



Free Speech, Academic Freedom and Equality Act Training

Helping your institution be compliant with the
Higher Education (Freedom of Speech) Act 2023



WHAT TRAINING DOES THE HIGHER EDUCATION (FREEDOM OF SPEECH) ACT 2023 REQUIRE?

The Higher Education (Freedom of Speech) Act applies to all higher education providers registered with the Office for Students (“OfS”), and their constituent colleges, schools, halls and similar institutions. It takes effect on 1 August 2024.

It states a range of duties for providers with respect to free speech on campus and academic freedom, as well as conditions of registration to be monitored by an OfS director, and a complaints scheme similar to the Office of the Independent Adjudicator scheme.

The compliance impact is wide-ranging and complex in terms of both issues and documentation, and adjustments may be required to facilitate proper compliance.

To assist institutions, the OfS has produced draft free speech guidance which details what they are expected to do in order to comply with the Act Under the OfS’ guidance, institutions must provide “adequate training” on freedom of speech and academic freedom.

This means that staff will have an up-to-date understanding of:

- The free speech code of practice and how it applies in practice, including its application in detail to the member of staff’s role in the organisation;
- The requirements of Higher Education and Research Act 2017, the Human Rights Act 1998 and the Equality Act 2010 in relation to freedom of speech and how they apply in detail to the member of staff’s role in the organisation; and
- The free speech complaints scheme and its relevance to the member of staff’s role in the organisation.

This training must be provided to anyone involved in making decisions in relation to the following:

- Admission, appointment, reappointment and promotion processes
- Disciplinary processes
- Employment contracts (that may include conditions on speech)
- Processes and policies relating to equality or equity, diversity and inclusion, including the Public Sector Equality Duty
- Harassment and bullying policies
- IT policies and processes, including acceptable use policies and surveillance of social media use
- Prevent duty
- Principles of curricular design
- Research ethics
- Speaker events
- Staff and student codes of conduct

Additionally, institutions should make the training above a mandatory part of induction for all students and staff.

WHY IS COMPLIANCE WITH THE ACT IMPORTANT?

The most impactful aspects of the Act are the enforcement mechanisms which it contains. These materially increase the risk profile around free speech and academic freedom issues, both in terms of costs and potential reputational damage, if an institution gets things wrong. In particular, please note:

The complaints scheme

This enables the new OfS Free Speech Director to issue recommendations if the new rules are broken by institutions, which could include paying compensation, causing events to go ahead or re-instating dismissed academics;

The statutory tort

This allows individuals to directly sue institutions if they suffer loss because the new free speech rules have been broken.

The general regulatory powers of the OfS

These can lead to sanctions, including significant fines and, in the worst cases, ultimately deregistration, if an institution fails to comply with the new regulatory conditions imposed by the Act.

As such, the implications of non-compliance could be severe.

HOW WE SUPPORT HIGHER EDUCATION INSTITUTIONS

We can work with you to provide training packages which are bespoke to your institution, depending on your needs and number of staff who need to be trained.

We can offer training online or in-person, and do so with either senior personnel who can then train others within your institution or with all those who require such training. We also offer recorded video training.

Our fixed price packages (as summer 2024) are as follows:

PACKAGE 1 – TRAIN SENIOR LEADERS IN PERSON (FIXED FEES)

| | Bronze | Silver | Gold | Gold+ |
|--------------------------|---|--|---|--|
| What is included? | 2-hour training for senior staff in person (including bespoke training on institution's code) | 4-hour training for senior staff in person (including Bronze content plus guided case study) | Silver, but delivered twice with a 6 – 12 month gap (having been updated) plus bi-monthly update emails | Gold, plus up to one 30-minute 'triage' call per month (up to 12 total) for free speech issues |
| Price | On request | On request | On request | On request |

| Key Features | Bronze | Silver | Gold | Gold+ |
|------------------------------------|--------|--------|------|-------|
| Training for senior staff | ✓ | ✓ | ✓ | ✓ |
| Bespoke to your institution's code | ✓ | ✓ | ✓ | ✓ |
| Guided case study | | ✓ | ✓ | ✓ |
| Additional, updated session | | | ✓ | ✓ |
| Bi-monthly update emails | | | ✓ | ✓ |
| Free Speech triage service | | | | ✓ |

PACKAGE 2 – RECORDED VIDEO TRAINING (FIXED FEES)

| | Bronze | Silver | Gold | Gold+ |
|--------------------------|---|--|---|---|
| What is included? | 1-hour general training which can be shown to all staff (pre-recorded video). Licensed for up to 100 views. | Bronze plus 30-minute bespoke training on institutions policies and code (pre-recorded video). Licensed for up to 100 views. | Silver plus 30-minute guided case study (pre-recorded video). Licensed for unlimited views. | Gold plus 30-minute update video after 1 year and up to one 30-minute 'triage' call per month (up to 12 total) for free speech issues |
| Price | On request | On request | On request | On request |

| Key Features | Bronze | Silver | Gold | Gold+ |
|------------------------------------|--------|--------|------|-------|
| Training for senior staff | ✓ | ✓ | ✓ | ✓ |
| Bespoke to your institution's code | ✓ | ✓ | ✓ | ✓ |
| Guided case study | | ✓ | ✓ | ✓ |
| Additional, updated session | | | ✓ | ✓ |
| Bi-monthly update emails | | | ✓ | ✓ |
| Free Speech triage service | | | | ✓ |

As part of any such training, in order to comply with the OfS guidance, we provide a user-friendly overview of the new Act and the complex area of law. The session will be very practical in its focus – giving suggestions for best practice, highlighting risk areas and mitigation strategies in an easy to understand and accessible way.

We're also happy to discuss bespoke training options. We offer competitive rates for such services, and we are happy to discuss other fixed fees for training where possible (e.g. for repeat sessions).

WHY OUR CLIENTS WORK WITH US

Our team regularly provides advice on free speech and academic freedom matters for both individuals and institutions, including in relation to compliance with the Act. We have particular expertise on the law around academic freedom and free expression on campus, on which we have advised institutions, academics, think tanks, politicians and the Government, often on complex employment and free expression issues, including both disputes and compliance matters.

Our specialists have published multiple articles on academic freedom, in addition to submissions of evidence to the Special Rapporteur on Freedom of Expression, the UK Parliament's Joint Committee on Human Rights, and the House of Commons Public Bill Committee in relation to the Act. The team has also published several academic papers on the law concerning academic freedom and free expression on campus.

We provide a high-quality service which is highly rated by our clients and recognized externally, with The Legal 500 and Chambers and Partners ranking us highly, both at a team and individual level.

ABOUT DOYLE CLAYTON

We offer legal and advisory support to clients on issues arising in the workplace, and provide realistic and effective solutions on employment, business and personal immigration, corporate and commercial law, and education issues.

OUR TEAM



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