

Question A: Do you have any comments on Proposal A regarding what a free speech complaint is?

No

Question B: Do you have any comments on Proposal B regarding who can complain?

We are concerned that the broad definition of visiting speakers might result in unfounded and undue complaints and that the quasi-regulatory role students' unions hold over their affiliated groups has not been considered.

For a Students' Union with over 400 student groups who could invite visiting speakers, we have legal responsibilities and clear expectations from our regulator (the Charity Commission) that a robust external speaker's process is in place. Therefore, until this process has been completed even if a student group might have indicated their intention to invite a speaker, the students' union cannot be responsible for the activities planned.

We urge the OfS to provide clarity and confirm that a speaker can only be said to have been 'invited' at the point an internal approvals process has been completed.

We agree that these necessary processes should be simple, easy to use and focus on securing freedom of speech wherever possible. We have a good track record in this space and have not rejected any external speaker in 7 years. However, the risk of individuals complaining who have not followed a required process is highly problematic.

As we have seen noted in the NUS response to this consultation, we agree that it is important for the OfS to recognise the current long-held sectoral practice that staff involved in corporate governance do not comment on political decision-making at the relevant students' union. This arrangement exists in part as a "quid pro quo" to prevent staff from being criticised in democratic spaces where they are ineligible to speak. We would appreciate OfS acknowledging that generally excluding comment or involvement in the democratic governance of the students' union would not be seen as an infringement of free speech: a failure to make this acknowledgement has the potential to cause us a wide range of issues.

Question C: Do you have any comments on Proposal C regarding complaints that we will not review?

In line with rules set out by quasi-judicial organisations such as the Legal Ombudsman, we believe that students' unions must be provided with an opportunity to deal with complaints under our own complaints processes before the OfS will take on any case. This is particularly important considering the scale and decentralised nature of Union activities which means that it is entirely possible that the students' union was not directly involved with the matter in contention. As mentioned previously, we have a regulatory role regarding our Clubs and Societies and, like the OfS, also take a risk-based approach. While we do, and will continue to, provide robust guidance and support to our affiliated groups, we are not in a position (and no union is) to monitor every activity – this is why we enforce our own regulatory regime. We believe the OfS must be cognisant of the unique nature of our operating model as we have detailed further elsewhere.

We firmly believe that the complainant should demonstrate they have 'exhausted any internal procedure for the review of complaints' which is provided by the respondent before a complaint can be considered by the OfS. We also note that the proposal as it currently stands is not in line with the Office of the Independent Adjudicator for Higher Education who will only conduct a review after a provider's internal process is completed.

We are equally concerned that the suggested 30-day period after which the OfS will review a complaint is far too short. When considering the complexity and wide scope of potential matters we may need to investigate, we believe that this is an unreasonable timeframe to expect a robust internal process to be carried out.

We believe that the 30-day requirements should be extended to 12 weeks and the OfS should take into consideration the specific context and constraints within which different students' unions operate – in certain circumstances it would be appropriate to extend the timeframe. The 12-week requirement should always be enforced to ensure that disciplinary processes etc. are not unduly influenced or prejudiced, and to ensure the equal and fair treatment of each complaint.

We welcome the commitment made by the OfS that frivolous or vexatious complaints will not be considered. We are interested to understand more about how the regulator will determine if complaints fall into this bracket. We suggest that clear criteria indicating what constitutes frivolous or vexatious complaints should be published alongside a confirmation that the regulator does not expect students' unions to investigate complaints that meet the outlined criteria.

Question D: Do you have any comments on Proposal D regarding time limits?

We are concerned that the current time limits to make a complaint are based on when the adverse consequences 'appears to the OfS' to have occurred. This subjective approach means that a complaint could in theory be raised many years after the initial event and it would be unreasonable in such circumstances to expect students' unions to be able to robustly respond.

