

IN THE MATTER OF

THE KING

on the application of

THE UNIVERSITY OF SUSSEX

Claimant

- and -

THE OFFICE FOR STUDENTS

Defendant

- and -

THE FREE SPEECH UNION

Intervener

SUMMARY OF THE JUDGMENT

I. INTRODUCTION

1. This is a summary of Lieven J’s judgment in the case of *R (University of Sussex) v Office for Students* [[2026] EWHC 984 (Admin)]. It is intended to assist the reader to understand the Court’s reasoning in this complex case, but it is no substitute for reading the judgment in full.
2. The Court found that the Office for Students’ (“OfS”) decision to sanction the University of Sussex (the “University”) for alleged breaches of its conditions of registration was unlawful. In particular, the OfS was biased, it misunderstood the concepts of freedom of speech and academic freedom, it exceeded its regulatory powers, and it failed to take relevant matters into account.
3. By way of background:
 - a. The OfS investigation was prompted by protests relating to Dr Kathleen Stock¹ that took place at the University in 2021. The OfS accepted that it had no powers to

¹ Dr Stock has publicly distanced herself from the title “Professor”. No disrespect is intended by referring to her as Dr Stock.

investigate the treatment of Dr Stock. Instead, it commenced an investigation into various of the University's documents, focusing on a two-page document entitled the Trans and Non-binary Equality Policy Statement (the "Policy Statement"). The Policy Statement was originally drafted by Advance HE² and was adopted by several universities, including the University. Its purpose was to promote the fair treatment of trans and non-binary people.

- b. In March 2024, the OfS issued a Provisional Decision. The University made submissions and submitted evidence in response to the Provisional Decision. The University also amended the various policy documents with which the OfS took issue.
 - c. On 27 March 2025, the OfS issued its Final Decision. It found that (i) the University had breached Condition E1 because the Policy Statement was a governing document of the University and failed to uphold freedom of speech and academic freedom and (ii) the University had breached Condition E2(i) because it had failed to act in accordance with its internal scheme of delegation when adopting certain policy documents. Based on these findings, the OfS imposed a monetary penalty of £585,000.
 - d. On 9 May 2025, the University issued a claim for judicial review, challenging the lawfulness of the Final Decision. The claim was heard in the High Court by Lieven J on 3 to 5 February 2026. Judgment was handed down on 29 April 2026.
4. The judgment addressed five central issues, which are set out in the following sections of this document. In brief overview:
- a. Issue 1 concerned the meaning of "governing documents". The Court found that that the OfS misunderstood the meaning of "governing documents" under s.14 of the Higher Education and Research Act 2017 ("HERA"). Properly construed, the term bears a narrow meaning, confined to documents forming the legal and constitutional framework of a higher education provider, such as a university's

² Which was the Equality Challenge Unit at the time.

Charter and Statutes. Accordingly, the Policy Statement was not a governing document, and the OfS had no basis to investigate it under Condition E1.

- b. Issue 2 concerned the visitorial jurisdiction. The Court found against the University on this issue. The OfS was, in principle, entitled to make findings under Condition E2(i), notwithstanding that doing so required it to interpret the University's internal laws, which is a task traditionally reserved to the University's Visitor. Nonetheless, the Court went on to hold that the OfS's finding of breach of Condition E2(i) was unlawful by reason of predetermination and because of a failure to take a material relevant consideration into account, namely that the University had remedied the alleged breach (see below).
- c. Issue 3 concerned the OfS's approach to questions about freedom of speech and academic freedom. The Court held that the OfS made multiple legal errors in this regard. In particular, the OfS (i) wrongly adopted an absolutist approach to freedom of speech (thinking that the University could never restrict lawful speech), (ii) was wrong to find that the Policy Statement breached academic freedom even though it did not put academics at risk of losing their jobs or privileges, and (iii) failed to take into account relevant protective measures, including the University's Freedom of Speech Code of Practice.
- d. Issue 4 concerned the decision to make findings of breach and impose a monetary penalty. The Court found for the University on one ground under this issue, holding that the OfS had unlawfully failed to consider whether the alleged breaches had been remedied before issuing the Final Decision, when that was a mandatory relevant consideration.
- e. Issue 5 concerned apparent bias and predetermination. The Court found that the OfS had approached the investigation with a closed mind, amounting to unlawful predetermination. Senior OfS officials had set out to establish a breach, declined to engage meaningfully with the University, and disregarded exculpatory evidence. As a result, the entire Final Decision was vitiated by bias.

