

Regulatory case report for University of Sussex: OfS decisions relating to breaches of conditions E1 and E2 and the imposition of monetary penalties

Executive summary

This report explains that the Office for Students (OfS) has found that the University of Sussex has breached ongoing conditions of registration relating to management and governance, and that the OfS has decided to impose monetary penalties.

Put simply, this means that the OfS has fined the University of Sussex £585,000 for two breaches of the conditions in our regulatory framework. One relates to our free speech and academic freedom requirements, and the other to the university's management and governance practices. One of the university's governing documents – its Trans and Non-Binary Equality Policy Statement – limited what staff could teach, and what staff and students could say, about sex and gender. This created a 'chilling effect': staff and students may have felt unable to express or discuss certain lawful views (including 'gender critical' views) for fear of breaching university policy and facing disciplinary action. We know that one senior academic, Professor Kathleen Stock, felt unable to teach certain topics as a result. This matters because constraints on lawful speech directly affect the quality of students' education and academic experience. All universities should make sure they have policies and procedures in place to meet their free speech obligations.

This case report provides background information, explains how the OfS reached the conclusion that there had been breaches of conditions E1 and E2, and sets out how we have arrived at the monetary penalties in relation to those breaches. It also sets out our concerns that the university may not have complied with, or acted compatibly with, wider legal requirements relating to freedom of speech and academic freedom.

The breaches

Condition E1 (public interest governance)

The first breach relates to constraints on freedom of speech and academic freedom in the university's governing documents, which had the effect of restricting the expression of lawful views. These included 'gender critical' views, which amount to a protected belief under the Equality Act 2010. This caused harm, including by creating a chilling effect – by which we mean the potential for staff and students to self-censor and not speak about or express certain lawful views. The experience of Professor Stock is an example of this chilling effect materialising in practice, and we explain this further later in the report.

The OfS's interest is in ensuring the protection and promotion of free speech within the law – irrespective of the particular views expressed. We take an impartial and viewpoint-neutral approach in our regulation and decisions. Students and academics are free to express and discuss

their and others' lawful views – even, or especially, where they may be controversial. The content of these views is not a matter for the OfS, so long as they are expressed lawfully.

Relevant statements for the breach of condition E1

The OfS has found that four elements of the university's Trans and Non-Binary Equality Policy Statement – one of the university's governing documents – constituted a breach of condition E1 because they were not compliant with the OfS's requirements and placed constraints on freedom of speech and academic freedom. These were:

- a. A requirement for 'any materials within relevant courses and modules [to] positively represent trans people and trans lives'. For ease of reference, we refer to this as the Positive Representation Statement throughout this report.
- b. A statement that 'the curriculum shall not rely on or reinforce stereotypical assumptions about trans people'. We refer to this as the Stereotyping Statement.
- c. A statement that 'transphobic propaganda ... will not be tolerated'. We refer to this as the Transphobic Propaganda Statement.
- d. A statement that 'transphobic abuse, harassment or bullying (name-calling/derogatory jokes, unacceptable or unwanted behaviour, intrusive questions) are serious disciplinary offences for staff and students and will be dealt with under the appropriate University procedures.' We refer to this as the Disciplinary Statement.

Where we refer to the statements collectively, we describe them as 'the four statements'.

Our decision

The OfS has concluded that the University of Sussex breached ongoing condition of registration E1 because the Trans and Non-Binary Equality Policy Statement failed to:

- uphold the OfS's freedom of speech and academic freedom public interest governance principles from 1 August 2019¹ to 16 August 2022, in relation to the Positive Representation Statement;
- uphold the OfS's academic freedom public interest governance principle from 1 August 2019 to 17 January 2023, in relation to the Stereotyping, Transphobic Propaganda and Disciplinary Statements; and
- uphold the OfS's freedom of speech public interest governance principle from 1 August 2019 to at least 20 March 2024, in relation to the Stereotyping, Transphobic Propaganda and Disciplinary Statements.

Why this matters

The fundamental importance of freedom of speech and academic freedom means that this is a serious breach with significant consequences. The four statements in the Trans and Non-Binary Equality Policy Statement were capable of restricting lawful speech. Our assessment is that the

¹ This is the date from which the OfS's ongoing condition of registration E1 came into force.

university did not have adequate safeguards in place in the policy statement or in its other governing documents to adequately protect freedom of speech and academic freedom for the period in which they were restricted. As a result:

- The university restricted certain viewpoints and lawful speech, including in its course materials and curriculum.
- A chilling effect was created because the university indicated, through these restrictions, that the expression of certain lawful speech and views was not acceptable at the university. This led to self-censorship by Professor Stock, and may also have led other academics and students to censor themselves and avoid expressing certain views or speech.
- Professor Stock excluded lawful speech and content from the curriculum and her course materials. This meant that the diversity of lawful opinion and debate that academics could teach, and to which students were exposed, was reduced. Other academics may have done the same, or felt the need to do so.

The university published the Trans and Non-Binary Equality Policy Statement in 2018. It did not include effective safeguards which adequately protected the expression of certain legally protected beliefs, including 'gender critical' beliefs; nor did other governing documents of the university. We have also considered the university's Statute VII – another of its governing documents – and whether that safeguarded freedom of speech and academic freedom. While we find it did provide some safeguarding effect, this was inadequate. We set this out in more detail later in this report. We also consider changes that the university made to its Trans and Non-Binary Equality Policy Statement in 2022 and 2023.

Condition E2 (management and governance)

The second breach relates to a pattern of decisions taken at the university to adopt and/or revise policies without proper delegated authority.

Our decision

The OfS has concluded that the University of Sussex breached ongoing condition of registration E2 because it failed to have adequate and effective management and governance arrangements in place to ensure that it operates in accordance with its governing documents.

