

Academic Freedom in the U.K.:
Legal and Normative Protection in a Comparative Context

Report for the University and College Union

by

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“Without such freedom there would have been no Shakespeare, no Goethe, no Newton, no Faraday, no Pasteur, and no Lister”.

(Albert Einstein, speech given at the Royal Albert Hall, 5th October 1933)

1 Executive Summary

This report examines the legal (*de jure*) and normative (*de facto*) protection for academic freedom in the UK, when compared with the other 27 EU nations. The legal protection is assessed first, by examining the EU nations’ constitutions and legislative instruments; second, by means of an assessment of individual nations’ degrees of compliance with UNESCO’s 1997 *Recommendation concerning the Status of Higher-Education Teaching Personnel*; and third by means of a very detailed analysis of 37 differing elements of university compliance with an array of measures, such as international instruments, but also including (for example) the ability of academic staff to appoint or dismiss the Rector, Deans and Heads of Departments. In sharp contrast with the other 27 EU nations, the constitutional protection for academic freedom (either directly, or indirectly via freedom of speech) in the UK is negligible, as is the legislative protection for the substantive (teaching and learning) and supportive (tenure and governance) elements of academic freedom. Additionally, the UK is similarly deficit in protecting academic freedom in line with international agreements of which it is a signatory, more especially UNESCO’s 1997 *Recommendation concerning the Status of Higher-Education Teaching Personnel*. Utilising the most comprehensive assessment of the constitutional and legal protection of academic freedom, the UK attains a score of 35%, which is less than the EU average (53%), and the second lowest among the 28 EU states.

The analysis of normative *de facto* protection uses comparable data from over 2000 UCU members and 4000 staff in universities of the European states, gathered by means of similar surveys. It demonstrates that the low level of *de jure* protection for academic freedom in the UK is mirrored by an equally poor (if not worse) level of *de facto* protection. The reality is that, in the overwhelming majority of instances, UCU members report statistically significantly higher levels of systematic abuse of their academic freedom, across a wide array of measures, than their European counterparts. For example, 23.1% of UCU respondents (and 14.1% of EU respondents) reported being bullied on account of their academic views, 26.6% of UCU respondents reported being subjected to psychological pressure (EU = 15.7%), while 35.5% of the UCU cohort admitted to self-censorship, for fear of negative repercussions, such as loss of privileges, demotion, physical harm (EU = 19.1%). Some of this abuse may be attributable to a lack of knowledge of academic freedom rights among staff – only 41.7% of the UCU cohort claimed to have an adequate working knowledge of academic freedom (EU = 49.2%), while less than half that proportion (20.6%) knew about the 1988 Education Reform Act, which supposedly protects academic freedom in the UK. Not surprisingly, 81.6% of UCU respondents said they would welcome additional information on the concept of academic freedom and its rights and responsibilities. Furthermore, UCU members are much more likely to strongly agree than their European counterparts that the major elements of academic freedom (freedom for teaching and research, autonomy, shared governance and employment protection) have declined.

In sum the very low level of legal protection in the UK is mirrored by a low level of awareness of the rights of academic freedom, and a high level of abuse. Work elsewhere suggests two possible options to ameliorate this situation. First, the provision of explanatory information and the creation of a training materials concerning academic freedom for UCU members, allied to a national

awareness raising campaign. Second, an appeal to UNESCO that the UK government does not meet its obligations under the 1997 *Recommendation* (of which it is a signatory state). The stark differences between the UK and the EU, in terms of *de jure* protection and *de facto* realities, both demonstrate the necessity for such an approach and provide a highly credible basis for such an appeal. This strategy was successfully adopted by the Dansk Magisterforening, the Danish academic professional association, and led to an independent expert evaluation of the legal protection for academic freedom, and change in the law. Repeated previous appeals by the Dansk Magisterforening to the national government to change the law were ignored. However, the appeal to UNESCO, a supra national body, could not be ignored, as it cast Denmark in an unfavourable light internationally. In the UK context, the possibility of an unfavourable international scrutiny will have even greater salience for the national government. This is because any criticisms from UNESCO will run directly contrary to the public images depicted by most top-rated research UK universities, who seek to attract and retain students, staff and donors alike, from across the world, by declaiming their adherence to the principle of freedom of speech and expression, as a means both of cultivating intellectual rigour and tolerance in students, and of encouraging original research of the highest quality. Moreover, for many such institutions, fees from international students are now absolutely crucial to their financial survival.

2 Academic Freedom: a neglected right in the UK

Most teaching and research staff working in UK universities, if asked whether academic freedom was important to them, would answer in the affirmative. However, despite the apparent importance attached to the concept, very little academic research has been undertaken into the protection for academic freedom in the U.K. Over 50 years ago, Lord Chorley, the (then) Honorary General Secretary of the Association of University Teachers, commented: “On the narrow front of court decisions there is very little to be said on the subject, nor has much systematic attention been given to it on a political, sociological or even educational basis. Academic freedom is indeed taken for granted in the United Kingdom, and matters taken for granted are not much written about in a systematic way”.¹ Although academic freedom is no longer taken for granted in the UK, the situation has not much improved since then. In fact, over the last 30 years, there have only been three major texts on academic freedom in the UK.² Moreover, writing in 2002, McGuinness³ averred that while there were more than 1000 reported judicial decisions dealing with academic freedom in the USA, the comparable figure for the Commonwealth nations was 203, of which only 6 reported cases in the UK dealt with the subject. Similarly, Aby and Kuhn’s guide to the literature on academic freedom⁴ lists 470 entries, but of these the vast majority relate to the USA, only eight relate to the U.K. Sinder’s earlier, shorter bibliography⁵ of 180 academic freedom related publications lists only three relating to a British academic (Bertrand Russell), and only then because the City College of New York annulled his professorial appointment. Additionally Kaplin and Lee’s authoritative volume on *The Law of Higher Education* in the USA devotes 117 of its 909⁶ pages to a consideration of academic freedom

¹ R. Chorley, (1963) “Academic Freedom in the United Kingdom”, *Law and Contemporary Problems*, 28(3): 647

² E. Barendt (2010) *Academic Freedom and the Law: A Comparative Study*, Oxford and Oregon: Hart Publishing.

K. McGuinness, (2002) *The Concept of Academic Freedom*, Lampeter: Edward Mellen Press.

M. Tight, (1988) (ed.), *Academic Freedom and Responsibility*, Buckingham: SRHE/OU Press.

³ K. McGuinness, (2002) *The Concept of Academic Freedom*, Lampeter: Edward Mellen Press, p. 4.

⁴ S. Aby and J. Kuhn (2000) *Academic Freedom: A Guide to the Literature*, Westport, Connecticut: Greenwood Press.

