

Written evidence submitted by Durham Students' Union

Submission to Committee Stage of Higher Education (Freedom of Speech) Bill

Executive Summary

- As a students' union, we are committed to freedom of speech and believe that there is a lively culture of free speech at Durham.
- On the national level, we do not believe that data supports the introduction of potentially unnecessary and overly onerous additional administrative burdens for universities and students' unions in particular.
- There are significant areas in need of clarification within the Bill, especially around the interaction between the Bill and existing regulation of both charities and employment, as well as around the scope of the proposed powers for the Office for Students.
- We believe there are substantial changes needed to prevent the provisions within this Bill from creating significant barriers, both operational and financial, to students' unions being able to support freedom of speech effectively.

1. Introduction

- 1.1. [Durham Students' Union](#) (Durham SU) represents more than 20,000 students of Durham University, to champion their interests and celebrate their successes. We work directly with the University to further these aims in a variety of ways, and have a broad range of mechanisms to enable students to express their opinions, from facilitating student democracy to supporting hundreds of groups to run events across the country.
- 1.2. We are responding to this call for evidence in order to illustrate our organisational experience of supporting students and student groups to exercise their right to freedom of speech, be that through organising events with external speakers, taking part in protests or debates, or seeking out like-minded individuals. While there are certain issues that must be taken into consideration, as we will discuss below these are on the basis of ensuring the health and safety of speakers and attendees, as well as complying with relevant legislation, and regulation, such as Prevent and current guidance from the Charity Commission.

2. The National Picture

- 2.1. Nationally, we have seen very little evidence that there is a systemic risk to freedom of speech on University campuses, through students, staff, students unions, colleges or participation at events. Recent analysis by WonkHE¹ illustrated that at least 99.7% of events that students run to share ideas and think freely go ahead without any intervention from SUs or universities, citing national OfS Prevent monitoring data that highlighted:

¹ Kernohan, D – [Defining the 'sector percentage' of cancelled events](#), WonkHE, 2/9/21

Year	No. events	Events or speakers approved with conditions or mitigations	Events or speakers referred to the highest decision maker	Events or speakers rejected	Percentage of events cancelled
2017/18	59574	2153	314	53	0.09%
2018/19	59782	1093	376	141	0.23%
2019/20	43337	854	362	94	0.21%

Table 1: National university events statistics

- 2.2. The unique circumstances which impacted the latter part of the 2019/20 academic year reduced the number of events taking place across university settings, though many events continued in digital spaces. However, the fact that the proportion of events which were cancelled remained both low and in line with the previous academic year demonstrates how minor this impact of these cancellations was compared to the impact of Covid-19 on student life.
- 2.3. Across the sector, statistics such as this represent a robust approach not only to freedom of speech and expression, but to acting in line with the Prevent duty, and demonstrating appropriate oversight of events which are occurring on University and Union premises.
- 2.4. The case for the scale of a “chilling effect” cited by the explanatory notes to the Bill is extremely limited, resting within the Bill on seemingly one study. While the King’s College London (KCL) study² in question notes that there are “signs of a chilling effect”³, it never demonstrates how the “chilling effect” might impact the general public, nor does it tangibly link this effect to any specific policy or practice within institutions.
- 2.5. The Bill also notes that the KCL study showed that “some students reported reluctance to express their views for fear of disagreeing with their peers”⁴. The only group within the study which agreed with the statement “I feel unable to express my views in my university because I’m scared of disagreeing with my peers”, however, was the ‘Conservative/Brexit Party’ subgroup of the ‘Libertarian’ group. Not only did all other groups and subgroups disagree with this statement, but the subgroup in question numbered only 96⁵, something that the study’s own methodology highlights, also noting that where a group size falls below 100, “the findings may not accurately reflect the opinion of the entire population”⁶.
- 2.6. Taken together, these illustrate that were a “chilling effect” to exist, more research of a greater scale is clearly needed prior to it forming a component of legislation to tackle a problem which has not been proven to substantively exist.