Why this matters

The university did not operate in accordance with governing documents that deal with delegation arrangements. As a result, there was a risk of lower quality decisions which may not have been made in the best interests of students and staff.

Decisions at higher education providers should be taken at the appropriate level by appropriate individuals or groups. When decisions are made by individuals or groups not identified by the university as appropriate to make those decisions, there is a risk that this may lead to decision-making of a degraded quality. For example, decisions may be made without sufficient scrutiny, expertise or knowledge of the matters at hand. As a result, decisions may not be made in the best interests of students and staff, or in accordance with the university's legal and regulatory obligations. This may include decisions that affect important matters, such as freedom of speech and academic freedom.

Monetary penalties

As a result of these two breaches of conditions of registration, the OfS has imposed the following monetary penalties on the University of Sussex:

1. For the breach of condition E1 relating to the Trans and Non-Binary Equality Policy Statement: £360,000.
2. For the breach of condition E2 relating to the university's management and governance arrangements: £225,000.

This report explains the approach the OfS has taken, including considering mitigating and aggravating factors, in deciding to impose penalties of this amount.

Legal requirements for freedom of speech and equality matters

Universities and colleges registered with the OfS are subject to a range of wider legal requirements relating to freedom of speech and equality matters. While the OfS does not enforce these, there is likely to be overlap of these wider legal obligations with the OfS's regulatory requirements and our assessment of providers' compliance with those regulatory requirements.

Specifically, the OfS is concerned that the university may not have complied, or acted compatibly, with:

- Section 43 of the Education (No. 2) Act 1986 (duty relating to freedom of speech)
- Article 10 of the European Convention on Human Rights (the right to freedom of expression)
- Section 19 of the Equality Act 2010 (indirect discrimination)
- The Public Sector Equality Duty.

We set out more details of our assessment of these matters later in this report.

Conclusion

Freedom of speech and academic freedom are fundamental values of higher education. The OfS has taken action in this case to ensure that students at the University of Sussex have a high quality education and are exposed to a wide range of academic thought and argument. Our action also ensures that academic staff can teach and research lawful topics with confidence, even if controversial. The OfS's interest is in ensuring the protection and promotion of lawful speech – irrespective of the views expressed. Publishing our decisions in this important case signals to all registered higher education providers that they should ensure they are satisfying their regulatory and legal obligations in relation to freedom of speech, academic freedom and equality matters.

Background to the investigation

On 7 October 2021, the OfS identified reports about an incident at the University of Sussex. The incident appeared to involve students at the university protesting against Professor Kathleen Stock, a senior academic, and calling for her employment to be terminated.

Professor Stock's research and teaching included writing on matters relating to sex, gender, and the rights of individuals in connection to these. She had, and continues to have, a public profile within the higher education sector, and beyond.

The incident included a protest by a masked demonstrator holding a sign with the message 'Stock Out', while posters calling for her employment to be terminated also appeared. A social media page set up by protestors made similar calls.

Gender critical beliefs

This report makes a number of references to gender critical beliefs. By 'gender critical', the OfS means the belief that biological sex is real, important, immutable and not to be conflated with gender identity. Gender critical beliefs are protected beliefs for the purposes of the Equality Act 2010.

The OfS's role

The OfS's interest is in ensuring the protection and promotion of lawful speech – irrespective of viewpoint. We take an impartial approach and are neutral in our regulation and decisions.

The incident described above, and a review of some of the university's policies, gave rise to regulatory concerns about whether the university was unlawfully restricting academic freedom and limiting lawful free speech in general.

The OfS does not currently have a role to act on behalf of any individual, for example Professor Stock. Our investigation was therefore focused on the university's compliance with its regulatory and legal obligations, rather than on the particular circumstances relating to Professor Stock.

The proposed introduction of the new OfS free speech complaints scheme will allow us to directly investigate matters relating to individuals and we anticipate this will provide a faster route to resolution of these complex issues.

The OfS contacted the university, seeking information about:

- The actions the university had taken to ensure that free speech and academic freedom were not being explicitly or implicitly curtailed for Professor Stock, or others who shared her views.
- The steps it planned to take to consider the extent to which the incident represented harassment of Professor Stock on the basis of her gender critical beliefs, and any actions that may flow from that judgement.

After reviewing this information, and a range of the university's governing documents and policies, the OfS opened an investigation on 22 October 2021. The investigation sought to understand whether:

- The university had taken reasonably practicable steps to secure freedom of speech within the law, and to secure academic freedom, including for people with gender critical beliefs.
- The university's governing documents upheld the OfS's public interest governance principles for academic freedom and freedom of speech and otherwise properly reflected other relevant legal obligations, including the Equality Act 2010.
- The implementation of the university's policies for academic freedom and freedom of speech, as well as for human resource matters and equality, diversity and inclusion matters, had a negative effect on academic freedom and freedom of speech.

To progress our investigation, we imposed cooperation requirements on the university to ensure that relevant documents were retained. We required the university to submit a range of documents on a number of occasions. We also invited the university to submit any further information it considered relevant, including in relation to changes it had made to its policies since the OfS opened its investigation. During the course of our investigation, the university updated key policies several times.

Following engagement with the university, we reached provisional findings in March 2024 and invited the university to provide representations about these. The OfS carefully considered the university's representations and subsequently made the final decisions set out in this case report on 14 February 2025. The timeline for the investigation reflects the complexity of the issues and evidence submitted.