⁵ J. Sinder, (1990) “Academic Freedom: A Bibliography”, *Law and Contemporary Problems*, 53(5): 381-392

⁶ W. Kaplin, and B. Lee (2006) *The Law of Higher Education Vol. 1* (4th Edition), San Francisco: Jossey-Bass, p. 605-722.

(including discrete sections on general concepts and principles; academic freedom in teaching; academic freedom in research and publication; academic freedom in institutional affairs; academic freedom in private life; administrators' authority regarding faculty academic freedom; protection of confidential academic information; academic freedom in religious colleges and universities), and 66 additional pages to a consideration of tenure. By contrast Farrington and Palfreyman's 723 page *The Law of Higher Education* (which was designed to be a UK equivalent to Kaplin and Lee) covers academic freedom in just sixteen pages,⁷ and devotes less than five additional pages to discuss the abolition of tenure.

Other academic researchers have remarked on the dearth of coverage of the subject of academic freedom within the UK context. Jasper, for example, reported that: "my research has yielded very little education litigation, with next to no cases involving tenure and related issues such as good cause".⁸ Similarly, Beloff could find "only one English statutory provision which makes a specific reference to academic freedom".⁹ Assessing the reasons for this apparent lacuna in the literature, Barendt proposes three possible explanations. First, he suggests that maybe "universities prefer ... to settle claims brought by any academics ... rather than contest them"; second, he suggests that maybe "universities ... show such respect for the individual academic freedom of their staff that they rarely have cause for complaint" (a notion that Barendt describes as "too complacent"); third, he suggests that "there is no constitutional guarantee of academic or scientific freedom in the UK".¹⁰ The high incidence of interest among legal counsels and scholars in the USA is a reflection of the fact that academic freedom in the USA has no direct protection in law (unlike, for example, in Finland, where academic freedom is specifically protected in the 2009 Universities Act), and has only indirect protection under the First Amendment of the US Constitution, passed in 1791, which protects the more general right of freedom of expression. Consequently, academics in the USA have had to repeatedly argue in the US Supreme Court (with varying degrees of success) that they should, under the aegis of freedom of speech, be granted a wider freedom than is afforded to the general public. As the use of this amendment to protect academic freedom has depended on the interpretations of the amendment by the Justices of the Supreme Court, which have varied over time, much of the literature on academic freedom in the USA centres on assessing the legal and moral validity of the changing interpretations of the concept made by the Supreme Court. The impact of the constitution on academic freedom in the UK is considered in Section 4 below.

However, there are two other reasons why there is much less case law on higher education when compared with the USA, and other EU states. First, with respect to the USA, it has a federal government system, and so responsibility for the provision of education lies with the states, the situation is the same in Germany. Consequently, universities are subject to state law, unless the federal constitution is implicated (which is the case when considering the protection for academic freedom under the First Amendment right of freedom of speech). Hence, there are 50 state legislatures, each responsible for fifty different jurisdictions, and each possessing their own state-based body of case law. Thus the high number of legal cases concerning academic freedom in the USA results, in part, from its federal system. Second, until the 1988 Education Reform Act,

⁷ D. Farrington, and D. Palfreyman, (2012) *The Law of Higher Education* (2nd Edition), Oxford: Oxford University Press, p. 451-468.

⁸ S. Jasper, (1990) "Britain's Education Reform Act: a Lesson in Academic Freedom and Tenure", *Journal of College and University Law*, 16(3): 464

⁹ M. Beloff, (2010) "Academic Freedom – Rhetoric or Reality?", *Denning Law Journal*, 22(1): 118.

¹⁰ E. Barendt (2010) *Academic Freedom and the Law: A Comparative Study*, Oxford and Oregon: Hart Publishing, p. 74f.

most UK universities were immune from any legal challenge in the courts. Each of the pre-1992 universities were autonomous corporations established by Royal Charter, under which the final resolution of any internal dispute was within the jurisdiction of the University Visitor, whose decisions were immune from legal challenge. The role of the University Visitor was arcane for most academic staff, but the Visitor's powers were considerable nevertheless. As Peiris details: "The visitor's jurisdiction is a general jurisdiction over all matters in dispute relating to the students of the foundation and the internal affairs and membership of the corporation. Since the visitatorial power is an incident of an eleemosynary corporation whose purpose is the distribution of the founder's bounty, his authority is confined to the province of the corporation's statutes and does not extend to matters governed by statutes of the realm, or by the common law".¹¹ Hence the reason that little had been written about case law involving Universities is that dispute jurisdiction was wholly the province of the Visitor, and could not be challenged externally. In essence, universities were legally autonomous entities. However this was altered by the 1988 Education Reform Act, Section 206 of which stated that: "The visitor of a qualifying institution shall not have jurisdiction in respect of any dispute relating to a member of the academic staff which concerns his appointment or employment or the termination of his appointment or employment". Thus the 1988 Act not only removed tenure and but also reduced the legal autonomy of universities.

In sum, the major reason why there has been so little consideration or debate, among by academics and lawyers alike, of the legal protection for academic freedom in the UK, is that there is no protection for academic freedom in the constitution, either via direct mention of the concept, or indirectly under freedom of speech, while the relevant h.e. legislation is so sparse, that there is very little to debate. Davies makes the point that: "the legal protections for academic freedom in the UK are minimal",¹² exactly how minimal will be shown in this paper. Within EU universities, academic freedom is protected indirectly via constitutional freedom of speech (and often directly in the constitution) and in legislation; in US academia, "academic freedom is a contested concept"¹³ as it has only indirect constitutional protection. In contrast to both the US and the EU, in the UK higher education sector the right of academic freedom is a neglected, rather than a protected or contested, concept, and has been largely ignored by individual academics (most of whom have scant knowledge of the concept), universities (although most pay lip service by having an academic freedom institutional statement, owing to the lack of a UK universities' act, these vary considerably in terms of length, comprehensiveness and accuracy) and government ministers and departments (who have viewed academic freedom as an impediment to the marketization of UK university functions). Hence, where there is negligible legislation, and therefore muted, if not non-existent, debate, as Barnett observed: "In such an environment academic freedom is not taken away; rather, the opportunities for its realisation are reduced".¹⁴

The position with respect to research into the *de jure* protection is mirrored when looking at the *de facto* situation. None of the three major texts on academic freedom produced in the UK over the last 30 years provide any insight as to either the effectiveness of constitutional and judicial protection, or the realities of how academic freedom operates, between academic staff, on a day to day basis within university departments. This dearth of empirical research into this topic is not

¹¹ G. Peiris, (1987) "Visitatorial Jurisdiction: The Changing Outlook On An Exclusive Regime", *Anglo-American Law Review*, 376(4): 381

¹² M. Davies, (2015) "Academic freedom: a lawyer's perspective", *Higher Education*, 70(6): 987.

