

The Management of Protest Situations on University Campuses

Part 1 of 2 Higher Education (Freedom of Speech) Act 2023 and the role of Campus staff

In August 2024, the Higher Education (Freedom of Speech) Act 2023 will come into force. This will enact freedom of speech in higher education, rather than rely on previous guidance with the new Act being designed to protect and promote free speech and academic freedom, amongst other requirements for Campus Governing bodies and Students Unions. Whilst there are many ongoing discussions on the strategic implications of the incoming legislation, this article considers operational implications following implementation of the statutory requirements and their impact on the role of campus security officers specifically during a protest.

The New Act

The number of university speakers 'rejected' from universities increased in the academic year 2020/2021 and were the highest recorded. There was concern in some quarters that lawful speech, even if 'disagreeable' to some people, was being muted. The Office for Students felt, even 'controversial or offensive' views should be heard and provided with a platform for discussion.

The European Convention on Human Rights which was enshrined into UK (United Kingdom) law by the Human Rights Act in 1998 provides Article 9; Freedom of Thought, Article 10; Freedom of Expression and Article 11; Freedom of Assembly which tend to be associated with the right to protest, and whilst the Human Rights Act is generally thought to concern public authorities on public land, Higher Education providers, if not privately funded may be considered public authorities for the purpose of Human Rights. The Universities also have powers to protect rights in various areas via other statutes such as The Equalities Act 2010 and in common law, and these must also be considered along with the requirements of the new Act.

Whilst the Act received Royal Assent in May 2023, it is not expected to come into force until 1st August 2024, and the Office for Students (OfS) are consulting on the Guidance that should be issued to Campuses with the end date being 20 March. However, notwithstanding the final format of the OfS Guidance, the Act has a couple of Key duties which Governing bodies and Students Unions will have to comply with. These are

- Governing Bodies and Student Unions, have a responsibility to introduce a code of practice, demonstrating how they will secure and promote both academic freedom and freedom of speech. This code of practice needs to be a working policy document ensuring applicable working guidelines for all university staff stakeholders.

Other key duties required of organisational governing bodies include:

- That there are no non-disclosure agreements in relation to complaints;
- Transparency regarding overseas funding
- The potential for civil litigation following breaches of the Act.

The Higher Education (Freedom of Speech) Act 2023 does not apply to Scotland however, Scotland has other statutory guidelines they must comply with. These include the Higher Education Governance (Scotland) Act 2016 and Land Reform (Scotland) Act 2003, as well as the Human Rights Act 1998.

It is unknown whether the introduction of this new act will increase the incidence of protest however considering the nature of potentially contentious opinions being verbalised, it will be likely to provide new challenges to Campus Security Officers, along the same lines as Police Officers face in meeting their responsibilities on public land. Accordingly, a proactive approach to preparing for dealing with protests or similar incidents on campus in an appropriate, safe, and lawful manner is vital.

Campus Staff Responsibilities at Protest Situations

Universities have always considered freedom of speech and academic freedom as a beacon of light in the education of minds where even uncomfortable subjects are discussed and debated, and protest has always been held up as an essential right of a democracy. However, the incidence of activism, and unlawful protest has increased and continues to do so in an uncertain world. Security Officers are On the frontline of dealing with that on campus. However, they cannot discharge their duties without the appropriate guidance and support from the Governing bodies in the form of a Code of Practice as required by the new statute and supporting policies and procedures.

These policies may include such methods (commonly used by police on public land) as:

- Campus Protest Liaison Officers to engage with protesters and advise them of the Governing body/Student Unions guidance.
- Provision of Designated Protest Areas which enabling students/others to protest in a risk assessed area where their voice can be heard but minimises disruption to learning by other students.

These examples are methods that would provide evidence that the higher education provider has complied with their statutory responsibilities. These are just a couple of the many operational responsibilities required of campus staff, who may comprise of not just front-line security officers, but also facility service teams or reception staff amongst others who will be faced with a potential protest situation.

Governing Bodies should consider, how realistic an expectation of a police presence at protests on campus will be. Police are responsible for enforcing criminal law and will deal with protest on public land, however when peaceful protest takes place on private land, they may only assist Campus Security Officers rather than take the lead due to the jurisdiction responsibilities. Police are a finite resource and may have competing demands potentially limiting their opportunity to assist. It is therefore good practice for the university to contact police and develop a working relationship with them, determining who has what responsibilities on the day.

Author

Kenny Macleod

Training Director,

Risk Management Resources Ltd

Kenny Macleod BSc MSyl is a retired police Superintendent with 30 years' service. He is a former Bronze and Silver Public Order Commander who has accumulated significant operational experience in the Police; especially in relation to public protest, balancing the right of individual protest with the right of other individuals to go about their lawful activity. Since leaving the police, Kenny has been instrumental in developing Dealing with Protest Training and Policy. He has codeveloped the Protest and Activism Special Interest Group on behalf of the Security Institute. He has worked across many industries providing training to ensure safety and appropriate response to protest situations.