² Grant, Hewlett, Nir and Duffy – [Freedom of Expression in UK Universities](#), King’s College London, December 2019

³ Grant, Hewlett, Nir and Duffy – Freedom of Expression in UK Universities, page 2

⁴ Higher Education (Freedom of Speech) Bill Explanatory Notes, page 4

⁵ Grant, Hewlett, Nir and Duffy – Freedom of Expression in UK Universities, page 30

⁶ Grant, Hewlett, Nir and Duffy – Freedom of Expression in UK Universities, page 40

3. Free Speech at Durham

- 3.1. Durham's lively student culture is formed through a combination of a wide number of organisations and structures, including the Students' Union (SU), its groups and societies, the common rooms of the 17 colleges, groups within Experience Durham and other associated, but student-led independent organisations including the Durham Union Society (DUS). As a result, Durham regularly hosts a broad range of events which include speeches, debates and discussions from academics and politicians to journalists and sportspeople.
- 3.2. Within the SU alone, there is an incredible level of engagement from students, which in 2020/21 included:
 - 3.2.1. 14443 student group memberships.
 - 3.2.2. 10073 unique members, which indicates 49.69% of the University's registered students are members of at least one SU student group⁷.
 - 3.2.3. 277 student groups, each of which enters into a Student Group Agreement⁸ with the SU to uphold and respect all relevant policy as determined by current legislation.
- 3.3. It is exceptionally rare that events in Durham face barriers beyond those in the interests of ensuring the health and safety of attendees and speakers, and both the SU and University have repeatedly upheld the right of students and visitors to hold and express their views.
- 3.4. The most prominent example of an issue which has arisen involving Durham SU and Freedom of Speech in the recent past is that of Angelos Sofocleous:
 - 3.4.1. Durham Student Angelos Sofocleous was removed from editorial posts at two student publications, and later resigned as president-elect of Humanist Students, after a Transphobia row relating to posts on social media in 2018. Ultimately both the University and SU apologised to Mr Sofocleous for their handling of the situation, with the SU stating that his dismissal had been "procedurally incorrect", further noting that "you are entitled to hold and express these views", but that "The Societies were also entitled to react to your free speech with their own expression of free speech, including a vote of no confidence"⁹.
- 3.5. As mentioned in 3.1 above, the DUS plays a notable role in Durham's culture and its events programme available to students and members of the public. However, as the DUS is an independent charity, not a students' union, and not part of Durham University, it falls beyond the scope of this Bill, despite the fact that it regularly invites speakers to Durham in debates held primarily for its student members, such as the example below:

⁷ [Durham University Student Numbers in academic year 2020/21](#)

⁸ [Durham SU Student Group Agreement](#)

⁹ McHardy and Davies – [Former student rejects compensation from University after transphobia controversy](#), Palatinate, 4/2/2021

3.5.1. In February 2017, Anastasia Lin, actress and human rights activist, was due to speak at a debate at the DUS¹⁰. Despite pressure from Chinese government officials and the Durham University Chinese Scholars Association, the event went ahead and the University reaffirmed its commitment to freedom of expression¹¹.

3.6. Both of these situations demonstrate that, across student culture at Durham there is clear, vocal and lively debate. Even where this challenges boundaries, both the community and the organisations in question have a robust, but fair and appropriate, approach to free speech, as exemplified in the SU's Free Speech Policy.

4. Durham SU's Free Speech Policy and future plans

4.1. As a registered charity, Durham SU is regulated by the Charity Commission, democratically directed by our members and has a responsibility to the public to comply with all relevant legislation. Durham SU's Free Speech policy, which is in line with current government guidance, has recently been revised, has a clear history of development across recent years to protect, and promote, free speech across the SU's groups and spaces.