¹³ S. Fish, (2014) *Versions of Academic Freedom: From Professionalism to Revolution*, Chicago: University of Chicago Press, p. 142.

¹⁴ R. Barnett, (1997) *Higher Education: A Critical Business*, Buckingham: SRHE/Open University Press, p. 53.

just a feature of the UK, but is universal. As Åkerlind and Kyrooz¹⁵ point out: “To date, public debates and scholarly discussions about the nature of academic freedom have been marked by a lack of empirical data”. A research bibliography encompassing the titles of over 2000 books, journal articles and academic papers on the subject of academic freedom,¹⁶ compiled by the lead author, revealed only eleven entries that featured any attempt at an empirical analysis of how academic freedom operates. Of these only one was an article in a peer-reviewed journal, one was a government commissioned report, while the remaining nine were theses, most of which, unsurprisingly, had a very limited focus and scope, and all related to the USA.

Rupe’s 2005 doctoral thesis,¹⁷ for example, examined college and university attorneys’ perceptions regarding challenges to academic freedom at higher education institutions in the USA. The survey comprised seven sections, each of which included five questions. The three sections regarding academic freedom included professorial, institutional, and student academic freedom. The four sections regarding challenges to academic freedom included judicial or governmental challenges, internal or collegial challenges, institutional challenges, and extra-institutional or non-governmental, outside challenges to academic freedom. The survey was sent to the 1680 members of the National Association of College and University Attorneys, working in both public and private universities, of whom only 179 responded. This analysis was hampered by the low sample size and the atypical nature of the respondents – university attorneys, by nature of their subject of expertise, are more likely to understand the legal foundation of academic freedom than the rest of the university teaching and research staff (chemists, historians, etc.). The commissioned report was a study undertaken by Bennich-Björkman¹⁸ for the Swedish National Agency for Higher Education. Bennich-Björkman interviewed 17 researchers (ten professors, two of whom were emeriti, three senior lecturers, two post-doctoral fellows, two contract researchers) at two Swedish universities. The study’s small (and eclectic) sample, allied to the single focus on research to the neglect of the teaching function, which mirrors Sweden’s legal protection for academic freedom (which also has no mention of academic freedom for teaching in either the Constitution or the law, but provides legal protection for research) limits the study’s utility for comparative analysis. The only peer reviewed paper in this area, by Romanowski and Nasser,¹⁹ examined faculty perceptions of academic freedom at a university in the Gulf Cooperation Council, and had a sample size of 94. This paper appeared in 2010, but has only been cited in ten other academic books and/or papers since publication. This total absence of any substantial empirical studies of the working of academic freedom, demonstrates the urgent need for a study such as this, but also highlights the severity of the task – a lack of any previous work means that the research instruments required for this task have had to be built from scratch.

To provide a comparative context for the situation concerning these *de jure* and *de facto* analyses of the protection for academic freedom in the UK, data from the other EU states will be used, for the following reasons. First, the genesis of the contemporary research university, of which academic freedom is an integral part, took place in Europe. As Goldstein relates, “the modern development of the doctrine of academic freedom is largely derived from the nineteenth century

¹⁵ G. Åkerlind, & C. Kayrooz, (2003) “Understanding Academic Freedom: The Views of Social Scientists”, *Higher Education Research and Development*, 22(3): 330.

¹⁶ Accessible from: <http://eprints.lincoln.ac.uk/1763/2/AcademicFreedomResearchBibliography.pdf>

¹⁷ M. Rupe, (2005) “Higher education attorneys’ perceptions regarding academic freedom and challenges to academic freedom”, *Dissertation Abstracts International*, 66(12). (UMI No. 3197564).

¹⁸ L. Bennich-Björkman, (2004) *Has academic freedom survived?* Stockholm: National Agency for Higher Education.

¹⁹ M. Romanowski, R. Nasser, (2010) “Faculty perceptions of academic freedom at a GCC university”, *Prospects*, 40(4): 481-497.

German concepts of *Lehrfreiheit* and *Lernfreiheit*”,²⁰ which are associated with the reforms instituted by Wilhelm von Humboldt at Berlin University. Although there are some exceptions (the University of Salamanca was very important in the development of the Spanish university model), the majority of the EU’s universities followed either the model laid down at the University of Paris, or that of the Humboldtian Berlin University. As Sanz and Bergan point out, the European heritage of universities is complex and multi-faceted, involving “the principles of academic autonomy, intellectual curiosity, the freedom to teach, pursue research and publish its results and rigorous standards of peer review ... (but also) ... fundamental societal values such as participation, community and equal opportunity”.²¹ Secondly, the histories both of the EU states and their universities have been closely interwoven, for example, scholars escaping the Great Dispersion from the University of Paris in 1229 helped to make up the contingent at Oxford; similarly, repression in the universities in Nazi Germany in the 1930’s led to an exodus of scholars, many of whom went to the UK or the USA. For these reasons, when examining the legal protection for academic freedom in the UK, comparisons are more relevant with respect to the EU states than with (for example) the USA, Russia, India, etc.

3 The Four Pillars of Academic Freedom²²

Before any study of academic freedom can commence, it is necessary to provide a working definition of the concept. Accurately, but unhelpfully, Altbach relates that “Academic freedom seems a simple concept, and in essence it is, but it is also difficult to define”, but nevertheless agrees that “academic freedom needs a universal definition ... (as) the lack of agreement on the nature of academic freedom makes a common understanding and unified action difficult”.²³ Eustace makes the telling point that “there is a tendency, natural enough, to speak of any lack of constraint on an academic related activity as an academic freedom. So the argument may conflate a wide range of concepts”.²⁴ However, this problem has been compounded by academics themselves – when the limits of academic freedom are imprecise, it is more difficult for those accused of infringing academic freedom to successfully plead their innocence. Consequently, as Manan points out “there are professors who used academic freedom as a weapon to defend themselves from their performance being evaluated by the academic community”.²⁵ The reverse was probably true in the UK where, although academic freedom was usually written into university statutes, the absence of any agreed definition in legislation allowed the Thatcher government to remove tenure, thereby irreparably weakening academic freedom. In terms of both definition and every day practicalities, academic freedom is clearly part of a wider set of complementary human rights, with an evident link between academic freedom and freedom of speech: as Connolly observes, “academic freedom is a kind of cousin of freedom of speech”.²⁶ However as Olivas rightly points out, “the concepts of free speech and academic freedom are

²⁰ S. Goldstein, (1976) “The Asserted Constitutional Right of Public School Teachers to Determine What They Teach”, *University of Pennsylvania Law Review* 124(6): 1293.

