 Part 5: Risk Of Being Drawn Into Terrorism; Chapter 1: Preventing People Being Drawn Into Terrorism
- ¹⁷ Open Society Justice Initiative, (2016) *Eroding Trust: The UK's Prevent Counter-Extremism Strategy in Health and Education*, New York: Open Society Foundations, p. 63, 97f
- ¹⁸ M. Kiai, (2017) *Statement by the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association at the Conclusion of his Second Visit to the United Kingdom*, mimeo, Geneva: UN Human Rights Council, 5
- ¹⁹ J. Gilmore, (2017) 'Teaching terrorism: the impact of the Counter- Terrorism and Security Act 2015 on academic freedom', *The Law Teacher*, 51(4): 523f
- ²⁰ The Commissioner of Public Appointments, (2018) *Report on the recruitment campaign for the Office for Students*. London: The Commissioner for Public Appointments
- ²¹ J. Fielden and R. Middlehurst (2017) *Alternative providers of higher education: issues for policymakers*, Oxford: Higher Education Policy Institute: HEPI Report 90
- ²² Carnegie Foundation for the Advancement of Teaching (2015) *The Carnegie Classification of Institutions of Higher Education*, available at <http://carnegieclassifications.iu.edu>
- ²³ W. Tierney and V. Lechuga, (2010) 'The Social Significance of Academic Freedom', *Cultural Studies – Critical Methodologies*, 10(2): 122
- ²⁴ American Association of University Professors, (2018) *Censure List*, available at: <https://www.aaup.org/our-programs/academic-freedom/censure-list>
- ²⁵ Universities UK (2017) *Implementation of the Higher Education and Research Act 2017*, London: Universities UK, 5
- ²⁷ R. Eustace, (1987) 'The English Ideal of University Governance – a missing rationale and some implications', *Studies in Higher Education*, 12(0): 7
- ²⁸ M. Taylor, (2013) 'Shared Governance in the Modern University', *Higher Education Quarterly*, 67(1): 81
- ²⁹ D. Farrington, (1995) 'Universities and Corporate Governance: a model for the future', *Corporate Governance: Hume Papers on Public Policy Volume 3*, Edinburgh: Edinburgh University Press, 23



- ³⁰ J. Hall and O. Hyams, (1998) 'Governance in an Era of Accountability and Potential Liability', in D. Palfreyman and D. Warner (eds.) *Higher Education and the Law. A Guide for Managers*, Buckingham: SHE/OU Press, 29
- ³¹ D. Farrington, and D. Palfreyman, (2012) *The Law of Higher Education (2nd Edition)*, Oxford: OUP, 126
- ³² HEFCE, (2017) *Report of an enquiry into a governance matter at the University of Bath*, London: HEFCE
- ³³ F. von Prondzynski, T. Brotherstone, I. Macwhirter, R. Parker, A. Simpson (2012) *Report of the Review of Higher Education Governance in Scotland*, chaired by Ferdinand von Prondzynski, Edinburgh: The Scottish Government, 7
- ³⁴ Joint Committee on Human Rights (2018) *Freedom of speech in UK universities. Fourth Report of Session 2017-19*, London: House of Commons and House of Lords, 5
- ³⁵ Joint Committee on Human Rights (2018) *Freedom of speech in UK universities. Fourth Report of Session 2017-19*, London: House of Commons and House of Lords. Written evidence from Dr Alison Scott-Baumann with Simon Perfect
- ³⁶ T. Rudd, (2017) 'Teaching Excellence Framework (TEF): Re-examining its logic and Considering Possible System and Institutional Outcomes', *Journal for Critical Education Policy Studies*, 15(2): 71
- ³⁷ C. Heaney, and H. Mackenzie, (2017). 'The Teaching Excellence Framework: Perpetual Pedagogical Control in Postwelfare Capitalism', *Compass: A Journal of Learning and Teaching*, 10(2) no page numbers
- ³⁸ G. Perkins, (2018) 'The Teaching Excellence Framework (TEF) and its Impact on Academic Identity within a Research-Intensive University', *Higher Education Policy* (Available online, volume, issue, page numbers unassigned)
- ³⁹ G. Brown, A. Wood, R. Ogden, J. Maltby (2015) 'Do Student Evaluations of University Reflect Inaccurate Beliefs or Actual Experience? A Relative Rank Model', *Journal of Behavioural Decision Making*, 28(1): 14
- ⁴⁰ P. Tatlow, D. Phoenix (2015) *The Possibilities and Pitfalls of a Teaching Excellence Framework*, London: Million+, not paginated
- ⁴¹ 'TEF to limit use of 'flawed' NSS Scores', *Times Higher Education*, 2-8 February 2017.
- ⁴² M. Wood, & F. Su, (2017). What makes an excellent lecturer? Academics' perspectives on the discourse of 'teaching excellence' in higher education. *Teaching in Higher Education*, 22(4): 461