We believe that there should be a requirement for complaints to be made within 12 months of the alleged incident 'action or inaction' occurring as opposed to when the alleged 'effect was felt'. This is a far clearer way of ensuring that issues can be reasonably investigated and avoids the potential for events without clear lines of causation being linked unfairly by a complainant.

This is particularly important considering students' unions are democratic organisations led by elected students who are in post normally for 1 year only. This is also the case for club and society leaders who normally serve a 1-year term in office.

Question E: Do you have any comments on Proposal E regarding submitting a complaint?

No

Question F: Do you have any comments on Proposal F regarding reviewing a complaint?

We believe that a students' union must always be made aware if a case is brought against them at the earliest opportunity. Sharing information with the respondent is vital in all cases, including ones where the OfS concludes that a breach has not occurred and does not need to investigate the case. This will not just help determine matters of eligibility but also identify the potential vexatious nature of complaints.

Question G: Do you have any comments on Proposal G regarding our decision and Notice of Complaint Outcome?

We agree that adopting the civil standard seems appropriate in this case however feel that additional consideration needs to be applied when deciding whether a complaint is justified, partially justified or unjustified.

We believe the additional questions should also be considered:

- Does the respondent have an appropriate procedure, risk management frameworks etc. in place that has been followed in a reasonable and fair way, with robust decision making in place?
- In the context of other regulatory duties did the respondent take 'reasonably practicable' steps to secure freedom of speech within the law?

The answer to c and d are fundamental to what should **not** be considered a 'strict liability offence' but rather a complex and contextualised duty at tension with other legal responsibilities.

Question H: Do you have any comments on Proposal H regarding recommendations and suggestions?

We have no major concerns with this proposal. However additional detail on what is meant by 'recommendations', what the expectations are on students' unions in relation to these, and any consequences of recommendations not being followed should be outlined.

Question I: Do you have any comments on Proposal I regarding suspension and withdrawal?

No

Question J: Do you have any comments on Proposal J regarding group complaints?

No

Question K: Do you have any comments on Proposal K regarding representations?

We would welcome more information about what representations might mean in practice. We also believe that it is vital that language is changed from **may** to **must** seek representations from the respondent before any final decision is made. If a decision was made without seeking representations from the 'accused' party the process would be fundamentally unfair.

The sole exception that should be made to the above is where the OfS has determined that there is no case to answer and/or the complaint is vexatious, and no further action is to be taken. In those circumstances we are content that a decision be made without a respondent's representations.

Question L: Do you have any comments on Proposal L regarding information requirements?

No

Question M: Do you have any comments on Proposal M regarding a respondent's duty to comply?

No

Question N: Do you have any comments on Proposal N regarding advertising the scheme?

We understand the need for the complaints scheme to be advertised appropriately, however we disagree that the scheme should be advertised at the beginning of a complaints process. It should be made clear that the scheme should be used as a last resort if the internal complaints process has been exhausted (including any right to appeal etc.)

As we have indicated previously, it is our view that a complainant should not be able to complain to the OfS before the internal complaints process has been exhausted.

Question O: Do you have any comments on Proposal O regarding charges, costs and fees?

The lack of information provided with regards to this proposal at this stage means we are unable to determine whether the approach is reasonable or fair. We believe that a full consultation should be conducted on this matter and clear guidelines are set out before any attempt to recover costs is made.

Question P: Do you have any comments on Proposal P regarding the publication of information relating to the free speech complaints scheme?

The decision to publish details of an investigation whether found justified, partly justified or unjustified has potential for substantial reputational and other risk to the students' union – with this in mind it is vital that the OfS always informs a student union, and allows a reasonable period for representations to be made, before making a decision to publish.

It is also vital that the publishing of information does not unduly impact or influence ongoing internal processes including prejudicing the outcome of an investigation.

Complaints considered vexatious should be highlighted in the reporting data but clearly identified as vexatious and unfounded so as not to skew the results.

We ask that the OfS conducts and publishes a review of the new complaints scheme and gives student unions and HEIs an opportunity to feed into this process in August 2025.