II. ISSUE 1: THE MEANING OF "GOVERNING DOCUMENTS" (GROUND 1)

5. Ground 1 of the University’s claim succeeded. The Court held that the OfS erred in law in its interpretation of “governing documents” in s.14 of the Higher Education and Research Act 2017 (“HERA”), with the consequence that its finding of a breach of Condition E1 was *ultra vires*. Properly construed, “governing documents” bears a narrow meaning, confined to documents that constitute and define the legal and constitutional framework of a higher education provider, such as a university’s Charter and Statutes. It does not extend to internal policies, codes, or statements of values.
6. The Court accepted the University’s submission that this interpretation is supported by the ordinary meaning of the term “governing documents”, and the statutory context does not compel a broader reading. The Court rejected the OfS’s contention that any document relating to objectives, values, or decision-making practices was a governing document. Had the OfS’ interpretation been correct, the term “governing documents” could have captured a vast number of procedures, guidance and communications. The Court noted that this interpretation led to “something very close to” unworkability, if not absurdity.
7. The Court placed significant weight on legislative history. Prior to HERA, the Privy Council was responsible for oversight of governing documents under the Education Reform Act 1988. Under that framework, a narrow class of instruments were treated as governing documents. The Green Paper, White Paper, Impact Assessment, and Explanatory Notes that preceded HERA demonstrated that Parliament intended to transfer the Privy Council’s oversight of governing documents to the OfS, not to expand it. This conclusion was reinforced by Parliamentary debates, in which a proposed amendment to extend the OfS’ oversight to “practices” was expressly rejected.
8. The Court also rejected the OfS’s arguments about statutory purpose. The narrower reading of “governing documents” was consistent with HERA’s protection of institutional autonomy. It also ensured that the OfS had capacity to assess compliance at the point of registration.
9. The Court rejected the OfS’ submission that it could not rely on its general power under s.5 of HERA to avoid the restricted meaning of “governing documents” under ss.13-14, because general statutory provisions give way specific statutory provisions.
10. Finally, the Court rejected the OfS’s argument that this part of the challenge was out of time, because the University’s claim was directed at the Final Decision, not the

Regulatory Framework itself. Although the Court did not formally quash any part of the Regulatory Framework, the definition of “governing documents” in the Regulatory Framework will inevitably have to be amended in light of the Court’s judgment.

11. Accordingly, the Policy Statement did not constitute a “governing document” within s.14, and the OfS lacked jurisdiction to find a breach of Condition E1 by reference to it. The finding of a breach of Condition E1 was therefore unlawful.

III. ISSUE 2: THE VISITORIAL JURISDICTION (GROUND 2)

12. Ground 2 of the claim failed.
13. The OfS had found that the University acted without proper delegated authority in breach of its internal governance rules, thereby failing to operate in accordance with its governing documents and to maintain adequate governance arrangements. These conclusions necessarily involved interpreting and applying the University’s internal laws, a function historically within the exclusive jurisdiction of the King as the University’s Visitor.
14. The Court accepted that disputes concerning the interpretation and application of the University’s internal laws historically fell within the exclusive jurisdiction of the Visitor, and that HERA contains no express provision abrogating that jurisdiction.
15. However, the Court held that HERA had impliedly abrogated the jurisdiction. The University had accepted that s.14 of HERA intruded, by clear implication, into the Visitor’s jurisdiction, and the Court rejected the University’s argument that the incursion was confined to s.14 alone because that would be artificial, impractical, and likely to produce an inconsistent approach as between institutions with Visitors and those without. Accordingly, the Court held that the OfS acted within its powers in making findings under Condition E2(i). Those findings were unlawful for other reasons (see further below) but were not *ultra vires*.