- ⁴³ L. Elton, (2000) 'The UK Research Assessment Exercise: Unintended Consequences', *Higher Education Quarterly*, 54(3): 276, 279
- ⁴⁴ University and College Union (2013). *The Research Excellence Framework (REF) UCU Survey*, London: UCU
- ⁴⁵ R. Watermeyer, M. Olssen, (2016) 'Excellence and Exclusion: The Individual Costs of Institutional Competitiveness', *Minerva*, 54(2): 201-218
- ⁴⁶ T. Murphy and D. Sage, (2015) 'Perceptions of the UK's Research Excellence Framework 2014', *Australian Universities Review*, 57(2) 33f
- ⁴⁷ R. Watermeyer, (2016) 'Impact in the REF: issues and obstacles', *Studies in Higher Education*, 41(2): 199
- ⁴⁸ HEFCE (2009) *Research Excellence Framework. Second consultation on the assessment and funding of research 2009/38*. HEFCE, Bristol, 4,5
- ⁴⁹ UCU (2009) *Response to the Research Excellence Framework Second consultation on the assessment and funding of research*, London: UCU, no page numbering
- ⁵⁰ C. Watson, (2011) 'Accountability, transparency, redundancy: academic identities in an era of 'excellence'', *British Educational Research Journal*, 37(6): 698
- ⁵¹ J. Watson, F. Crick (1953) 'Molecular structure of nucleic acids; a structure for deoxyribose nucleic acid', *Nature*. 171 (4356): 737-8
- ⁵² A. Jeffreys, (1987) 'Highly variable minisatellites and DNA fingerprints', *Biochemical Society Transactions* 15 (3): 309-17
- ⁵³ University and College Union (UCU), (2018) *Precarious contracts in HE - institution snapshot*, mimeo, London: UCU
- ⁵⁴ University and College Union (UCU), (2018) *The Concordat to Support the Career Development of Researchers: Insecure employment and unfulfilled promise - A response to the Expert Review Group*, London: UCU, 5
- ⁵⁵ T. Karran, (2007) 'Academic Freedom in Europe: A Preliminary Comparative Analysis', *Higher Education Policy*, 20(3): 309
- ⁵⁶ D. Farrington, & D. Palfreyman, (2012) *The Law of Higher Education (2nd Edition)*, Oxford: Oxford University Press, 456
- ⁵⁷ D. Farrington, & D. Palfreyman, (2012) *The Law of Higher Education (2nd Edition)*, Oxford: Oxford University Press, p.451-468



⁵⁸ R. Barnett, (1997) *Higher Education: A Critical Business*, Buckingham: SRHE/Open University Press, p. 53

⁵⁹ UCU would like to acknowledge the significant contribution of Professor Terence Karran from the School of Education at the University of the Lincoln in the United Kingdom in drafting the submission to the CEART



BIBLIOGRAPHY

Åkerlind, G., and Kayrooz, C., (2003) 'Understanding academic freedom: The views of social scientists', *Higher Research and Development* 22(3): 327-344

American Association of University Professors, (2018) Censure List, available at: <https://www.aup.org/our-programs/academic-freedom/censure-list>

Barnett, R., (1997) *Higher Education: A Critical Business*, Buckingham: SRHE/Open University Press

Beiter, K., (2005) *The Protection of the Right to Education by International Law*, Leiden/Boston: Martinus Nijhoff Publishers

Brown, G., Wood, A., Ogden, R., Maltby, J., (2015) 'Do Student Evaluations of University Reflect Inaccurate Beliefs or Actual Experience? A Relative Rank Model', *Journal of Behavioural Decision Making*, 28(1): 14-26

Carnegie Foundation for the Advancement of Teaching (2015) *The Carnegie Classification of Institutions of Higher Education*, accessed from <http://carnegieclassifications.iu.edu>

