

The HE Free Speech Bill Must Incorporate the Equality Act by Dr David Renton, barrister and Prof Alison Scott-Baumann (19 July 2021)

Summary: Since mid-May, the universities minister Michelle Donelan has insisted that the Higher Education (Freedom of Speech) Bill will not require universities to accept speech that contravenes the Equality Act: “We can hold and articulate views which are objectionable to others as long as they don’t cross the threshold of hate speech”¹. **This statement directly contradicts the fact that the bill now before parliament is an absolutist free speech bill, ensuring that the Equality Act will cease to apply.**

For fifty years, there has been a conflict in universities over whether far-right speakers should be allowed a platform. The motion passed by the National Union of Students in April 1974, and periodically reaffirmed since, encouraged universities to refuse platforms to “openly racist or fascist organisations or societies”². The original target of the phrase “racist or fascist” was the National Front.

This bill strips universities of **the discretion** they previously enjoyed **to state that of course free speech is important - but it is not the only value at stake, and equality law must also apply**. From its very first clause the bill creates a new and absolute “Duty to take steps to secure freedom of speech” which overrides the Equality Act. The bill also insists that universities “must take steps that [...] are reasonably practicable” to uphold free speech, as per stated objectives ([see A1](#), clauses (2), (3) and (4)). Those objectives, however, are so all-encompassing that universities **can no longer refuse to host a speaker**. At most, a university can decide not to host an unwelcome event if contacted for the first time an hour before the event is due to start. However, opportunities must be provided to host that speaker at some point.

The bill also allows anyone to sue a university for damages, an injunction, or a declaration in circumstances where they believe that their free speech has been limited. The people who will interpret the bill are therefore not ministers but **judges**. And judges **will most likely say that the Bill constitutionalises free speech, making it a defining purpose of universities**. When students ask: ‘What about the ban on hate speech?’, the answer will be: ‘I’m sorry, it doesn’t apply anymore.’

The government could have put into the legislation a “saving clause” - words which clearly state that the Equality Act still applies. But they chose not to do so.

Actions:

Members should propose the following amendments to clause 1(A1)(1) (the new text is in square brackets):

"The governing body of a registered higher education provider must take the steps that, having particular regard to the importance of freedom of speech, [and the need to give due regard to eliminate discrimination etc pursuant to the Equality Act 2010], are reasonably practicable for it to take in order to achieve the objective in subsection (2)."

Members should also propose to amend clause 2(A4)(1) to reflect the above.

Members should remove clause 3 and the individual right to sue.

References

¹ Mclaughlin, M. “Michelle Donelan responds to concerns of anti-Semitism”. *This is Wiltshire*, 14.05.21

² Smith, E “45 Years On: The History and Continuing Importance of ‘No Platform’”. *New Socialist*. 18.04.19

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