

## Press Summary

29<sup>th</sup> April 2026

*The University of Sussex v The Office for Students*

[2026] EWHC 984 (Admin)

**Judge:** The Honourable Mrs Justice Lieven

**NOTE: This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.**

*References in square brackets are to paragraphs in the judgment.*

### Background to the case

The issue to be determined in this case was whether the Office for Students (“OfS”) erred in law when it made the decision on 27 March 2025 that the University of Sussex (“*the University*”) was in breach of two registration conditions, and to fine the University £585,000 in respect of those breaches. The OfS exercised its powers under the Higher Education and Research Act 2017 (“*HERA*”), [1].

The decision arose following an OfS investigation into the University, which opened on 22 October 2021 and concluded on 27 March 2025, [34]. The investigation was prompted by a series of student protests at the University concerning Professor Stock, a gender critical feminist, [17]-[29]. This case does not adjudicate on any issues relating to the events surrounding Professor Stock. That was not the subject of the OfS investigation or decision, [29]. The OfS investigation evaluated a series of documents of the University, namely the Trans and Non-Binary Equality Policy Statement (“*TNBEPS*” or “*the Policy Statement*”), Freedom of Speech Code of Practice (“*FOSCOP*”) and External Speakers Procedure (“*ESP*”), [77].

The Policy Statement is at the heart of the OfS decision. It emanated from a template policy produced by Advance HE, a charity that promotes higher education. Some 10 other universities adopted the same or very similar policies during the same period, [79]. The University produced four versions, 2018, 2022, 2023 and 2024. Each version has the same intent not to discriminate against people on the grounds of their gender identity. The issues in this case turned on some of the very precise wording of the different versions, [78]-[90].

The Final Decision (“*FD*”) was made by the OfS’s “*University of Sussex Compliance and Enforcement Committee*” (“*USCEC*”) on 27 March 2025, [54]. In the FD, the USCEC found that the 2018, 2022, and 2023 versions of the Policy Statement had breached condition E1 (to uphold academic freedom and freedom of speech in its governing documents). It also found that the University had used incorrect delegation procedures to approve FOSCOP 2021, ESP 2023, and the Policy Statement 2022 and 2023, and had therefore breached condition E2(i) (to

have in place adequate and effective management and governance arrangements to operate in accordance with its governing documents) [98]-[108].

On 9 May 2025, the University challenged the OfS’s findings of breach and sanction in this Judicial Review claim, [56]. The parties grouped the Grounds into five headings or topics, [111]. The Judge provided a summary of her conclusions on each Ground, [444]-[455].

## **Judgment**

The OfS did not have jurisdiction to make the finding of breach of condition E1 because the Policy Statement was not a “*governing document*” within the meaning of Section 14(1) HERA. Even if the OfS had had jurisdiction, the OfS misdirected itself on the meaning of “*freedom of speech within the law*” and “*academic freedom*”, and failed to have proper regard to the protective effect of the University’s Freedom of Speech Code of Practice.

The OfS did have jurisdiction to make the finding of breach of condition E2(i) because the powers given to the OfS in HERA do encroach into, or overlap with, the Visitors’ jurisdiction. However, the OfS was wrong in law not to have considered whether the alleged breaches of both conditions had been remedied by the time of the Final Decision. In any event, the finding of breach in relation to both conditions was vitiated by bias because the OfS approached the decision with a closed mind and had therefore unlawfully predetermined the decision.

## **Reasons for the Judgment**

### The Legal Framework

Pursuant to Section 5 HERA, the OfS has determined and published a list of conditions that universities must meet on their initial registration as higher education providers, and on an ongoing basis, [61]. The conditions are produced in the OfS’s Regulatory Framework (“*RF*”) at Annex A, [69]. Section 13(1)(b) and Section 14(1) HERA provide that one of the conditions may be “*a public interest governance condition*”, which means “*a condition requiring the provider’s governing documents to be consistent with the principles in the list published under this section*”, [62]-[63]. The list of public interest governance principles (“*PIGPs*”) is set out at Annex B of the OfS’s RF, [71].

The relevant conditions in this case are conditions E1 and E2(i). Condition E1 provides that the “*provider’s governing documents must uphold the public interest governance principles [“PIGPs”] that are applicable to the provider*”; Condition E2(i) provides that the “*provider must have in place adequate and effective management and governance arrangements to: i. operate in accordance with its governing documents...*”, [69]. The relevant PIGPs referred to in condition E1 are freedom of speech and academic freedom, [71].