²¹ N. Sanz, and S. Bergan, (2006) “Introduction: a word from the editors”, in N. Sanz and S. Bergan (eds.) *The Heritage of European universities*, Strasbourg: Council of Europe, p. 16.

²² For an in-depth description of these four constituent elements see T. Karran, (2009a) “Academic Freedom in Europe: Time for a *Magna Charta*?”, *Higher Education Policy*, 22(2), 170-185.

²³ P. Altbach, (2001) “Academic Freedom: International Realities and Challenges”, *Higher Education*, 41(1/2): 206

²⁴ R. Eustace, (1989) “Freedom for Academics”, *Higher Education Quarterly*, 43(3): 217.

²⁵ W. Manan, (2000) “Academic Freedom: Ethical Implications and Civic Responsibilities”, in G. Neave (ed.) *The Universities’ Responsibilities to Society: International Perspectives*, Kidlington: Elsevier Science, p. 255.

²⁶ J. Connolly, (2000) “The academy’s freedom, the academy’s burden”, *Thought & Action* 16(1): 71.

symmetrical and overlapping, not synonymous”.²⁷ Thus, the presence of freedom of speech does not guarantee academic freedom, but makes its protection more likely. Freedom of speech is a generic freedom granted to all, to express their opinions and beliefs by whatever method they deem appropriate, on any subject that they may choose, to all other people, but for no particular purpose. Academic freedom, by contrast, is a professional freedom granted to a few, chosen on the basis of their professional competence, to firstly: express their informed opinions only on subjects in which they have accredited expertise, just to a group of individuals chosen on the basis of academic criteria, in order to educate them; and secondly to undertake research to create new knowledge, freely disseminated to their students and the wider academic community. Irrespective as to whether constitutional or legal protection for freedom of speech might exist in the UK (and it does not), experience in the USA suggests that it would be insufficient to fully protect academic freedom.

Whilst acknowledging that “there is little consensus between parties as to what academic freedom actually means ... the concept is open to a wide range of interpretations and has been used at time to support conflicting causes and positions”,²⁸ most academic experts in the field would concur that academic freedom comprises two substantive and two supportive, elements. The substantive elements are firstly, freedom to teach. This freedom will normally include some (may be all) of the following: freedom to determine what shall be taught (course content); freedom to determine how it shall be taught (pedagogy); freedom to determine who shall teach (via transparent selection procedures); freedom to determine whom shall be taught (the right to determine and enforce entry standards); freedom to determine how students’ progress shall be evaluated (assessment methods); freedom to determine whether students shall progress (via marking criteria and grade determination). Secondly, freedom to research and, as with teaching, this element has associated liberties which will include: freedom to determine what shall be researched; freedom to determine the method of research; freedom to determine the purpose of their research (and thereby refuse to undertake research considered unethical); freedom to determine the avenues and modes (conference presentations, journal articles) of disseminating research findings to one’s peers, and the wider world. These two substantive elements are buttressed and sustained by two supportive elements: self-governance and tenure. Self-governance consists of the rights: to voice an opinion on the running of the university; to participate in decision-making within the university; to be able to appoint people to, and dismiss them from, positions of managerial authority within the university. Tenure comprises the right to some form of job security within the university, via an agreed procedure involving a peer-reviewed assessment of academic accomplishments, following the successful completion of a probationary period of employment. It also includes the ability to remove tenure from staff who fail to meet minimum levels of competence or to uphold professional standards of conduct. With respect to the granting of tenure, it is incumbent on the probationer to demonstrate competence, while for the removal of tenure the university needs to show due cause.

There is a further element that is worthy of consideration, that is, the distinction between individual and institutional autonomy, as these concepts have particular resonance within the UK context. Individual autonomy and institutional autonomy are often conflated under the heading of “academic freedom”. Indeed Rabban has noted that academic freedom, has been used to refer to

²⁷ M. Olivas, (1993) “Reflections of professorial academic freedom: Second thoughts on the third ‘essential freedom’”, *Stanford Law Review*, 45(6): 1838.

²⁸ G. Åkerlind, and C. Kayrooz, (2003) “Understanding academic freedom: The views of social scientists”, *Higher Research and Development*, 22(3): 328.

“both the freedom of the academy to pursue its ends without interference from the government . . . and the freedom of the individual teacher (or in some versions - indeed in most cases - the student)”.²⁹ Although these two concepts are linked, they are different. Wolff’s study makes this distinction explicit viz. “academic freedom is the privilege individual academics may claim as the freedom to question and test received wisdom, to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing the jobs or privileges they may have at their institutions. Academic autonomy applies to the institution. It may be defined as the right of academic institutions to decide freely and independently how to perform their tasks”.³⁰

The link between individual and institutional autonomy originally derived from the process of academic governance within the stadium generale of the community of scholars. Hence the granting of individual academic autonomy enabled scholars to participate directly in academic governance, and thereby have a tangible input into institutional autonomy by, for example, electing, from amidst their ranks, Professors, Deans, and the Rector – who were considered primus inter pares, and not primus supra pares. This right of self-governance was crucial in the first medieval universities like Bologna, in which the civil authorities made all significant university decisions as they paid university salaries; while the right to nominate the Rector lay with the students. As necessary, to avoid repeated attempts at external control, the scholars (acting individually, and as a body) would democratically decide, en masse, to decamp to another city, or even, another country. Hence in 1209, after disputes between students and townsfolk, academics at Oxford fled from the violence to Cambridge, to found a university there. In such institutions, provided that the opinions of academics were dominant in the process of institutional governance, their individual autonomy acted so as to maintain and legitimate institutional autonomy. Such governance mechanisms were the norm in UK universities, at least until the publication of the Robbins Report in 1963 which acknowledged that:

Freedom of institutions as well as individual freedom is an essential constituent of a free society and the tradition of academic freedom in this country has deep roots in the whole history of our people. We are convinced also that such freedom is a necessary condition of the highest efficiency and the proper progress of academic institutions, and that encroachments upon their liberty, in the supposed interests of greater efficiency, would in fact diminish their efficiency and stultify their development.³¹

However, as Neave relates, “the expansion of higher education contributed powerfully to redefining the nature of academic autonomy. From the latter parts of the 1960s established models, the origins of which could be traced back over the previous century and a half, were revised”.³² This process has been documented in the UK by Griffith,³³ among others, who cites two key points from the Jarratt Report viz.: “We stress that in our view universities are first and foremost corporate enterprises to which subsidiary units and individual academics are responsible and accountable”, “The tradition of Vice Chancellors being scholars first and acting as a chairman

²⁹ D. Rabban, (2001) “Academic Freedom, Individual or Institutional?”, *Academe* 87(6): 17.