IV. ISSUE 3: BREACH OF CONDITION E1 – FREEDOM OF SPEECH AND ACADEMIC FREEDOM (GROUNDS 3D, 3C, 4, 5C AND 3A)

16. The Court held that the OfS misdirected itself in law in relation to the concepts of freedom of speech and academic freedom. The errors were both substantive and procedural and were sufficient, independently of Ground 1, to vitiate the OfS's findings.
17. On Ground 3D, the Court held that:
 - a. When it took the Final Decision, the OfS misunderstood the concept of "freedom of speech within the law".
 - b. The OfS wrongly treated the mere possibility that lawful speech might be restricted as determinative of a breach. In doing so, it adopted an absolutist approach to freedom of speech.
 - c. This ignored the principle that lawful speech may be subject to proportionate restrictions where there is a legitimate justification. The OfS also failed to consider the Policy Statement in its full context, including accompanying safeguards and the broader framework of protections for free speech.
18. On Grounds 3C and 4, the Court held that:
 - a. The relevant standard is whether academics are placed "in jeopardy of losing their jobs or privileges". This means an actual risk of losing jobs or privileges.
 - b. The OfS accepted that no such jeopardy existed, yet found a breach based on risks of disciplinary proceedings, stress, reputational harm, and a "chilling effect". The Court held that these considerations are legally irrelevant to the right to academic freedom, which protects academics against a *specific* type of harm. The OfS's error was "manifest". Properly construed, the University's governing instruments adequately protected academic freedom.
 - c. The OfS also erred in assuming that the University might act unlawfully, contrary to the presumption that public bodies act in accordance with the law.
19. In relation to Ground 5C, the University argued that it was irrational for the OfS to find that certain passages of the 2023 version of the Policy Statement, read with the Safeguarding Statement, were incompatible with the freedom of speech, even though

they were compatible with the academic freedom. The Court held that Ground 5C added nothing to Ground 3D.

20. On Ground 3A, the Court held that:

- a. The University's Freedom of Speech Code of Practice ("FOSCOP") was central to the assessment required under Condition E1, because FOSCOP is the University's primary statement on freedom of speech and directly relevant to the interaction between the Policy Statement, freedom of expression, and disciplinary procedures.
- b. The OfS failed properly to consider the FOSCOP. The Final Decision made no reference to it and gave no reasons for disregarding it. This amounted to a failure to take into account a material consideration and/or a failure to give adequate reasons, rendering the decision unlawful.

21. These errors meant that the OfS's findings of breach under Condition E1 could not stand, even if they had not been *ultra vires* for the reasons under Ground 1.

V. ISSUE 4: THE DECISION TO MAKE FINDINGS OF BREACH AND ISSUE A MONETARY PENALTY (GROUNDS 5A, 6A, 5E AND 5B)

22. Ground 5A of the University's claim succeeded. The Court held that the OfS acted unlawfully by failing to consider whether the alleged breaches had been remedied before issuing the Final Decision, including by failing to consider updated policies introduced in 2024. In particular:

- a. Under HERA and the Regulatory Framework, the OfS is required to take action only where necessary and must consider whether a breach has been addressed when deciding whether to make a formal finding and whether to impose sanctions.
- b. The University had provided evidence that all governance issues in relation to Condition E2(i) had been resolved and that the Policy Statement had been adequately revised more than 10 months before the Final Decision. However, the OfS declined to engage with that material.
- c. This was a failure to take into account a mandatory material consideration.