The OfS's regulatory framework sets out how the OfS will use its powers where an investigation concludes that there is, or has been, a breach of one or more conditions of registration. In deciding whether and how to intervene, the OfS must have regard to its general duties in section 2 of the Higher Education and Research Act 2017² and consider how interventions can be appropriately prioritised, proportionate, targeted and transparent. The OfS is accountable for the decisions it makes, and must be able to explain them to relevant providers. We must also consider the appropriate intervention factors set out in paragraph 167 of the regulatory framework.³ These factors include the significance and severity of a breach, the impact of an intervention on students and the behaviour of the provider.

The OfS has a range of potential interventions:

- Imposition of enhanced monitoring requirements.
- Imposition of specific ongoing conditions of registration.
- Imposition of formal sanctions:

² See [Higher Education and Research Act 2017, section 2](#).

³ See the OfS regulatory framework, [Overview of monitoring of risk for registered providers - Office for Students](#).

- Monetary penalties
- Suspension from the Register
- Deregistration.

Following our investigation into the University of Sussex, we identified a range of regulatory concerns, including breaches of ongoing conditions of registration relating to: (a) the governance of freedom of speech and academic freedom, and (b) broader governance processes. We have imposed a monetary penalty for each of these breaches.

Breaches of OfS ongoing conditions of registration

This section explains the breaches of conditions E1 and E2 we found. It sets out the factors we considered in finding that conditions had been breached and determining the significance of those breaches. We call these ‘intervention factors’. We then explain the approach we took to decide that it was appropriate to impose monetary penalties and the level of those penalties.

The OfS found a breach of condition E1 which relates to public interest governance. The relevant requirements are set out in the box below.

Condition E1: Public interest governance

The provider’s governing documents must uphold the public interest governance principles that are applicable to the provider.

Relevant public interest governance principles

Academic freedom: Academic staff at an English higher education provider have freedom within the law:

- to question and test received wisdom; and
- 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.

Freedom of speech: The governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.

The OfS found a breach of condition E2 which relates to a provider’s management and governance arrangements. This relates specifically to condition E2(i) and the relevant requirements are set out in the box below.

Condition E2: Management and governance

The provider must have in place adequate and effective management and governance arrangements to:

- (i) Operate in accordance with its governing documents.

Adoption of Trans and Non-Binary Equality Policy Statement – background

The Trans and Non-Binary Equality Policy Statement was first adopted by the university in November 2018.

On 12 November 2018, it was proposed that the statement be published on 20 November, which was marked as 'Trans Day of Remembrance'. The draft 2018 version was considered by the University Executive Group on 13 November 2018. The University Executive Group supported the direction of travel of the statement and asked for a more detailed discussion once it had been discussed by the university's Equality, Diversity and Inclusion Committee. The University Executive Group also noted that: 'if you feel we need to make a statement next Tuesday, this should be along the lines of "the University is supporting Trans Awareness Week and has committed to starting a conversation around the development of its Trans Equality Policy Statement". You may also want to share the draft Advance HE template but it would need to be clear that this is the starter for the discussion as down the line the University might adopt its own bespoke Statement depending on the outcome of your work re this.'

The University Executive Group was subsequently convened on 14 November 2018 for a single item additional meeting. No separate minute was recorded for this meeting and at the end the University Executive Group agreed that the 2018 version could be published on 20 November 2018. This 2018 version of the statement was in place in October 2021 when the OfS's investigation was opened.

Breach of condition E1: Trans and Non-Binary Equality Policy Statement

OfS decision

The OfS found a historic breach of ongoing condition of registration E1 because successive versions of the university's Trans and Non-Binary Equality Policy Statement failed to:

- Uphold the freedom of speech and academic freedom public interest governance principles from 1 August 2019 to 16 August 2022, in relation to the Positive Representation Statement.
- Uphold the academic freedom public interest governance principle from 1 August 2019 to 17 January 2023, in relation to the Stereotyping, Transphobic Propaganda and Disciplinary Statements.
- Uphold the freedom of speech public interest governance principle from 1 August 2019 to at least 20 March 2024, in relation to the Stereotyping, Transphobic Propaganda and

Disciplinary Statements. The OfS has reserved its position on whether this element of the breach continued past 20 March 2024, including (but not limited to) in the version of the Trans and Non-Binary Equality Policy Statement that was adopted by the university in May 2024.

Intervention factors relevant to this breach

The OfS considers that, taken as a whole, the intervention factors support finding a breach of ongoing condition E1 in relation to the 2018, 2022 and 2023 versions of the Trans and Non-Binary Equality Policy Statement from 1 August 2019 until at least 20 March 2024. This is because:

- The concerns that amount to a breach have already occurred.
- The impact of this breach is significant and severe. The four statements in the Trans and Non-Binary Equality Policy Statement restricted lawful speech. They have the effect of restricting lawful speech and content, including in the curriculum and course materials, and have created a chilling effect. An example of this chilling effect materialising in practice was set out in a witness statement provided to the OfS by Professor Stock.
- It is likely that finding breaches will incentivise the university and other providers (through the publication of information about our regulatory action) to ensure they are complying with their regulatory obligations relating to freedom of speech and academic freedom. This is a clear benefit to students and outweighs any potential harm caused by the reputational damage the university may face.
- The university did not alert the OfS to the potential breaches.
- The duration of the breaches was significant, and the underlying causes are longstanding.
- Although the university took some steps in August 2022 and January 2023 to seek to remedy the issues that contribute to a breach of condition E1, some of the underlying causes and issues with the Trans and Non-Binary Equality Policy Statement persisted. The breaches therefore continued until at least 20 March 2024.
- Responsibility for taking regulatory action in respect of compliance with condition E1 lies with the OfS rather than another body.

