Neutral Citation Number: [2026] EWHC 2708 (Admin)

Case No: AC-2025-LON-001462

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/10/2026

Before:

THE HONOURABLE MRS JUSTICE LIEVEN

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Between:

THE KING (on the application of THE UNIVERSITY OF SUSSEX)	**Claimant**
- and -	
THE OFFICE FOR STUDENTS	**Defendant**
- and -	
THE FREE SPEECH UNION LTD	**Intervener**

(Costs Judgment)

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Chris Buttler KC, Katy Sheridan and **Jack Boswell** (instructed by **Ms Laila El Baradei** the General Counsel and Director of Governance and Compliance of the University of Sussex, with **Mills & Reeve LLP** acting as solicitors on the record) for the **Claimant**
Monica Carss-Frisk KC, Tom Lowenthal, and Emmeline Plews (instructed by **the OfS**) for the **Defendant**
Tom Cross KC and Zoe Gannon (instructed by **Sharpe Pritchard LLP**) for the **Intervener (on written submissions only)**

Hearing dates: 03rd-05th February 2026

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Approved Judgment

This judgment was handed down remotely at 11.00am on 23 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE LIEVEN

Mrs Justice Lieven:

1. This judgment concerns the costs order to be made following the judgment in *The King (on the application of The University of Sussex) and The Office for Students and The Free Speech Union Ltd* [2026] EWHC 984 (Admin). There are two issues:

    a) Whether the OfS should pay the entirety of the University's costs or whether a 10% reduction should be applied to reflect those parts of the case upon which the OfS was successful;

    b) Whether the Intervener (the Free Speech Union) should pay the University's costs occasioned by the intervention.

Issue One

2. The University was successful on the large majority of the case and succeeded in having the entirety of the decision quashed in respect of both breaches found. However, the OfS was successful on Ground Two, (the extent of the Visitor's jurisdiction), as well as on three other more minor Grounds (5E, 5B and 6A). The OfS accepts that costs will follow the event and submits only that it would be appropriate to make a 10% reduction in the University's costs when the costs have been assessed.

3. The applicable principles are not in issue;

    a. The Court has a discretion to award costs of and incidental to the proceedings, section 51(1) Senior Courts Act 1981;

    b. The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, CPR r44.2(2)(a);

    c. The Court will have regard to all the circumstances of the case, including whether a party has succeeded on part of its case, CPR r44.2(4)(a):

    (4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –

    (a) the conduct of all the parties;

    (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

    (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

    […]

    (6) The orders which the court may make under this rule include an order that a party must pay –

    (a) a proportion of another party's costs;

    […]

    (c) costs from or until a certain date only;

    […]

    (f) costs relating only to a distinct part of the proceedings; and

    […]

(7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.

4. The OfS raises five reasons why the Court should make a reduction, primarily by reference to the Visitors issue. The first is that the Ground was not a reasonable one to take given the Court's finding that the University's analysis was "illogical and probably unworkable", see judgment [85] ("J85").

5. Secondly, the University changed its position during the course of oral argument, by accepting that "*some invasion of the Visitors' jurisdiction can be implied into HERA"* (J165 and J182).

6. Thirdly, the University is wrong to suggest that the Court found that the OfS's characterisation of its jurisdiction being concurrent with that of the King was incorrect. The judgment in fact does not make such a finding.

7. Fourthly, the answer to the issue was plain from the text of the statute, but the University placed considerable reliance on historical materials, which involved considerable work by the OfS. Given the importance of the point to the OfS's regulatory duties, the OfS had to expend considerable resources on the issues.

8. Fifthly, the OfS also succeeded on three other Grounds.

9. The University submits that the Visitors issue was an important, novel and arguable point that needed to be considered by the Court and upon which permission had been granted. The University points to the parts of the judgment, J15 and J187 where the Court noted the surprising fact that there appeared to have been little consideration of the impact on the Visitorial jurisdiction by the creation of the OfS.

10. I agree with the University that the Visitors issue was an important one, in the context of a fairly new statutory scheme, and a complex regulatory framework, with no directly applicable previous authority. The Ground was arguable and the University had been granted permission upon it. As was said in the judgment there was an uncomfortable interface between the role of the Visitor and the role of the OfS, which did not appear to have been fully considered through the Bill's progress. Although I found against the University on the issue, I do not think there was anything unreasonable about them raising the issue, or in the way they conducted the argument.

11. There were oddities and changes of position in both parties' cases. Given the overall success of the University in its case, and the arguable nature of the issue, I do not consider it would be correct to reduce the University's costs.

Issue Two

12. The second issue is whether the FSU should pay the University the costs occasioned by the intervention.

13. The power to make a costs order against an Intervener is contained in Section 87 of the Criminal Justice and Courts Act 2015, which provides;

"(1) This section applies where—

(a) a person is granted permission to file evidence or make representations in judicial review proceedings, and

(b) at that time, the person is not a relevant party to the proceedings.

(2) That person is referred to in this section as an "intervener" . […]

(5) On an application to the High Court or the Court of Appeal by a relevant party to the proceedings, if the court is satisfied that a condition described in subsection (6) is met in a stage of the proceedings that the court deals with, the court must order the intervener to pay any costs specified in the application that the court considers have been incurred by the relevant party as a result of the intervener's involvement in that stage of the proceedings.