³⁰ K. Wolff, (2000) “Academic Freedom and University Autonomy”, in G. Neave (ed.) *The Universities’ Responsibilities to Society: International Perspectives*, Oxford: Elsevier Science, p. 198.

³¹ L. Robbins, (1963) *Higher Education Report of the Committee appointed by the Prime Minister under the Chairmanship of Lord Robbins 1961–1963*, (Cmnd. 2154), London: HMSO, p. 228f.

³² G. Neave, (1988) “On Being Economical with University Autonomy: Being an Account of the Retrospective Joys of a Written Constitution”, in Malcolm Tight, (ed.) *Academic Freedom and Responsibility*, Buckingham: SRHE/Open University Press, p. 39.

³³ J. Griffith, (1990) “The Education Reform Act: abolishing the independent status of the universities”, *Education and the Law*, 2(3): 97-108.

of the Senate carrying out its will, rather than leading it strongly, is changing”.³⁴ Neave further demonstrates that similar policies in other European states in the 1960s and 1970s created a situation in which “autonomy can be exercised only on condition that the individual institute or department fulfils national or establishment norms which are continually to be renegotiated in the light of public policy”.³⁵ Consequently, under the misleading aegis of academic freedom, national and European governments and NGOs have called for greater institutional autonomy for universities, e.g., the EUA’s Prague Declaration stated that: “Universities need strengthened autonomy to better serve society and specifically to ensure favourable regulatory frameworks which allow university leaders to design internal structures efficiently, select and train staff, shape academic programmes and use financial resources, all of these in line with their specific institutional missions and profiles”.³⁶

4 Constitutional Protection for Academic Freedom

In legal terms, constitutions are the supreme authority with respect to the canon of civil and criminal law of individual states. For example, in the USA, all appeals in law that go to the Supreme Court, acting as the highest court in the land, do so because the Supreme Court is the final interpreter of federal constitutional law, and ultimate arbiter as to the meaning of the Constitution itself. The situation with respect to the constitutional protection for academic freedom in the UK differs from both the USA and the rest of the European Union nations. The UK has no written constitution which could provide protection for freedom of speech, and thereby indirectly protect academic freedom, as occurs in the USA and in many EU states. The UK has an “unwritten constitution”, in which the system of governance is described in, and constrained by, a set of documents and “usual practices”.³⁷ The sources of the UK’s unwritten constitution arise in statute law (i.e. law set down by the legislative bodies of the Houses of Parliament); common law (i.e. case law developed by precedent following the decisions in individual cases made by judges and courts); conventions (i.e. “normal” ways of doing things – it is now the convention that the Prime Minister must be a member of the House of Commons); authoritative works (i.e. books that have affected interpretations of the way in which constitutional processes operate, for example A.V. Dicey’s *Law of the Constitution*); and external agreements (i.e. the European Convention on Human Rights). Hence, there is no single ultimate and unequivocal document of reference with respect individual rights to which an appeal can be made with respect to academic freedom. So, for example, if an academic was removed from his post, without due cause, he would be unable to argue that the use of the Education Reform Act in this way contravened his right to academic freedom (or freedom of expression) under the Constitution (as there is no Constitution).

To assess the constitutional protection for academic freedom in the UK, when compared with other EU nations, constitutional data from the 28 states was appraised in order to check first, whether there was any indirect protection for academic freedom, via protection of freedom of speech or expression; second, whether there was any direct protection for any of the elements of academic

³⁴ CVCP, (1985) *Report of the Steering Committee for Efficiency Studies in Universities* (‘The Jarratt Report’), London: CVCP, p. 22, 26.

³⁵ G. Neave, (1988) “On Being Economical with University Autonomy: Being an Account of the Retrospective Joys of a Written Constitution”, in Malcolm Tight, (ed.) *Academic Freedom and Responsibility*, Buckingham: SRHE/Open University Press, p. 46.

³⁶ European Universities Association, (2009) *Prague Declaration: European Universities – Looking Forward with Confidence*, Brussels: EUA.

³⁷ A. Cammisa, and P. Manuel, (2014) *The Path of American Public Policy: Comparative Perspectives*, Lanham: Lexington Books, p. 58f.

freedom (freedom for teaching and research, tenure, etc.) in the constitution. The full results are given on pages 1-4 of the Appendix Tables (available on request) and a summary table of the results appears in Table 1 below.

Table 1: Constitutional Protection for Freedom of Speech and Academic Freedom

Nation	Is freedom of speech/expression protected in the Constitution?	Are any elements of academic freedom protected in the Constitution?
Austria	Yes	Yes – research and teaching
Belgium	Yes	Yes – teaching
Bulgaria	Yes	Yes – autonomy and research
Croatia	Yes	Yes – autonomy and research
Cyprus	Yes	Yes – freedom of research and university autonomy
Czech Republic	Yes	No Protection
Denmark	Yes	Yes - freedom of research and artistic creation
Estonia	Yes	No Protection
Finland	Yes	Yes – freedom of research and teaching, university autonomy
France	Yes	No Protection
Germany	Yes	Yes – freedom of research and teaching.
Greece	Yes	Yes – freedom of teaching and research, tenure
Hungary	Yes	Yes – freedom of research and teaching.
Ireland	Yes	No Protection
Italy	Yes	Yes - freedom of research and teaching.
Latvia	Yes	No Protection
Lithuania	Yes	Yes – freedom of research and teaching, university autonomy
Luxembourg	Yes	Yes - academic freedom mentioned specifically
Malta	Yes	No Protection
Netherlands	Yes	No Protection
Poland	Yes	Yes - freedom of research and teaching
Portugal	Yes	Yes - freedom of teaching.
Romania	Yes	Yes – university autonomy
Slovakia	Yes	Yes - freedom of research and teaching
Slovenia	Yes	Yes – freedom of research and university autonomy
Spain	Yes	Yes - academic freedom mentioned specifically
Sweden	Yes	Yes – freedom for research
U.K.	No Protection	No Protection

As the table shows, unlike the UK, all the other 27 EU states have a written constitution (usually expressed in one document), all of which have some form of protection for freedom of speech and/or expression (to which an appeal from a lower court could be made, in respect of academic freedom cases). In addition to providing indirect protection for academic freedom via protection for freedom of speech, this table shows that the constitutions of twenty of the European Union nations also provide some form of direct protection for academic freedom. For example Article 20 of the Constitution of Spain states explicitly “The following rights are recognised and protected: c) the right to academic freedom”. The constitutions of other EU nations don’t always refer to academic

freedom as explicitly, but the majority, nevertheless, provide some guarantee for the substantive elements of academic freedom, the Constitution of Hungary, for example, ensures: “the freedom of learning for the acquisition of the highest possible level of knowledge, and, within the framework laid down in an Act, the freedom of teaching”. In sum, it can be seen that the constitutional protection for academic freedom in the UK, either directly or indirectly (via freedom of speech), is non-existent (as there is no written constitution) and in marked distinction with the other EU states in which constitutional protection both for freedom of speech and for some element of academic freedom is the norm, rather than the exception.