Steps taken to safeguard freedom of speech and academic freedom

The university took some steps to seek to mitigate the breach of condition E1. We have, in particular, considered two issues here. First, we assessed the impact of Statute VII, which is one of the university's governing documents, and relates to staff at the university. Then, we considered carefully the impact of the changes the university has made to its Trans and Non-Binary Equality Policy Statement in successive versions.

The impact of Statute VII

Statute VII relates only to university staff, so does not have any safeguarding effect on students' freedom of speech. It is also important to note that nothing in the Trans and Non-Binary Equality Policy Statement, or the university's Statutes, Regulations or other governing documents, explains how to resolve any conflict between Statute VII and any content in the Trans and Non-Binary Equality Policy Statement.

When assessing the extent to which Statute VII has a safeguarding effect on academic freedom and staff's freedom of speech, we considered whether or not staff could face disciplinary proceedings as a result of non-compliance with the Trans and Non-Binary Equality Policy Statement, and whether staff would be afforded protection in any disciplinary proceedings.

Statute VII does not rule out the possibility of disciplinary proceedings being brought against members of staff for a breach of the restrictions on lawful speech in the Trans and Non-Binary Equality Policy Statement. Any such proceedings could have caused clear detrimental effects including anxiety, stress and uncertainty while the process was underway. However, our assessment is that the proper application of Statute VII would safeguard against an adverse outcome for a staff member investigated for a breach of the Trans and Non-Binary Equality Policy Statement.

Amendments to the Trans and Non-Binary Equality Policy Statement

The university has amended its Trans and Non-Binary Equality Policy Statement on a number of occasions since the OfS investigation began. The OfS's findings relate to the versions adopted in 2018, 2022 and 2023. The OfS has reserved its position on the version of the Trans and Non-Binary Equality Policy Statement that was adopted by the university in May 2024.

Amendments in 2022 and 2023 sought to provide additional safeguards for freedom of speech and academic freedom. First, in August 2022, the university removed the requirement in the Trans and Non-Binary Equality Policy Statement to represent trans people and trans lives positively in modules and courses. In the August 2022 version, the Stereotyping Statement was amended to read: '[t]he curriculum shall not rely on or **seek to** reinforce stereotypical assumptions about trans people' (emphasis added). Then, in January 2023, a general statement (referred to as the Safeguard Statement) which purported to safeguard freedom of speech and which adequately safeguarded academic freedom was inserted into the Trans and Non-Binary Equality Policy Statement. In the January 2023 version of the policy statement, the university removed the term 'transphobic propaganda' and added a definition of 'transphobic abuse, harassment or bullying', which refers to an objective test.

We have concluded that both the 2022 and 2023 versions of the Trans and Non-Binary Equality Policy Statement continued to constitute a breach of condition E1 because each version of the statement continued to prohibit lawful speech and have a chilling effect.

The amended Stereotyping Statement in the 2022 version of the Trans and Non-Binary Equality Policy Statement introduced a requirement that the curriculum would not **seek to** reinforce stereotypical assumptions. This narrowed the restriction but the absence of adequate safeguards meant that the Stereotyping Statement still restricted lawful speech. This change did not therefore remedy the issues with the Stereotyping Statement that gave rise to a breach of condition E1.

We have given credit in our assessment of breach and our monetary penalty calculation for the steps taken by the university which narrowed the breach of condition E1 and/or affected its seriousness. Specifically, we took the view that the Safeguard Statement in the 2023 version of the Trans and Non-Binary Equality Policy Statement adequately safeguards academic freedom because it expressly stated that 'nothing in this Policy Statement should be taken to justify sanctioning academic staff for questioning or testing received wisdom or putting forward new ideas including controversial or unpopular opinions within the law...'. This confirmed that where the content of the Trans and Non-Binary Equality Policy Statement conflicted with the provisions of the

Safeguard Statement which protected academic freedom, any such conflict should be resolved in favour of academic freedom.

However, the Safeguard Statement was not as effective in safeguarding freedom of speech adequately. It stated 'nor should this Policy Statement be taken to justify disproportionate restrictions on freedom of speech'. While we assessed this to have some safeguarding effect – because it signalled that the policy statement should not be used to justify disproportionate restrictions of lawful speech – this was ineffective and undermined because of the continued inclusion of the Stereotyping Statement and the Disciplinary Statement, and the inclusion of the restriction on 'abusive, bullying or harassing material' which replaced the Transphobic Propaganda Statement. This implied that the university considered these statements and restrictions (which restrict lawful speech) to be proportionate restrictions on freedom of speech and therefore justified. This meant that the restrictive effect, including the chilling effect, created by these statements persisted.

The new definition for 'transphobic abuse, harassment or bullying' narrowed the restrictive effect of the Disciplinary Statement (and 'abusive, bullying or harassing material', which replaced the Transphobic Propaganda Statement in the 2023 version of the policy). It introduced a requirement to objectively assess what amounts to 'transphobic abuse, harassment or bullying' and/or 'abusive, bullying or harassing material', and it explains that this (emphasis added): 'mean[s] unwanted behaviours and communications **that could reasonably be expected to cause distress or fear among trans people**'. However, even applying this objective definition, the terms 'transphobic abuse, harassment or bullying' and 'abusive, bullying or harassing material' are still capable of restricting lawful speech because the definition used by the university in its Trans and Non-Binary Equality Policy Statement was not limited to existing prohibitions in law and was therefore sufficiently broad to restrict lawful speech.