CEART (undated) *Revised Mandate of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel - Procedure concerning allegations and reports*, mimeo, Paris: CEART, accessed from: http://www.ilo.org/global/industries-and-sectors/education/WCMS_368325/lang-en/index.htm

Commissioner of Public Appointments, (2018) *Report on the recruitment campaign for the Office for Students*. London: The Commissioner for Public Appointments

Daughtrey, W., (1990) 'The legal nature of academic freedom in United States colleges and universities', *University of Richmond Law Review*, 25(2): 233-271

Elton, L., (2000) 'The UK Research Assessment Exercise: Unintended Consequences', *Higher Education Quarterly*, 54(3): 274-283

European Universities Association (2001) *Salamanca Declaration: Shaping the European Higher Education Area*, Brussels: EUA

Eustace, R., (1987) 'The English Ideal of University Governance - a missing rationale and some implications', *Studies in Higher Education*, 12(1): 7-22

Farrington, D., (1995) 'Universities and Corporate Governance: a model for the future', *Corporate Governance: Hume Papers on Public Policy Volume 3*, Edinburgh: Edinburgh University Press, pp. 21-38



Farrington, D., and Palfreyman, D., (2012) *The Law of Higher Education* (2nd Edition), Oxford: Oxford University Press

Fielden, J., and Middlehurst, R., (2017) *Alternative providers of higher education: issues for policymakers*, Oxford: Higher Education Policy Institute: HEPI Report 90. Gilmore, J., (2017) 'Teaching terrorism: the impact of the Counter-Terrorism and Security Act 2015 on academic freedom', *The Law Teacher*, 51(4): 515-524

Goldstein, S., (1976) 'The Asserted Constitutional Right of Public School Teachers to Determine What They Teach', *University of Pennsylvania Law Review* 124(6): 1293-1357

Hall, J., and Hyams, O., (1998) 'Governance in an Era of Accountability and Potential Liability', in D. Palfreyman and D. Warner (eds.) *Higher Education and the Law. A Guide for Managers*, Buckingham: SHE/O.U. Press, pp. 25-50

Heaney, C., and H. Mackenzie, (2017). 'The Teaching Excellence Framework: Perpetual Pedagogical Control in Postwelfare Capitalism', *Compass: A Journal of Learning and Teaching*, 10(2) no page numbers

HEFCE, (2009) *Research Excellence Framework. Second consultation on the assessment and funding of research 2009/38*. HEFCE, Bristol: HEFCE.
Available at: http://dera.ioe.ac.uk/9288/1/09_38.pdf

HEFCE, (2017) *Report of an enquiry into a governance matter at the University of Bath*, London: HEFCE

HM Government (2015) *Prevent Duty Guidance: for higher education institutions in England and Wales*, London: HM Government

Jeffreys, A., (1987). 'Highly variable minisatellites and DNA fingerprints', *Biochemical Society Transactions* 15 (3): 309-17

Joint Committee on Human Rights (2018) *Freedom of speech in UK universities. Fourth Report of Session 2017-19*, London: House of Commons and House of Lords

Joint Committee on Human Rights inquiry into Freedom of speech in UK universities. Written evidence from Dr Alison Scott-Baumann with Simon Perfect (FSU0075) to the Joint Committee on Human Rights inquiry into Freedom of speech in UK universities.

Available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/freedom-of-speech-in-universities/written/75991.pdf>

Kiai, M., (2017) *Statement by the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association at the Conclusion of his Second Visit*



to the United Kingdom, mimeo, Geneva: UN Human Rights Council, accessed from <http://freeassembly.net/reports/united-kingdom-follow-up/>

Karran, T., (2007) 'Academic Freedom in Europe: A Preliminary Comparative Analysis', *Higher Education Policy*, 20(3): 289-313

Karran, T., and L. Mallinson, (2017) *Academic Freedom in the U.K.: Legal and Normative Protection in a Comparative Context*. Report for the University and College Union, London: UCU

Murphy, T., and Sage, D., (2015) 'Perceptions of the UK's Research Excellence Framework 2014', *Australian Universities Review*, 57(2): 31-36

Open Society Justice Initiative, (2016) *Eroding Trust: The UK's Prevent Counter-Extremism Strategy in Health and Education*, New York: Open Society Foundations

Perkins, G., (2018) 'The Teaching Excellence Framework (TEF) and its Impact on Academic Identity within a Research-Intensive University', *Higher Education Policy* (Available online- volume, issue number and page numbers not assigned)

Renaut, A., (2006) 'The role of universities in developing a democratic European culture', in B. Sanz, S. Bergan, (eds.) *The Heritage of European Universities*, Strasbourg: Council of Europe, pp. 121-129

Rudd, T., (2017) 'Teaching Excellence Framework (TEF): Re-examining its logic and Considering Possible System and Institutional Outcomes', *Journal for Critical Education Policy Studies*, 15(2): 59-90.

