

University and College Union briefing on the Higher Education (Freedom of Speech) Bill

House of Lords Second Reading – Tuesday 28 June

The Higher Education (Freedom Of Speech) Bill, which has been widely criticised by academics and human rights groups, will do nothing to address the real threats to academic freedom, which are widely understood to be the use of precarious employment practices that prevent staff from researching and working freely, a lack of staff representation in university governance, and a management culture which dictates the research academics undertake.

- There has been a worrying tendency to mischaracterise peaceful protest as intimidation, when in fact protest is itself an exercise of fundamental human rights to freedom of expression and freedom of assembly.
- The legislation before Parliament misses the mark in many ways. Most notably it fails to take any account of what our members tell us are some of the biggest threats to free speech and academic freedom in UK HE - job insecurity, restrictive and overbearing management practices, and a lack of representation on governance structures. It is also in tension with policies like Prevent which seek to restrict the ways in which certain views can be expressed.

This Bill has been introduced on the pretext that there is a crisis of free speech and academic freedom on campus caused by intolerant students and staff, and the resultant rise of so-called 'cancel culture'. There is no real evidence for this.

UCU does believe, however, that there are significant threats to both academic freedom and free speech in higher education, but they come from the government and university managers.

Freedom from state interference and government control are crucial dimensions of academic freedom and freedom of speech. We believe that the Bill represents another case of heavy-handed ministerial interference in the education system, which will further imperil the freedoms it purports to protect.

Freedom of speech

- Under the Education (No.2) Act 1986, Universities and other higher education providers already have a legal duty 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 Human Rights Act 1998, moreover, contains in Article 10 'the right to freedom of expression', including 'freedom to hold opinions and to receive and impart information and ideas *without interference by public authority** and regardless of frontiers.'

Academic freedom

- There are also existing legislative protections for academic freedom, namely in the Education Reform Act 1988, where it is defined as ‘freedom [for academic staff] 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.’
- UCU has repeatedly pointed out, however, that this is not an exhaustive definition of academic freedom. Academic freedom must also include the ‘right to choose what topics to research, irrespective of pressure from managers and governments.’
- The 1997 [UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel](#), moreover, emphasises that a ‘just and open system of career development including fair procedures for appointment, tenure where applicable, promotion, [and] dismissal’ is central to academic freedom.

2022 UNESCO intervention on academic freedom

Earlier this year, an international group of experts called on the UK government to address issues of job insecurity in UK universities.

The report was in response to an [allegation submitted by UCU](#) to the Joint ILO/UNESCO Committee of Experts regarding the UK's government's non-compliance with the [1997 UNESCO recommendation on the status of higher education teaching personnel](#).

The [report from the Joint Committee of Experts of UNESCO](#) and the International Labour Organization, recognises that the growth in casualised contracts in higher education is undermining academic freedom and therefore 'one of the fundamental pillars of excellence in teaching and research'. It calls on the UK government to address growing employment insecurity among higher education staff, including by 'enhancing policy measures that safeguard tenure or its functional equivalent'.

In terms of the impact of 'quality assurance' mechanisms on academic freedom, the report raises concerns about both "political interference and deference to market-driven priorities", particularly various policies to ensure 'value for money'.

The report provide further evidence of the detrimental impact of casualisation and called on higher education employers to provide job security for all staff in the sector.

The UNESCO/ILO report also highlights the dangers posed to academic freedom by political interference and marketisation, both of which have been allowed to pollute the entire higher education sector, no more clearly demonstrated than by the UK government's attack on the arts, and its obsession with reductive metrics, student number caps and graduate earnings data.

New amendments tabled during the Commons debate, which may be included in the Lords, and which we would encourage you to support:

- Labour amendment to broaden the definition of academic freedom to include **protection for trade unionists**
- Labour amendment to ensure the new **Director of Freedom of Speech** cannot have donated to a political party
- Labour sunset clause amendment to **renew the legislation** after 3 years
- Labour amendment on **NDA's not inhibiting freedom of speech**

The real threats to academic freedom

- **Casualisation and managerialism**
 - UCU's research has shown that widespread casualised employment practices across the higher education sector are a major barrier to academic freedom. More than two thirds of researchers and almost half of teaching-only staff in the sector are on fixed term contracts.
 - [Respondents to a UCU survey](#) were asked to rank the biggest threats to or restrictions on their academic freedom. The top five were:
 1. Casualised employment
 2. Attacks on the arts and humanities
 3. Insecurity of research funding
 4. Government interference with academic research agendas
 5. Targeted redundancies
 - Rather than enjoy the freedom to shape their own research and teaching, academics employed on precarious contracts often have the goals and focus of their research dictated by managers, who hold power over grants, funding streams, and promotions.
 - As our [Second Class Academic Citizens](#) report (2020) points out, moreover, endemic casualisation 'explicitly curtails' the possibility of career development stressed by UNESCO as an important aspect of academic freedom. Precariously employed staff are less able to speak out freely, and to challenge authority.

- **Prevent**
 - A director of leading human rights group Liberty has [argued](#) that the single biggest threat to free speech on campus comes from Prevent. Since its introduction as a statutory duty in 2015, Prevent has encouraged the policing of mainstream discussion of topics such as British foreign policy and Palestine, in the name of countering extremism.
 - The Office for Students' (OfS) own [figures](#) from 2019 show that at least 2,100 events and external speakers at 65 different institutions were interfered with under Prevent in just one year.
 - One-third of Muslim students [surveyed](#) by the National Union of Students in 2018 felt that they had been negatively affected by Prevent. Of those impacted, 43% felt unable to express their views or be themselves as a result.

- **The IHRA definition and examples**
 - More recently, the DfE has sought to force universities to adopt the International Holocaust Remembrance Association (IHRA) definition and examples of antisemitism, threatening to cut funding for institutions who fail to do so.
 - Many [academics](#) and [lawyers](#) have raised concerns that the IHRA examples risk silencing free research and discussion of the past and present of Palestine's history, in [particular](#) the dispossession of the Palestinian people.
 - UCU believes that the government's use of the contested IHRA definition and examples seriously threatens academic freedom and freedom of speech, and may lead universities to violate existing legal obligations to uphold these rights.

Further information

If you would like further information about anything contained in this briefing or assistance with work around post-16 education, please contact Will Pickering at wpickering@ucu.org.uk or on 07581 186517.

About UCU

The University and College Union (UCU) is the UK's largest trade union for academic and academic-related staff in higher and further education, representing over 100,000 members working in universities, colleges, training providers, adult education settings and prisons.