5 Legislative Protection for Substantive Elements: Teaching and Research

As was shown in Table 1, all the EU states have protection for freedom of speech in their constitutional documents (except the UK), and the majority also have some form of (indirect or direct) constitutional protection for academic freedom. However, as well as providing protection for academic freedom within their constitutions (which is frequently couched in general terms), most of the EU states have specific h.e. laws that provide detailed information on how their universities are to be run – for example the Finnish Universities Law of 2009 has 93 sections covering (inter alia) mission; institutional autonomy; the university community; legal capacity of universities; freedom of research; arts and teaching; degrees and the degree structure; languages of instruction; organs of a university; board of the public university; appointment composition; functions and terms of office of the university board; election; powers and duty of care of the rector of a university; composition; functions and powers of the collegiate body of a university; university regulations and rules; administrative procedure and confidentiality; employment relations of the personnel; duties; appointment and title of professor; liability under criminal law. Such laws usually contain an explicit reference to academic freedom. In Ireland, for example, the 1997 Universities Act states: “A member of the academic staff of a university shall have the freedom, within the law, in his or her teaching, research and any other activities either in or outside the university, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions”. The legal protection for academic freedom in the UK h.e. sector is provided in a subordinate section of the 1988 Education Reform Act, entitled “Miscellaneous and General”, which states:

There shall be a body of Commissioners known as the University Commissioners who shall exercise, the functions assigned to them by those sections.

- (2) In exercising those functions, the Commissioners shall have regard to the need—
 - (a) to ensure that academic staff 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 their institutions;
 - (b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically; and
 - (c) to apply the principles of justice and fairness.

The Higher Education Act 2004 further clarified the situation with respect to the powers of the University Visitor, as established under the 1988 Education Reform Act. In Section 46 of Part V (Miscellaneous and General), the Higher Education Act states:

- (1) The visitor of a qualifying institution has no jurisdiction in respect of—

- (a) any dispute relating to a member of staff which concerns his appointment or employment or the termination of his appointment or employment,
 - (b) any other dispute between a member of staff and the qualifying institution in respect of which proceedings could be brought before any court or tribunal, or
 - (c) any dispute as to the application of the statutes or other internal laws of the institution in relation to a matter falling within paragraph (a) or (b).
- (2) In subsection (1) “qualifying institution” has the meaning given by section 11.
- (3) In determining whether a dispute falls within subsection (1)(b) it is to be assumed that the visitor does not have jurisdiction to determine the dispute.
- (4) Section 206 of the Education Reform Act 1988 (c. 40) (which is superseded by subsection (1)) shall cease to have effect.

Thus any illusions about the possibility of residual powers for the University Visitor, after the 1988 Education Reform Act, were comprehensively dispelled by the new Act.

However, the situation in Scotland has changed recently with passing of the Higher Education Governance (Scotland) Act of 2016. The legislation followed a research review chaired by Ferdinand von Prondzynski, the VC at Robert Gordon University, but who was formerly President of DCU, and so knew about the protection for academic freedom offered by the 1997 Irish Universities Act. The research review team were of the opinion that “a core principle of higher education is the protection of academic freedom, in accordance with the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, made in Paris on 11 November 1997”.³⁸ Additionally, the review team recommended that a definition of academic freedom be incorporated in the statute governing higher education, based on the definition contained in Ireland’s Universities Act 1997. The new act does not adhere to the UNESCO *Recommendation* directly, but is similar to the Irish legislation. Part 2 of the new Act deals specifically with academic freedom and, borrowing from the Irish legislation, allows academics “freedom within the law to do the following things –

- (a) hold and express opinions,
- (b) question and test established ideas or received wisdom,
- (c) develop and advance new ideas or innovative proposals,
- (d) present controversial or unpopular points of view”.³⁹

Also, the legislation considerably broadened the membership of the governing body, which now has to include:

- 2 staff representatives elected by the staff;
- 1 representative nominated by the academic staff who are members of an academic trade union that has a connection with the institution;
- 2 representatives nominated by a students’ association of the institution from among the students of the institution.

These reforms represent an improvement in the protection for academic freedom and a greater involvement in governance by the academic staff. However, legislation on academic freedom in Ireland is infrequently invoked, as academics still have tenure. Hence how the Scottish legislation

³⁸ F.von Prondzynski, T. Brotherstone, I. Macwhirter, R. Parker, A. Simpson (2012) *Report of the Review of Higher Education Governance in Scotland*, chaired by Ferdinand von Prondzynski, Edinburgh: The Scottish Government, p.7

³⁹ *Higher Education Governance (Scotland) Act 2016*, p.10

will operate in practice remains to be seen. Even with this legislation in place, it will still be possible for abuses of academic freedom to occur. What is required for the legislation to deliver tangible protection is the establishment of a neutral arbitration body within each university to investigate claims of abuses.

To assess the legislative protection for academic freedom for teaching and research (the substantive elements) in the EU, copies of the relevant laws were sourced from each of the EU states. Gathering this data was difficult and time-consuming, although the implementation of the Bologna Process within the EU states has necessitated the translation of many h.e. legal instruments, some of the more arcane pieces of legislation in the more unfamiliar languages required recourse to online translation tools, followed by double-checking via secondary sources. The detailed results of this exercise are shown on pages 5-8 of the Appendix Tables (which are available on request), and a summary table of the results appears in Table 2 below.

As this table shows two nations – Estonia and Malta – have no protection for academic freedom for teaching and research in the national legislation, and in Malta there is also no protection for academic freedom in the Constitution. At the other end of the scale, in Spain academic freedom is mentioned explicitly in the constitution and the legislation gives further protection for the individual functions of teaching and research, which further strengthen the legal protection for academic freedom. Nine nations offer specific protection for research – for example the 2011 Law of National Education in Romania states that: “in higher education institutions the freedom of research is ensured in terms of setting the subjects, choosing the methods and procedures and capitalising results, in compliance with the law”. Both Bulgaria and Slovakia offer specific protection for teaching and research activities in law, along with direct protection via their constitutions. Five nations offer discrete protection for academic freedom in teaching – for example the Czech Higher Education Act guarantees “freedom of teaching, in particular with regard to openness to different scientific and scholarly views, scientific and research methods and artistic movements”. Belgium and Croatia are unusual, as they offer some protection in law, but refer back to their Constitutions, which are superior legal instruments for the protection for academic freedom. Sweden is unusual as it provides legal protection for research but has no mention of academic freedom for teaching in either the Constitution or the law.