4.2. In 2018, a collection of processes were codified into a single free speech policy, and a process to further update this policy began in 2020, in response to the University's own Freedom of Expression Policy¹² which was revised in January 2020. During the 2020/21 academic year, a wide variety of student representatives and groups were consulted on the proposed changes, including several democratic bodies, culminating in further revisions made by these groups and bodies, in the spring of 2021.

4.3. The Free Speech policy aims to balance the freedom to speak with the need to secure freedom from harm for students and communities, in the process recognising and dismantling the barriers which prevent students from exercising their right to speak, both in events and in publications. The policy takes a risk based approach whereupon the only grounds that an event or activity would be prohibited are if it is not lawful, or where the risk involved can't be managed effectively.

4.4. The following process is followed for approval of both speakers and publications:

4.4.1. A Guest Speaker Request Form¹³ is submitted at least 14 working days in advance of the event, to give time for the SU trustees to understand and accept relevant risk.

4.4.2. A risk assessment is submitted, containing information on the speaker or publication:

4.4.2.1. A biography of the speaker or author

4.4.2.2. The sponsoring organisation or publisher

¹⁰ Swerling and Tucker – [Student debate will harm relations, insists China](#), The Times, 11/2/2017

¹¹ Smith, E – [Chinese Embassy reportedly warns Durham Union Society against giving platform to human rights advocate](#), Palatine, 10/2/2017

¹² See "[Freedom of Expression in Relation to Meetings or Other Activities: A Code of Practice](#)"

¹³ [Durham SU Guest Speaker Request Form](#)

- 4.4.2.3. An initial description of both content and context
- 4.4.2.4. Any relevant background information that informs the risk assessment.
- 4.4.3. Based on this assessment, any low- or medium-risk activity will be approved, with controls where appropriate. High-risk activity will be referred, but the presumption is that they will still be approved with appropriate controls in place. Where a decision is taken to not approve a risk assessment, this is referred to the Trustee Board of the SU.
- 4.4.4. An activity being deemed high risk may be for one or more of the following reasons. It is important to note that high risk events will still proceed, although implementation of controls may cost more money and take more time:
 - 4.4.4.1. An activity may attract a response that presents health and safety issues.
 - 4.4.4.2. An activity is known to or is likely to cause specific harm to specific groups, such as repeating a defamation claim which implicates the organisation.
 - 4.4.4.3. The activity is known to have contributed to fear or intimidation of students, staff or other attendees at another institution.
 - 4.4.4.4. The activity at the event may result in a platform for the expression or promotion of extremism or radicalisation.
- 4.4.5. The only risk control which is in common use is the restriction of number of attendees, which in 2020/21 has been in large part due to the widely online nature of many events necessitating a response to a spate of so-called “Zoom-bombing” incidents¹⁴ ¹⁵. “Zoom-bombing” is the unwanted invasion of a digital event by individuals seeking solely to disrupt, often halt, the event - often using extreme and graphic material or hate speech.
- 4.5. Across the entirety of the 2020/21 academic year, Durham SU received 120 guest speaker requests, all of which were approved. Each of these events was reviewed, in line with the policy outlined above, by Durham SU staff, and in a handful of cases in consultation with Durham University staff as appropriate. In some isolated cases the events in question did not ultimately occur, however none of these were due to their being prevented from taking place by either Durham SU or the University, with availability of speakers and/or spaces both being the main reasons for cancellations.
- 4.6. Looking forward, Durham SU will continue to support a programme of student group activity specifically to enhance and develop Durham’s intellectually curious community, featuring a diverse range of guest speakers, and a wider range of debating sessions

¹⁴ Smith, K – [St. Mary’s LGBT+ Zoom event hijacked by anonymous callers](#), Palatinate, 20/10/2020

¹⁵ Askham, P and Kendix, M – [Crocodile porn “Zoom Bombing” disrupts Trevs JCR meeting](#), Palatinate, 20/1/2021

featuring both students and staff.