### Issue 1 (the meaning of “governing documents”)

The OfS had no jurisdiction to make the finding of breach of condition E1 because the Policy Statement was not a “*governing document*” within the meaning of Section 14(1) HERA [149].

The starting point is the words of the statute. The ordinary and natural reading of “*governing documents*” tends towards a narrow meaning, because they would need to be documents that had some governing effect, rather than simply setting out a policy, [150]. In addition, the legislative history of HERA points very strongly to “*governing documents*” having a narrow meaning, [153]. The OfS’s broad definition would be unworkable, [159].

### Issue 2 (the visitorial jurisdiction)

The University of Sussex is one of 14 universities and colleges that have “Visitors” who have exclusive jurisdiction on certain matters related to the University’s internal laws [167]. The origin of the visitorial jurisdiction is ecclesiastical, [168].

The OfS did have jurisdiction to make the finding of breach of condition E2(i), because the powers given to the OfS in HERA do encroach into, or overlap with, the Visitors’ jurisdiction, [190]. Section 14 HERA clearly intends to give the OfS jurisdiction over the governing documents, and this necessarily involves straying into the Visitors’ jurisdiction, despite the fact that there is no express reference, either in the statute or any of the background documentation, to the impact of HERA on the Visitors, [183]. It would be unworkable if conditions made under Section 14 HERA could stray into the Visitors’ jurisdiction, but conditions made under Section 5 HERA could not, [188]. The necessary implication is therefore that Parliament intended the OfS to have power to scrutinise issues that would previously have fallen within the exclusive jurisdiction of the Visitors, [189].

### Issue 3 (breaches of condition E1)

The Grounds under Issue 3 were all argued in the alternative to Issue 1, [191].

Under Ground 3D, the OfS misdirected itself in the FD as to the meaning of “*freedom of speech within the law*”, [251]. *The PIGP in respect of freedom of speech is, “VII Freedom of speech: the governing body makes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured with the provider.” This directly reflects the freedom of speech duty on higher education providers in s.43 of the Education (No2) Act 1986, [198]-[199].*

A higher education provider will have complied with the duty under condition E1 and the freedom of speech PIGP if it has taken reasonably practicable steps to secure the speech, and has acted proportionately in any restrictions it imposes on freedom of speech, [207]. This is outlined in the OfS’s own three-step approach in its Regulatory Advice 24 (“RA24”), [206]. The intervenor (the Free Speech Union) disagreed that a proportionality assessment was necessary, [212].

In order to determine whether the different versions of the Policy Statement breached condition E1 and the freedom of speech PIGP it is necessary to read the documents as a whole, [237]. The 2018 Policy Statement included the “*Positive Representation Statement*”, “*Stereotyping Statement*” and “*Transphobic Propaganda and Disciplinary Statements*”. The 2022 version of the Policy Statement removed the “*Positive Representation Statement*” and amended the

“*Stereotyping Statement*”. The 2023 version of the Policy Statement added the “*Safeguarding Statement*”, [195].

In relation to the 2023 Policy Statement, the OfS misdirected itself on the meaning of “*freedom of speech within the law*” because: (i) it relied on the restriction of “*lawful speech*”, where the OfS accepted in the RA24 that lawful speech could, in appropriate circumstances, be restricted; (ii) it failed to read the Policy Statement as a whole, and was wrong to conclude that the “*Safeguarding Statement*” did not ensure that the three-stage approach was to be undertaken before the Policy Statement would support the infringement of freedom of speech; (iii) it failed to read the Policy Statement alongside FOSCOP and appreciate that the Policy Statement was merely one of a suite of documents which protected freedom of speech, [246].

While the 2022 version did not include the “*Safeguarding Statement*”, the first and second points remain, [247]. The University accepted that the 2018 Policy Statement was in breach of condition E1, because of the “*Positive Representation Statement*” [223]. That does not mean that there was a lawful finding of breach of condition E1 in relation to the 2018 version, because of the issues with the FD under other Grounds, [223].

Under Ground 3A, the OfS misdirected itself because of its failure in the FD to have proper regard to FOSCOP, [286]. FOSCOP was the document which specifically addressed and set out the University’s policy on freedom of speech. The OfS’s own guidance in RA24 says that the University’s “*definitive statement*” on freedom of speech is in FOSCOP, [284]. The University’s position was that FOSCOP met condition E1, and that if FOSCOP, the Policy Statement, and the other relevant documents were read together, then there was no breach of condition E1. FOSCOP was obviously a material consideration, [283].