(6) Those conditions are that—

(a) the intervener has acted, in substance, as the sole or principal applicant, defendant, appellant or respondent;

(b) the intervener's evidence and representations, taken as a whole, have not been of significant assistance to the court;

(c) a significant part of the intervener's evidence and representations relates to matters that it is not necessary for the court to consider in order to resolve the issues that are the subject of the stage in the proceedings;

(d) the intervener has behaved unreasonably.

(7) Subsection (5) does not require the court to make an order if it considers that there are exceptional circumstances that make it inappropriate to do so."

14. The University submits that the conditions in s.87(6)(b), (c) and (d) are all met. It says that the Court found that the Intervener's submissions were not of "significant assistance" to the Court, in particular:

    (1) At J3, the Court refused permission for the FSU to rely on further (unsolicited) submissions, noting that the FSU had had a limited role in the case and such submissions would introduce "unnecessary complexity" into the proceedings.

    (2) At J220, the Court noted that it was recording the intervener's position "for completeness" and not because it was necessary to resolve the issues raised. The Court in any event agreed with the University and the OfS and disagreed with the FSU (§221).

    (3) At J249, the Court found that the intervener's argument did not "change or add anything" to its conclusions. Similarly, at J68, the Court noted that the intervener's submissions on the Higher Education (Freedom of Speech) Act 2023 were of *"no assistance"*.

15. The University submits that the Intervener's submissions and evidence were aimed at a question that the Court did not need to resolve and therefore falls within s.87(6)(c).

16. The University also submits that that the Intervener acted unreasonably, within s.87(6)(d). They did not act promptly in making their application. Further they filed unsolicited further submissions after the hearing had finished.

17. The first point that the FSU makes is that the power to award costs in s.87(5) is limited to those costs incurred "*as a result of the intervener's involvement in that stage of the proceedings"*. Therefore, the University cannot be awarded costs for any work prior to Chamberlain J's order of 28 January 2026. This includes the costs incurred in objecting to the FSU's application to intervene.

18. In my view the FSU are plainly correct on this point. The words of s.87(5) are clear, and the power is very specific in its scope for the award of costs to that particular stage of the proceedings. Therefore, earlier work, before the FSU were allowed to intervene, is not caught by the section.

19. In terms of s.87(6)(b) and (c) the FSU submits that its submissions were on two issues. The first was the meaning of "freedom of speech within the law". This is an important issue of very wide concern, which was central to a number of the arguments in the case. During the course of the hearing the University changed its position on the meaning of this phrase, but the Intervener was entirely correct to make its submissions on the basis of the original argument.

20. In respect of the first issue raised by the University I do not consider that the tests in s.87((b) or (c) are met. The question of what is meant by "freedom of speech within the law" was of considerable importance not merely to some of the Grounds, but also to the entire context of the case. Although by the time of the hearing the two principal parties were largely agreed, it was important and of "significant assistance" to the Court to have the FSU's submissions on the breadth of the issue and the arguments that could arise under Article 10 ECHR. As is often the case with Interveners the submissions did not in the end go to the heart of the Court's conclusions, but they were still of considerable assistance in understanding the broader context and the potential ramifications of arguments that were being made by the principal parties.

21. This was particularly so in a case such as this, where the outcome was inevitably going to be scrutinised across the higher education sector, given the relative lack of previous caselaw, and the importance of the issues to the sector.

22. Essentially, the same position arises under s.87(6)(c). Although, in the end, it was not necessary to reach a reasoned determination on the issue, because the principal parties agreed, the various shifts in position they made could not have been anticipated by the FSU. It would be unfair to penalise the FSU on this basis, given that it had been granted permission to intervene, and the position of the parties had been less than clear until shortly before the hearing.

23. The second issue raised was the scope of consideration of Convention rights in determining whether an institution had taken reasonably practicable steps to secure lawful speech. The FSU submits that this was not a "significant part" of the submissions and therefore does not fall within s.87(6)(c). In respect of the test in s.87(6)(b) the Court rejected the FSU's submission at J221, but, again, I agree with the FSU that the fact that the argument was rejected, does not mean that the submissions on the point were not of significant assistance.

24. Further, the wording of s.87(6)(b) that the submissions "taken as a whole" have not been of significant assistance, in my view points towards not disaggregating the issues unless there is a very clear demarcation between the different parts of the Intervener's submissions or evidence, which would justify a topic-based approach to costs. That was not the case here, where the two issues were closely interrelated.

25. In respect of s.87(6)(d) I do not consider that the FSU acted unreasonably in its submissions. The case was of widespread interest and significance across the higher education sector. The FSU's approach was at all stages proportionate and focused. The Court did not agree with those submissions, but there was nothing unreasonable in the FSU's behaviour.

26. Further, and in any event, I agree with the FSU that there are exceptional circumstances within the meaning of s.87(7), which should lead the Court not to make a costs order against the FSU. This case was of considerable wider interest to the higher education sector both in terms of the scope of the OfS's powers to regulate, and the meaning of freedom of speech, and raised issues of very broad concern. It was important that the Court could hear a range of submissions so that it could fully and properly consider both the specific arguments, but also the broad context. That wider public interest would itself be justification on the facts of this case for the FSU's submissions to fall within s.87(7).

27. For all those reasons I decline to make a costs order against the FSU.