- d. The Court rejected the OfS’s argument about the need for finality. There was no evidence that the University was being obstructive by revising the Policy Statement. The revisions could easily have been considered by the OfS in the time before it issued the Final Decision.
 - e. It was particularly problematic that the OfS relied on the possibility of ongoing or future breaches as weighing *in favour* of intervention, without having considered whether the breaches had in fact been remedied.
23. Grounds 6A, 5E, and 5B were dismissed:
- a. On Ground 6A, the Court rejected the argument that procedural fairness required disclosure of Dr Stock’s second witness statement, as it introduced no materially new issues and the University had already had a fair opportunity to respond.
 - b. On Ground 5E, the Court rejected the University’s challenge to the rationality of OfS’s assessment of harm. The Court held that, if the Final Decision had not otherwise been unlawful, the OfS’s assessment of harm would have been sustainable.
 - c. On Ground 5B, the Court rejected the argument that the OfS unlawfully failed to consider the impact of its decision on competition. This argument was held to be more relevant to predetermination, which is discussed below.

VI. ISSUE 5: APPARENT BIAS AND/OR PREDETERMINATION (GROUND 6C)

24. Ground 6C of the University’s claim succeeded. The Court found that the OfS as an institution had approached the matter with a closed mind.
25. The University focused this part of the challenge on two issues: (i) the relationship between Dr Ahmed and Dr Stock and (ii) the closed-minded attitude of the OfS investigation team generally.
26. In relation to Dr Ahmed, the Court held that, had he been the decision maker, in all probability it would have found that he predetermined the decision by reason of having a closed mind. However, “the die had already been well cast” before Dr Ahmed took over

the investigation and therefore his role in the Final Decision was not sufficiently central to vitiate the decision.

27. However, the broader conduct of the OfS demonstrated predetermination. The Court found there was “compelling” evidence that the OfS had approached the investigation with a closed mind. In particular:
 - a. From the outset of the investigation, the OfS (under the direction of its then Chief Executive, Ms Susan Lapworth) adopted a strategy aimed at creating a “test case” to send a strong signal to the higher education sector. This strategy depended on the University being found in breach, heavily fined, and publicly criticised. While Ms Lapworth was not the formal decision maker, her extensive involvement meant her mindset materially shaped the process.
 - b. The OfS refused to engage in settlement discussions unless the University accepted all the breaches alleged by the OfS, even before a provisional decision had been reached. This was because the OfS was unwilling to accept any compromise that undermined its strategy of using the University to make an example for the sector. Approaching settlement discussions by assuming there had been a breach, before even a provisional decision had been reached, and refusing to discuss any other possibility, was indicative of a fixed view.
 - c. The OfS singled out the University despite several other institutions adopting policies that were materially identical to the Policy Statement. If the principal concern had been sector-wide compliance, the most effective course would have been to engage directly with all those institutions. Instead, the OfS deliberately chose to use the University as a test case – it only contacted other institutions with the same policy after publication of the Final Decision.
 - d. The OfS refused to consider key exculpatory material (including FOSCOP) and declined to assess whether the University had remedied any earlier failures. The Court found that the OfS had closed its eyes to these factors because it was determined to find significant breaches against the University.
28. The involvement of the decision-making committee (the University of Sussex Compliance and Enforcement Committee) did not cure this defect. The committee relied

heavily on material prepared by the investigative team, adopted their conclusions fully, and operated within a process already shaped by the OfS's predetermined stance. The Court noted that Ms Lapworth and Dr Ahmed were in the room when the Final Decision was taken, and that there was no contemporaneous material which pointed to independent decision-making.

29. The Court concluded that a fair-minded and informed observer would find a real possibility that the Final Decision was infected by predetermination and was therefore unlawful.

VII. CONCLUSION

30. For these reasons, the Court held that the Final Decision was unlawful.

Chris Buttler KC

Katy Sheridan

Jack Boswell

Matrix Chambers

29 April 2026