Under Ground 3C and 4, the OfS misdirected itself on the question of what amounted to a breach of the academic freedom PIGP, [266]. The academic freedom PIGP states that academic staff have freedom within the law “... *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 provider*”, [252]. The OfS found that the 2018 and 2022 versions of the Policy Statement had not upheld the academic freedom PIGP because, if an academic member of staff had breached either the “*Positive Representation Statement*”, the “*Stereotyping Statement*”, or the “*Disciplinary and Transphobic Propaganda Statements*”, they could have faced disciplinary proceedings, [253]. The error of law was manifest: the requirement to protect academic freedom by not allowing an academic to be “*in jeopardy of losing their job*” does not encompass jeopardy of disciplinary proceedings or of other detrimental effects, [266].

#### Issue 4 (decision to make formal findings of breach and impose sanction)

The Grounds under Issue 4 assumed that the findings of breach were in themselves lawful, but concerned whether formal findings should have been made and sanctions imposed, [287].

Under Ground 5A, it was wrong in law for the OfS not to address whether the breaches had been remedied by the time of the FD, [305]. The OfS is under a general duty in Section 2(1)(f) HERA to have regard to “*the need to use the OfS’s resources in an efficient, effective and economic way*”; and in Section 2(1)(g) to undertake regulatory activities in a proportionate

manner, “(ii) targeted only at cases in which action is needed”. In addition, the “intervention factors” in the OfS’s RF direct the OfS to consider “Steps taken by the provider to mitigate the increased risk or remedy the breach” and “the likelihood that a breach could happen again”, [291]. Therefore, whether a breach has been remedied was plainly a relevant consideration in deciding whether it is necessary to make a finding and impose a sanction, [305].

It was not, however, unlawful for the OfS not to disclose Professor Stock’s second witness statement, as there has to be some point of finality in proceedings (Ground 6A), [323]. It was also not unreasonable for the OfS to conclude that the harm was “significant and severe”, as this was a pure irrationality Ground, which is a high test, made higher by the fact of the OfS’s remit under HERA and its specialist expertise (Ground 5E), [336]-[343]. Nor was it unlawful for the OfS not to take into account the “anti-competitive” effect of its decision under Section 2(1)(c) HERA, as it is sufficiently obvious that negative impacts, and therefore in some sense an impact on competitive position, will fall on an institution under investigation (Ground 5B), [349]-[350].

#### Issue 5 (bias and predetermination)

The FD was vitiated by apparent bias, by predetermination. It is particularly important for this Ground to fully consider the precise decision-making process and the various roles and responsibilities, [362].

On 23 September 2021, the OfS board met and decided to “Proactively seek cases to pursue using our investigatory powers”, [366]. Ms Lapworth, the OfS chief executive, explained in her witness statement that, “In light of the sector landscape... I considered that initiating investigatory work on a case relating to free speech would benefit the sector, by sending a strong signal” and creating “clear compliance incentives”, [367]. The following month, on 22 October 2021, the OfS opened an investigation into the University, prompted by the student protests against Professor Stock. On 6 July 2023 Ms Lapworth established the USCEC, [43]. In August 2023 Dr Ahmed joined the OfS as Director for Freedom of Speech and Academic Freedom, [44]. On 15 October 2024 Dr Ahmed joined the OfS investigation team, in effect leading the team, subject to Ms Lapworth’s oversight, [50]. Dr Ahmed had expressed support for Professor Stock, [375]-[402]. On 24 December 2024 the OfS investigation team dispatched its recommendation pack on final decisions to the USCEC, [52].

There is no vitiating apparent bias in respect of Dr Ahmed’s personal role in the decision-making, [420]-[426]. Dr Ahmed was not the decision-maker and he came into the process after the Provisional Decision had been issued, [425]. However, the OfS unlawfully predetermined the decision because of: (i) its overarching strategy from the opening of the investigation to find a “test case” that would “send a strong signal” [428]; (ii) its approach to settlement negotiations, where the OfS assumed a breach before the Provisional Decision was reached, and refused to meet the University unless the University accepted the alleged breaches in their entirety, [432]-[433]; (iii) the OfS’s approach to other higher education providers that were using the same policy. Dr Ahmed wrote to the other universities using the same policy template only after the FD was published, highlighting the breach and the fine, which points again to the

OfS's strategy, [434]-[435]; (iv) the OfS's failure to refer to FOSCOP, [436]; the OfS's refusal to consider whether the University had remedied the breaches, [437].

Even though the FD was made by the USCEC, which was an independent committee, the draft FD produced by the investigation team was adopted by the USCEC in its entirety, and there is no evidence of sufficient independent consideration on the part of the USCEC for the closed mind approach of the OfS to have been sufficiently, if at all, removed, [439]-[443].