Monetary penalty for this breach

Monetary penalties

Regulation 4 of The Higher Education (Monetary Penalties and Refusal to Agree an Access and Participation Plan) (England) Regulations 2019 sets out the factors to which the OfS must have regard when considering whether to impose a monetary penalty:

- a. the nature, seriousness, duration and impact of the relevant breach;
- b. any financial or other gain made by the provider as a result of the relevant breach which benefits the provider;
- c. any financial or other loss avoided as a result of the relevant breach which benefits the provider;
- d. where any gain described in sub-paragraph (b) or avoided loss described in sub-paragraph (c) can be quantified, the amount of any such gain or avoided loss;
- e. any previous breach of the provider's ongoing registration conditions;

- f. any steps taken by the provider following the relevant breach to avoid a breach in the future of its ongoing registration conditions;
- g. the impact that imposing a monetary penalty on the provider is likely to have on— students on higher education courses at the provider, students generally, or students of a particular description, on higher education courses provided by registered higher education providers.

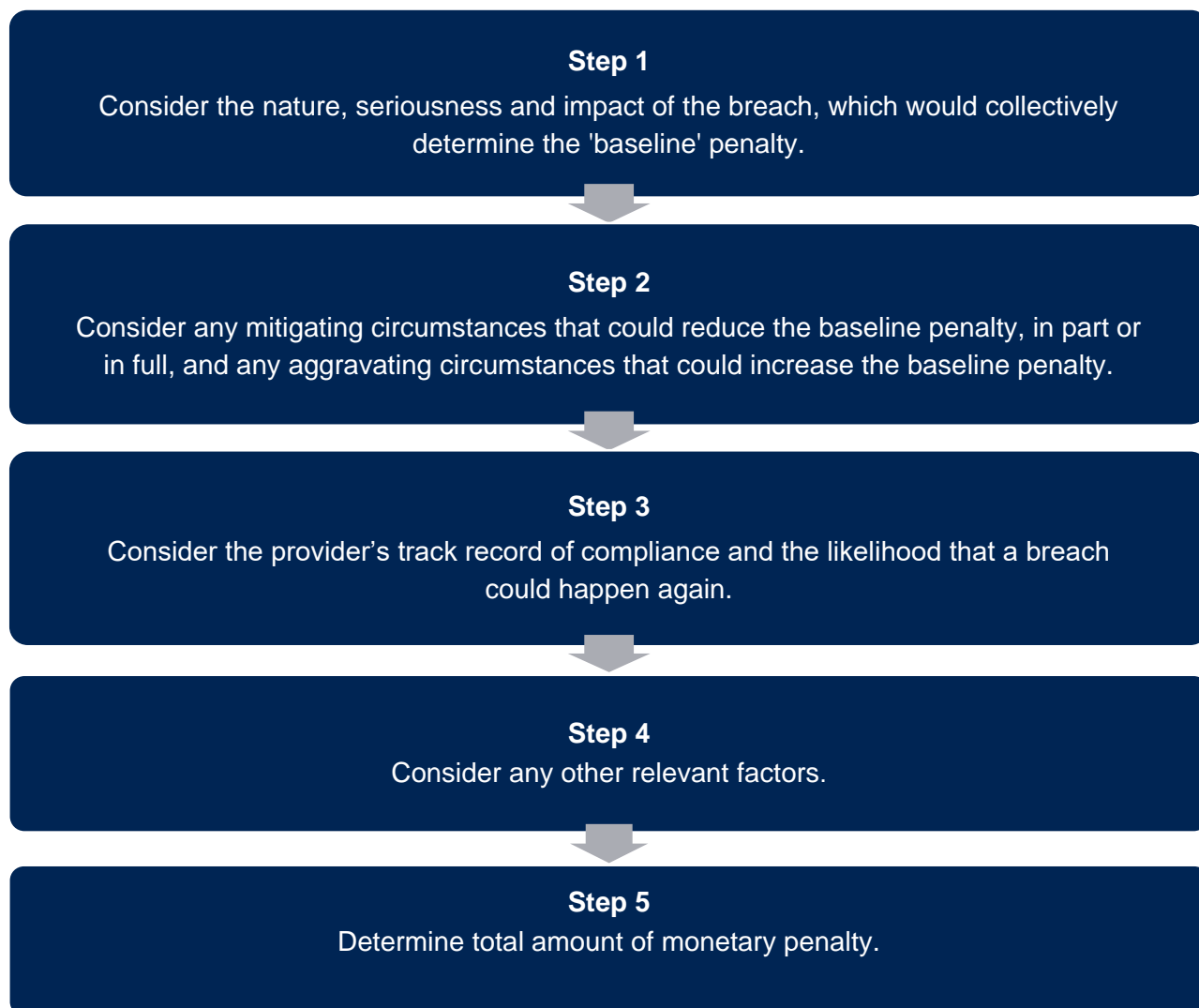
The OfS considers these factors in setting a baseline penalty, and then looks at aggravating and mitigating circumstances, adjusting the penalty as appropriate. A provider's record of compliance is considered, and the OfS then considers any other relevant factors before determining the appropriate penalty. The maximum penalty which may be imposed is capped by the Monetary Penalties Regulations at the higher of either 2 per cent of a provider's qualifying income, or £500,000.

The University of Sussex's qualifying income in 2023-24 was £232,358,874. The maximum penalty for a breach of a condition of registration was therefore £4,647,177.

Further information about how the OfS will calculate the value of a monetary penalty is set out in Regulatory advice 19. That document also sets out the circumstances in which the OfS would consider entering into a settlement agreement in relation to a monetary penalty.

Figure 1 sets out the process the OfS follows when determining the amount of a monetary penalty. This section of the report sets out how we judged steps 1 to 3 for each breach of a condition of registration. We then explain the process followed at steps 4 and 5 for the breaches collectively.