Table 2: Legislative Protection for Freedom of Teaching and Research

Nation	Is freedom to teach protected in legislation?	Is freedom to research protected in legislation?
Austria	Yes – “freedom of sciences and their teaching and freedom of scientific and artistic activity, the dissemination of the arts and their teaching;... freedom of study”	
Belgium	Yes – “members of a higher education institution shall enjoy academic freedom”	Yes – “researchers must, ... enjoy a very wide freedom to carry out research”
Bulgaria	Yes – “academic staff ... have the right to: develop and teach the study content of their discipline freely”	Yes – “academic staff ... have the right: freely to conduct, ... scientific research and to publish the results”
Croatia	Yes – “Academic freedom is enjoyed by all members of the academic community”	
Cyprus	No	No
Czech Republic	Yes – “freedom of teaching, ... openness to different scientific and scholarly views”	Yes – “freedom of scholarly, scientific, research activities as well as publication of the results”
Denmark	Yes – “The university must protect ... the individual's research freedom”	Yes - The university must defend ... the freedom of research”
Estonia	No	No
Finland	Yes – “At the universities there is freedom of research, art and teaching”	
France	Yes – “lecturers, teachers and researchers enjoy full independence ... in the exercise of their functions of teaching and their research activities”	
Germany	Yes – “Freedom of art and science and of research, teaching and study”	
Greece	Yes – “In Universities, academic freedom in research and teaching ... shall be safeguarded.”	
Hungary	Yes – “lecturers ... shall be entitled to the right to perform educational activities in accordance with their world view, ideology and values”	
Ireland	Yes – “academic staff of a university shall have the freedom, within the law, in his or her teaching, research and any other activities either in or outside the university	
Italy	Yes – “the freedom of teaching for teachers”	Yes - “the freedom of research of professors”
Latvia	Yes – “Institutions of higher education shall guarantee the academic freedom of academic staff”	Yes - “The freedom of studies, research work and artistic creation shall be ensured”
Lithuania	Yes – “higher education shall be based on ... academic freedom and autonomy	Yes – “Research shall be based on ... freedom of creation and research”
Luxembourg	Yes - “In the exercise of their teaching and research duties, members of the University shall enjoy academic freedom”	
Malta	No	No
Netherlands	Yes – “academic freedom: the institutions’ academic freedom is respected.”	
Poland	Yes – “Higher education institutions shall be governed by the principles of academic freedom in teaching, scientific research”	
Portugal	Yes - “autonomy ... affording both teachers and students intellectual freedom in teaching and learning processes”.	Yes - In higher education institutions the freedom of research is ensured
Romania	Yes – “The academic freedom of the members of the university community is guaranteed. ... they have the freedom of teaching, research and creation”	
Slovakia	Yes – “academic freedoms and academic rights shall be guaranteed (b) freedom of teaching”	Yes – “academic freedoms and academic rights shall be guaranteed (a) freedom of scientific investigation, research,
Slovenia	Yes – “higher education teachers ... independently develop those areas of science, art ... and care for the transfer of this knowledge.”	Yes - “A university shall ... ensure the following: freedom of research, artistic production and knowledge mediation”,
Spain	Yes – “Teaching is duty of teachers ... which they exercise with academic freedom”	Yes – “Freedom of research in universities is recognised and guaranteed.”
Sweden	No	Yes – “research issues may be freely selected; ... and research results may be freely published”
U.K.	Yes - “to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions”	

Legal protection for academic freedom in the UK differs from the rest of the EU states. First, the legal protection for academic freedom in the UK is not vested in a bespoke law which is designed to address either the higher education sector in general, or universities specifically. The section of the Education Reform Act relating to academic freedom appears in Part IV “Miscellaneous and General” of the Act. The majority of the Act deals with unrelated items, viz.: Part I National Curriculum; Part II the incorporation of local education authority maintained higher education institutions; Part III the abolition of the Inner London Education Authority. Second, the 1988 Education Reform Act is worded such that the legal protection for academic freedom can only be invoked after someone has been removed from a university position. The reason for this was that the purpose of the Education Reform Act was not to protect academic freedom, but to abolish tenure for staff, thereby removing a central supportive element of academic freedom. To ensure that staff could appeal if their tenure was revoked without due cause, the University Commissioners were created to establish the validity of any claims brought on the grounds of academic freedom, when an individual academic claims that s/he has been made redundant on grounds other than “just cause”. However, even this modest protection has been further diluted. The 1988 ERA established the duties and powers of the Commissioners, and their continuing work was confirmed each year by means of a statutory instrument, signed by the Minister. But the last such confirmatory signature was on 1st April 1995, such that the Commissioners ceased their duties on 1st April 1996. In sum, the legal protection for academic freedom for teaching and learning in the UK is generally at a lower level than the majority of other EU nations, although not as low as occurs in Estonia and Malta, and possibly in Denmark and Sweden.

6 Legislative Protection for Supportive Elements: Tenure and Governance

The supportive elements for academic freedom (tenure and shared governance) are critical to ensuring that the substantive elements (freedom to teach and undertake research) may flourish. However, whereas the legal protection for the substantive elements is usually readily apparent in the legislation (for example, Bulgaria’s 1995 Higher Education Act states that “academic staff ... shall have the right to freely conduct ... scientific research and to publish the results”), the legislation surrounding the supportive elements is more complex, nuanced and varied. Hence, in some nations there may be only one decision-making body (e.g. Senate), and the legislation may state that all the members of this body have to be elected from, and by, the academic faculty. In others, there may be more than one body assigned to make decisions (e.g. Senate and the University Council) and the membership of these entities may be split between (for example) the academic staff, the administrative staff, the students, and external nominees (often from local business). Similarly with tenure, in some nations the situation is readily apparent, for example, no form of tenure exists in the UK, while in Spain Professors may apply for the status of Catedrático, which, in essence, provides them with tenure and the status of a civil servant. More usually, however, the attainment of tenured status varies considerably both between (and sometimes within) the EU states. In order to assess the legislative protection for these supportive elements, as before, the relevant legislative instruments were examined for each EU nation. Some caveats are necessary with respect to this analysis. First, information relating to these elements is rarely available in English, and hence some meaning may be lost in translation; second, the legislation provides the “bare bones” of the systems of tenure protection and governance, while their day to day operation may not always exactly reflect the legal framework. The first stage of this analysis identified the major elements in the legislation relating to governance and tenure. This was a protracted process, as the majority of legislative instruments in EU nations dealing with higher

education are detailed and lengthy – the Ley Orgánica 4/2007 which deals with higher education in Spain, for example, is over 25,000 words long – the total volume of text thus identified was circa 55,000 words. Hence the second stage was to summarise the detailed legal instruments, in order to answer the following questions:

- 1) What are the major governance bodies (Council, Board, Senate), how are they constituted, and what are the roles of the academic staff in electing people to such bodies?
- 2) Is tenure available to academic staff, if so, under what conditions?