5. Questions regarding the implementation of the Bill

- 5.1. As demonstrated in Section 4 above, Durham SU, in common with students' unions, guilds and associations across the country, takes a robust, clear and considered approach to Free Speech, in line with all current guidance and regulation.
- 5.2. Clause 1, Section A4 of the Bill raises several questions:
 - 5.2.1. Where a protest, or other lawful expression of free speech, may prevent access to a building or space in response to an event to the degree that security is required which may be prohibitively expensive, will an organisation be deemed to have prevented that individual or group from expressing their right to free speech?
 - 5.2.2. Where two or more of those listed in subsection (2) exercise their right to free speech in ways which conflict, should one be given priority and/or protection in that scenario, and if so, which?
- 5.3. Clause 1, Section A5 also points to further questions:
 - 5.3.1. Where a group's events regularly encounter additional, potentially excessive costs as a result of the need to enforce the code of practice for that group (see for example 5.2.1 above), would this justify the withdrawal of funding from other groups to exercise their freedom of speech, on the grounds that resources are ultimately limited?
 - 5.3.2. If the above is the case, will support and guidance be made available by the proposed regulator, the Office for Students (OfS) to organisations on how to respond in such a scenario?
- 5.4. Clause 6 potentially represents the addition of a significant administrative burden for organisations – what notice period for reasonable adaptation of existing policies will be given prior to implementation?
- 5.5. Clause 8 creates the position of the “Director for Freedom of Speech and Academic Freedom” at the OfS by amending the Higher Education and Research Act 2017, making the role appointed by the Secretary of State – what steps will be taken to assure the qualification, independence and accountability of the Director?
- 5.6. Can the Bill clarify the status of the constituent colleges and common rooms in universities to reflect the differences present across the UK higher education system beyond those in the universities of Oxford and Cambridge?
- 5.7. Can the government clarify how the proposed Bill interacts with the existing body of employment law, including but not limited to the Equality Act (2010) and subsequent related laws?

- 5.8. Can the Bill clarify how trustees of students' unions should prioritise their duties in circumstances where there is conflicting guidance on whether to permit or promote an activity from the Office for Students and the Charity Commission?
- 5.9. Can the Bill provide clear protection for the trustees of students' unions who, having been required to permit a guest speaker to speak, may face questions, complaints or legal claims for the content of the event they have sponsored?
- 5.10. Can the Bill clarify that the trustees of a students' union are responsible for the actions of student groups which are governed by the students' union, and no other person has power to control the use of students' group resources to further their speech unless in accordance with directions of the trustees?

6. Recommendations

- 6.1. Durham SU would like to endorse the questions and recommendations put forward by the National Union of Students (NUS) in June¹⁶.
- 6.2. An addition to Section A4 to reflect the fact that where an event has been cancelled on the basis of force majeure, an organisation shall not face penalty, financial or otherwise.
- 6.3. An addition to Section A4 to reflect the reasons for an event not taking place which differentiates between a "cancellation" by an organiser or host, and a failure to complete appropriate processes within the required timeframe in order for the event to take place safely.
- 6.4. An addition to Section A4 to reflect the ability of organisations to have freedom to choose those individuals who speak at events on the basis of protection and enhancement of quality of debate, choosing individuals relevant to their membership's interests, or simple logistics.
- 6.5. An amendment to Schedule 6A (8) to strengthen the commitment of the Director for Freedom of Speech and Academic Freedom to increase transparency around decision making and include student and staff representation in the appointment process, drawing upon both the NUS and University and College Union (UCU).
- 6.6. An amendment to Section 4 (1) on the role of the OfS in protecting freedom of speech to create a fund in order to support organisations which cannot bear the financial burden of providing security to events as a result of the potentially contentious nature of the speaker or event.

¹⁶ National Union of Students – [Higher Education \(Freedom of Speech\) Bill update](#), 4/6/2021