Figure 1: Summary of five-step approach to determining the amount of a monetary penalty



Step 1 – baseline penalty

In determining the baseline penalty for the breach of condition E1, we considered a range of factors, including but not limited to:

- The seriousness of the breach. As explained above, this was a serious and significant breach which points towards a higher starting point for the baseline penalty.
- The university's Statute VII does not rule out the possibility of disciplinary proceedings being brought against members of staff for a breach of the restrictions on lawful speech in the Trans and Non-Binary Equality Policy Statement (and the potential detrimental effects of being subject to disciplinary proceedings, including anxiety, stress and uncertainty). However, our assessment is that proper application of Statute VII does safeguard against disciplinary proceedings progressing to an adverse outcome for a staff member being sanctioned for a breach of the Trans and Non-Binary Equality Policy Statement. We therefore considered that the existence of Statute VII warrants a downward adjustment to the baseline penalty.

- The impact of the penalty on students. We recognise that a financial penalty will reduce the funds available to the university for other activities. This may point to a lower penalty for institutions facing financial challenges. However, for the financial year 1 August 2023 to 31 July 2024, the university had qualifying income of £232.4 million and cash reserves of £33.9 million (consolidated group cash reserves of £38.1 million). We do not anticipate that the level of the penalty would, therefore, significantly or materially affect students. There is also a significant benefit to students as the penalty will effectively further incentivise the university to ensure that it is complying with condition E1, and that it continues to comply with it in the future, and consequently uphold freedom of speech and academic freedom. This helps facilitate a higher education environment conducive to advancing new ideas, encouraging productive debate and challenging conventional wisdom; increases opportunities for students to be exposed to a diverse range of academic thought; and minimises any chilling effect on students and staff. Through the publication of the OfS's decisions, other institutions are likely to be incentivised to review (and where appropriate change) their policies and procedures relating to free speech and academic freedom, bringing these benefits to students across the sector.
- The effectiveness of the intervention. As explained above, the penalty will effectively further incentivise the university to ensure that it is complying with condition E1, and that it continues to comply with it in the future. This, combined with the likely positive effect of publication on other providers registered with the OfS, points in favour of setting the baseline penalty at a level which will incentivise the university to remedy the breach.

After considering all relevant factors, the OfS decided that the appropriate initial baseline penalty for this breach was 0.9 per cent of the university's qualifying income: £2,091,230.

Step 2 – mitigating or aggravating circumstances

We considered a range of mitigating and aggravating circumstances. We considered the following to be aggravating circumstances:

- The breach was not reported to the OfS.
- The breach was longstanding (from 1 August 2019 until at least 20 March 2024), during which time there were opportunities for the university to adequately and effectively revise its Trans and Non-Binary Equality Policy Statement.

We considered the following to be mitigating circumstances:

- The university took some steps to seek to remedy the restrictive effect of the Trans and Non-Binary Equality Policy Statement on freedom of speech and academic freedom:
 - the removal of the requirement for 'positive representation of trans people and trans lives' in all courses and modules (the Positive Representation Statement) in the 2022 version of the policy;
 - the inclusion of a definition for 'transphobic abuse' which includes an objective test in the 2023 version of the policy; and
 - the inclusion of the Safeguard Statement in the 2023 version of the policy which protected academic freedom, and sought to protect freedom of speech, although the

OfS's view is that it did so in a limited manner and inadequately for reasons explained above.

We treated the following neutrally:

- The OfS considers that providers are obliged by their conditions of registration to co-operate with regulatory investigations and are expected to provide information sought through compulsory requests. The university has co-operated with the investigation. There is no evidence or intelligence that the OfS has identified to suggest that the university has sought to cover up information, or that the university has acted deliberately, dishonestly or recklessly.

In the light of the mitigating factors, the OfS considers that it is appropriate to apply a reduction to the penalty of 0.2 per cent of the university's qualifying income. In the light of the aggravating factors, the OfS considers that it is appropriate to apply an increase to the penalty of 0.2 per cent of the university's qualifying income. After step 2 in the process the penalty for this breach of condition E1 remained 0.9 per cent of the university's qualifying income.

Step 3 – provider's record of compliance

No change was made to the calculation of the penalty at this stage – the university does not have an adverse record of compliance with the OfS's conditions of registration.

After the first three steps of the process, the monetary penalty for this breach was 0.9 per cent of the university's qualifying income: £2,091,230.

Breach of condition E2: Management and governance

OfS decision

The OfS found a breach of condition E2 in respect of the university's failure to have adequate and effective management and governance arrangements in place to ensure that it operates in accordance with its governing documents.

The Prevent Steering Group approved and adopted the 2021 version of the university's Freedom of Speech Code of Practice despite that group not having delegated authority to do so. The 2023 version of the External Speakers' Procedure was approved by the University Executive Group despite that group not having delegated authority to do so. The University Executive Group also approved the 2022 and 2023 versions of the Trans and Non-Binary Equality Policy Statement, despite that group not having delegated authority to do so.

Intervention factors relevant to this breach

The OfS considers that, taken as a whole, the intervention factors support finding a breach of condition E2, specifically condition E2(i). This is because:

- The concerns that amount to a breach have already occurred.
- The impact of this breach is significant because:
 - decisions were made by individuals or groups that had not been identified by the university as appropriate decision-makers for the relevant decision;

- there is a risk that this may have led to decision-making of a degraded quality, for example decisions being made without sufficient scrutiny, expertise or knowledge of the matters at hand; and
 - as a result, decisions may not have been made in the best interests of students and staff, and in accordance with the university’s legal and regulatory obligations.
- The nature of the breach is serious because it constitutes a repeated failure of the university to follow its own governance processes, suggesting it is a sustained issue with the university’s management and governance arrangements rather than a one-off failure.
 - The university did not alert the OfS to the potential breach.
 - The OfS has not identified any steps that the university has taken to seek to remedy the breach and ensure that it has adequate and effective management and governance arrangements in place to operate in accordance with its governing documents, and the delegation arrangements set out in those documents.
 - Responsibility for taking regulatory action in respect of compliance with condition E2 lies with the OfS.