Sanz, N., and Bergan, S., (2006) 'Introduction: a word from the editors', in N. Sanz and S. Bergan (eds.) *The Heritage of European universities*, Strasbourg: Council of Europe, pp. 11-24

Tatlow, P., and Phoenix, D., (2015) *The Possibilities and Pitfalls of a Teaching Excellence Framework*, London: Million+, not paginated

Taylor, M., (2013) 'Shared Governance in the Modern University', *Higher Education Quarterly*, 67(1): 80-94

Tierney, W., and Lechuga, V., (2010) 'The Social Significance of Academic Freedom', *Cultural Studies- Critical Methodologies*, 10(2): 118-133

Times Higher Education, (2017) 'TEF to limit use of 'flawed' NSS Scores', 2-8 February 2017

Turner, J., (1988) 'The Price of Freedom', in M. Tight, (ed.) *Academic Freedom and Responsibility*, Buckingham: SRHE/OU Press, pp. 104-113

UNESCO (1997) Records of the General Conference, Twenty-ninth Session Paris, 21 October to 12 November 1997, Volume 1 Resolutions, Paris: UNESCO

Universities UK (2017) Implementation of the Higher Education and Research Act 2017, London: Universities UK

University and College Union (UCU), (2009) Response to the Research Excellence Framework Second consultation on the assessment and funding of research, mimeo, London: UCU. Available at: https://www.ucu.org.uk/media/3601/Response-to-the-REF-second-consultation-Dec-09/pdf/ucu_REFresponse_dec09.pdf.

University and College Union (UCU). (2013). The Research Excellence Framework (REF) UCU Survey. Available at <https://www.ucu.org.uk/media/6005/>

University and College Union (UCU), (2018) The Concordat to Support the Career Development of Researchers: Insecure employment and unfulfilled promise - A response to the Expert Review Group, London: UCU, p.5. Available at https://www.ucu.org.uk/media/8919/UCU-concordat-review-response-insecure-employment-and-unfulfilled-promise-Nov-17/pdf/ucu_concordatreview_researchercareers_response_nov17.pdf

University and College Union (UCU), (2018) Precarious contracts in HE - institution snapshot. Available at <https://www.ucu.org.uk/article/9532/HE-casualisation---using-our-new-resources-to-develop-a-claim?list=7268> von Prondzynski, F., Brotherstone, T., Macwhirter, I., Parker, R., Simpson, A., (2012) Report of the Review of Higher Education Governance in Scotland, chaired by Ferdinand von Prondzynski, Edinburgh: The Scottish Government

von Prondzynski, F., Brotherstone, T., Macwhirter, I., Parker, R., Simpson, A., (2012) Report of the Review of Higher Education Governance in Scotland, chaired by Ferdinand von Prondzynski, Edinburgh: The Scottish Government

Watermeyer, R., and Olssen, M., (2016) 'Excellence' and Exclusion: The Individual Costs of Institutional Competitiveness', *Minerva*, 54(2): 201-218

Watermeyer, R., (2016) 'Impact in the REF: issues and obstacles', *Studies in Higher Education*, 41(2): 199-214

Watson, C., (2011) 'Accountability, transparency, redundancy: academic identities in an era of 'excellence'', *British Educational Research Journal*, 37(6): 955-971

Watson, J., and Crick, F., (1953). 'Molecular structure of nucleic acids; a structure for deoxyribose nucleic acid', *Nature*, 171 (4356): 737-8



Wood, M., and Su, F., (2017) 'What makes an excellent lecturer? Academics' perspectives on the discourse of 'teaching excellence' in higher education', *Teaching in Higher Education*, 22(4): 451-466.

Produced by University and College Union, Carlow Street, London NW1 7LH

T: 020 7756 2500 E: mwaddup@ucu.org.uk W: www.ucu.org.uk January 2019