Monetary penalty for this breach

Step 1 – baseline penalty

In determining the baseline penalty for the breach of condition E2, we considered a range of factors, including but not limited to:

- The seriousness of the breach. The breach of condition E2 was significant because decisions were taken at the university by individuals or groups that had not been identified by the university as appropriate decision-makers for the relevant decision. There is a risk that this may have led to decision-making of a degraded quality, for example decisions being taken without appropriate scrutiny, expertise or knowledge, and as a result the decisions taken may not have been in the best interests of students and staff. It is a failure of governance by the university, which is serious by its nature. However, the direct impact on students of this breach is less severe than that of the breach of condition E1, which goes directly to the quality of students’ education. This means that a lower baseline penalty is appropriate for this breach.
- The impact of the penalty on students. As explained for the breach of condition E1, we do not consider the penalty imposed on the university will significantly or materially affect its students. However, the penalty may incentivise future compliance to ensure an appropriate level of scrutiny for decision-making. This will benefit students at the university, as well as students across the sector. This is because publishing this decision will also incentivise other providers to ensure that they have in place adequate and effective management and governance arrangements.

After considering all relevant factors, the OfS decided that the appropriate initial baseline penalty for this breach was 0.5 per cent of the university’s qualifying income: £1,161,794.

Step 2 – mitigating or aggravating circumstances

We considered whether there were mitigating and aggravating circumstances. We considered the following to be aggravating circumstances:

- The breach was not reported to the OfS. Instead, the OfS identified issues during the course of its investigation.
- The breach was longstanding. There has been a pattern since 2021 of the university failing to follow the delegation arrangements set out in its governing documents. This pattern of behaviour demonstrates that the university did not have adequate and effective management and governance arrangements in place to operate in accordance with its governing documents.
- The OfS is not aware of any steps taken by the university to remedy the breach.

We did not find any mitigating circumstances.

We treated the following neutrally:

- The OfS considers that providers are obliged by their conditions of registration to co-operate with regulatory investigations and are expected to provide information sought through compulsory requests. The university has co-operated with the investigation. There is no evidence or intelligence that the OfS has identified to suggest that the university has sought to cover up information, or that the university has acted deliberately, dishonestly or recklessly.

In the light of the aggravating factors described above, the OfS considers that it is appropriate to apply an increase to the penalty of 0.2 per cent of the university's qualifying income. After step 2 in the process, the penalty for this breach of condition E2 is 0.7 per cent of the university's qualifying income: £1,626,512.

Step 3 – provider's record of compliance

No change was made to the calculation of the penalty at this stage – the university does not have an adverse record of compliance with the OfS's conditions of registration.

After the first three steps of the process, the monetary penalty for this breach was 0.7 per cent of the university's qualifying income: £1,626,512.

Final steps to calculate monetary penalties for each breach

Step 4 – other relevant factors

This is the first time that the OfS has found breaches in relation to condition E1 in respect of matters relating to freedom of speech and academic freedom. This is an evolving area of regulatory practice and legislation. The law relating to freedom of speech and academic freedom is complex, particularly in relation to the issue of interpretation of terms and phrases and consideration of what amounts to an unlawful restriction on free speech.

As this is the first time the OfS has found breaches of condition E1 and the first time we have found breaches of any kind in relation to freedom of speech and academic freedom, and given the

complicated nature of these matters, the OfS considers that a reduction in the penalty for each breach is appropriate at this stage on this occasion.

We have considered a range of factors when deciding whether to adjust the penalty to create an appropriate deterrent. Factors in favour of increasing the penalty include the university's substantial financial resources, the seriousness of the issues, and the fact that the university has been subject to the relevant regulatory requirements since 1 August 2019 (with legal obligations on the university in respect of freedom of speech in force since 1987).

Some factors that point in favour of a lower penalty include the cumulative effect of the two penalties. Without further adjustments, the proposed penalties would total 1.6 per cent of the university's qualifying income or around £3.7 million. We considered that an appropriate deterrent effect could be created by penalties totalling less than £3.7 million. Further, the finding of breaches and the reputational impact of publication on the university also contribute to the overall incentive effect.

In view of all these factors taken in the round, and on balance, we considered that sufficient deterrence can be achieved in this case with lower penalties than those reached in steps 1 to 3 of the calculation.

The OfS decided that monetary penalties totalling £585,000 are sufficient to achieve an appropriate deterrent effect in relation to the breaches of condition E1 and E2.

Step 1 in our calculation of monetary penalties sets out our view of the differing seriousness of the two breaches. As a result we decided that an appropriate deterrent effect would be achieved with the following amounts:

- a. Condition E1 breach: £360,000
- b. Condition E2 breach: £225,000.

Step 5 – determine the appropriate monetary penalty

In taking a decision on the appropriate monetary penalty, we considered the impact on the university's financial viability and sustainability.

The university forecasts sufficient cash reserves to pay a monetary penalty of £585,000 in either the 2024-25 or 2025-26 financial years. The university has also identified a range of mitigations to manage potential adverse financial performance and liquidity constraints, and therefore the OfS's view is that it has options to mitigate the potential impact of a monetary penalty.

After this step, the final monetary penalties are:

- For the breach of condition E1: £360,000
- For the breach of condition E2: £225,000.

Legal requirements for freedom of speech and equality matters

All providers registered with the OfS are subject to a range of wider legal requirements relating to freedom of speech and equality matters.

These include:

Section 43 of the Education (No. 2) Act 1986 (duty relating to freedom of speech)

The section 43 duty requires universities and colleges to 'take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers'.

Article 10 of the European Convention on Human Rights (the right to freedom of expression)

Disproportionate interferences with the Convention right to freedom of expression are unlawful. The OfS would ordinarily expect a provider to carry out a proportionality assessment where lawful speech may be restricted in its governing documents to demonstrate the proportionality of any interference.

Section 13 and Section 19 of the Equality Act 2010 (provisions relating to direct and indirect discrimination)

Universities and colleges must comply with the requirements of equality law. The relevant provisions are framed in relation to a set of 'protected characteristics' set out in the Equality Act 2010. These are age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity.

The Equality Act 2010 prohibits unlawful discrimination. There are two types of discrimination, direct discrimination and indirect discrimination. The Act prohibits both direct and indirect discrimination in relation to a relevant protected characteristic.

Where a university adopts a policy or practice that promotes a particular protected characteristic to the detriment of others, that may amount to unlawful discrimination. Such a policy may give rise to concerns in relation to freedom of speech and academic freedom if the effect of the policy is that it curtails lawful speech. Restrictions on lawful speech may unlawfully discriminate (directly or indirectly) against those with the protected characteristic of religion or belief.

Public Sector Equality Duty (PSED)

The protected characteristics also underpin an overarching equality duty with which public organisations must comply. A public authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [the Equality Act 2010]
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The PSED is a duty to 'have due regard' to the need to achieve the aims set out above. It is not a duty to achieve those aims. Universities and colleges should be clear about the precise equality implications of their decisions, policies and practices. Although they must recognise the desirability of achieving the aims set out above, they must do so in the context of the importance of free speech and academic freedom, particularly in higher education.

Further information about providers' obligations in this area is set out in 'Freedom to question, challenge and debate', an OfS Insight brief.⁴

These obligations are distinct from the OfS's regulatory requirements and conditions of registration, and the OfS is not responsible for enforcing these directly. However, there is likely to be overlap of these wider legal obligations with the OfS's regulatory requirements and our assessment of providers' compliance with those regulatory requirements. All universities and colleges should therefore ensure that they understand and comply with these legal obligations.

The University of Sussex's compliance with these legal requirements

In the course of assessing compliance with condition E1, the OfS identified concerns that the University of Sussex may not have complied, or acted compatibly, with some of these legal obligations, in relation to the Trans and Non-Binary Equality Policy Statement:

The section 43 free speech duty

By including the Positive Representation Statement, the Stereotyping Statement, the Transphobic Propaganda Statement and the Disciplinary Statement in its Trans and Non-Binary Equality Policy Statement, the university took steps that restrict freedom of speech within the law. These statements created a chilling effect and/or directly restricted the freedom of speech of staff and students at the university. The OfS is therefore concerned that the university may not have complied with its section 43 duty.

Article 10 of the European Convention on Human Rights (right to freedom of expression)

The OfS has seen no credible evidence, including in reviewing as part of the investigation the decision-making documents underpinning the Trans and Non-Binary Equality Statement, that demonstrates that the university assessed the proportionality of its potential interferences with the right to freedom of expression, or that the potential interferences were themselves proportionate. The OfS has concerns that the university may not have carried out a proportionality assessment, and that these potential interferences with the right to freedom of expression could be disproportionate and therefore unlawful.

Section 19 of the Equality Act 2010 (indirect discrimination)

'Gender critical' beliefs amount to a protected belief under the Equality Act 2010.

The OfS is concerned that the university may not have complied with equality law in relation to indirect discrimination. This is because the Trans and Non-Binary Equality Policy Statement contained the Positive Representation, Stereotyping, Transphobic Propaganda and Disciplinary

⁴ See [Freedom to question, challenge and debate - Office for Students](#).

Statements, each of which had a restrictive effect on lawful speech, including 'gender critical' views.

There is therefore a risk that the Trans and Non-Binary Equality Policy Statement was indirectly discriminatory in relation to persons with the protected characteristic of 'gender critical' beliefs. This is because persons with such beliefs could have been treated less favourably than persons without such beliefs because they were/are more likely to express such beliefs. Expression of 'gender critical' views could have fallen within the scope of the four statements and breached the policy, and a person in breach of the policy could face disciplinary proceedings. Consequently, persons with 'gender critical' beliefs were more likely to face disciplinary proceedings for a breach of policy for expressing their protected beliefs.

The OfS has not seen any credible evidence of the university's objective justification for such restrictions, including in reviewing the decision-making documents underpinning the Trans and Non-Binary Equality Policy Statement.

Public Sector Equality Duty (PSED)

The OfS is also concerned that the University of Sussex may not have complied with the PSED.

In reviewing the decision-making documents underpinning the Trans and Non-Binary Equality Policy Statement as part of its investigation, the OfS has not seen any credible evidence that the University did in fact properly have regard to the PSED and the equality implications of the Trans and Non-Binary Equality Policy Statement in 2018 or 2022.

With regard to the 2023 version of the Trans and Non-Binary Equality Policy Statement, the University states that it undertook an Equality Impact Assessment. However, this document appears to apply only to the impact of the change of wording in the Trans and Non-Binary Equality Policy Statement (i.e. the removal of the Positive Representation Statement), and not to the remaining content. The analysis therefore appears not to have regard to the various elements of the PSED test in respect of the actual contents of the 2023 version of the Trans and Non-Binary Equality Policy Statement – it appears only to have considered equality implications in respect of the content that was removed.

Therefore, the existence of this 'Equality Impact Assessment' does not allay our concern that the university may not have complied with its PSED in respect of the 2023 version.