The summary data in relation to the legal protection for these two supportive elements of academic freedom is given in Table 3 below (more detail is given on pages 9-34 of the Appendix Tables, which are available on request).

Shared governance has long been considered a vital element to securing academic freedom. For example the Association of American University Professors argues that “sound governance practice and the exercise of academic freedom are closely connected, if not inextricably linked”,⁴⁰ and that “the faculty’s role in governance, is the foundation of academic freedom”.⁴¹ Similarly, Rochford has noted that “[a] traditional institutional protection for academic freedoms is through the tradition of participation by faculty members in academic governance”.⁴² Clearly legal protection for academic freedom for teaching and research is important, but unless academics can participate in governance, there is a strong chance that this freedom will not be fully realized. Similarly, if job security is not protected via tenure, then the presence of legal protection for academic freedom becomes irrelevant, as staff who believe that their academic freedom has been compromised can simply be removed from office by the university authorities.

Although there are evident variations in the governance structure of universities in different states, analysis of the data on governance powers and structures in Table 3 reveals surprising similarities in the governance structures within universities in the EU. In all instances (apart from in the UK’s pre-1992 universities) national legislation specified precisely the composition, functions, and powers of the governance bodies in universities. In some nations, the composition of the governance was determined by local statutes, which made it difficult to assess which body exercised managerial dominance. However, in 22 of the 28 states, there were two governance structures – invariably one had broad based executive power (the University Board), while the other had a deliberative function in relation to academic matters, (Senate). In 10 cases, the academic staff were in a majority on Senate, but not on the Board. Hence there was a balance of power between these elements, as Board decisions had to be ratified by Senate; additionally, in some instances this balance of power was tempered by the ability of Senate to choose (and dismiss) the Rector. In six nations, the academics wielded majority power on both bodies, while in three states, the academics were in the minority on both governance bodies. In five nations there was only one governmental body, with the academics in the majority in three nations, and in the minority in two; finally in one nation there were three governing bodies, and the academic staff controlled only two.

⁴⁰ Association of American University Professors, (1944) *On the Relationship of Faculty Governance to Academic Freedom*, Statement adopted by the Association’s Council, June 1994, p. 3

⁴¹ J. Scott, (1994) Chair of the AAUP’s Committee on Academic Freedom and Tenure, quoted by Bowen, R., (March, 2005) in “For The Record: Born Free but in Chains: Academic Freedom and Rights of Governance”, *Academe*, 91(2): 119.

⁴² F. Rochford, (2003) “Academic freedom as insubordination: the legalisation of the academy”, *Education and the Law*, 15(4): 252.

Table 3: Legislative Protection for Governance and Tenure

Nation	Do academic staff control university governance?	Is there Tenure?
Austria	No - the majority of senate members are elected by academic staff, but academic staff are in the minority on the university council;	No
Belgium	No -The Board of Directors has 25 members, between 9 & 13 are academic staff, the Executive Council comprises academic staff, but which are appointed (e.g. the Presidents of the Education and Research Councils) rather than elected.	Yes
Bulgaria	Yes – academic staff comprise 70% of the members of the general meeting, and 70% of the Academic Council	Yes
Croatia	Yes - academic staff comprise 60% of Senate; University Council (which is advisory) has six or twelve members, 50% are appointed by Senate	Yes
Cyprus	No- Academic staff comprise 80% of Senate; 5 out of 14 members of the University Council are academic staff	Yes
Czech Republic	Yes –the senate comprises representatives from the academic staff and the students (who may make up to 50% of the Senate members). Rector determines membership of the scientific board (30% are external) but with Senate’s approval. The Board of Trustees are appointed by the Minister but have oversight powers only.	Yes
Denmark	No - external members must constitute a majority on the University Board	Yes
Estonia	No - The rector, vice-rectors, representatives of teaching and research staff and students and certain other persons comprise the University Council the exact composition is regulated by the statutes. Senate is drawn from the university staff (not just the academic staff), and 20% come from the student body	Yes
Finland	No – University Board has 7 or 9–14 members, elected by professors; teaching, research and administrative staff, and students but 40% are external appointees; The collegiate body (up to 50 members) comprises representatives of professors, teaching, research and administrative staff, and students; none of which can exceed 50% of the total	Yes
France	No - academic staff constitute 29% - 50% of the conseil d’administration, but research and teaching staff may be in the majority on the commission de la recherche (40-73%), and the conseil académique (39-57%)	Yes
Germany	No - 7 out of 11 members of Senate are representatives of academic staff , but academics comprise only 7 out of 20 members of the University Council	Yes
Greece	Yes - University Council comprises 15 members; 8 are academics, 1 is a student, and 6 are external, but are elected by the teaching staff. Senate comprises up to 21 members, and it is usual that + 50% are academic staff.	Yes
Hungary	Yes - Senate is the supreme body and representatives of lecturers and researchers must constitute a majority.	Yes
Ireland	No – academic staff comprise the majority of academic council, statutes determine numbers, composition, selection and appointment, but academic staff comprise only 25% of the governing authority	Yes
Italy	No - At least two thirds of the Academic Senate are drawn from academic staff with tenure. Whether the Board of Directors has a majority of external members depends on the university’s statutes which are approved by the senate.	Yes
Latvia	Yes - Minimum of 60% of the constitutional assembly are academic staff, with minimum of 20% students. Senate comprises 75% academic staff and a minimum of 25% students.	No
Lithuania	No - University council comprises 9 or 11 members, 4 or 5 appointed by the academic staff. Academic staff must comprise not less than 40% of Senate.	No
Luxembourg	No - Governing council has 7 members, but they are appointed not elected. The proportion of academic staff on the university council is between 48-65%	Yes

Table 3: Continued

Malta	No - academic staff representatives in the minority on the University Council and Senate.	Yes
Netherlands	No – academic staff are not in the majority on the supervisory council or senate	Yes
Poland	Yes – composition of senate is determined by university statute but academic staff must comprise at least 50% of the membership, but not exceed 60%.	Yes
Portugal	Yes – The general council comprises of 15 -35 members of which more than 50% are elected by the teachers and researchers.	Yes
Romania	Yes - Senate comprises 75% teaching and research staff and 25% students' representatives, and controls the activity of the Rector and Board of Directors though specialised committees.	Yes
Slovakia	Yes - senate has at least 15 members, students constitute not less than one third; academic teachers and research workers (and other employees, if the statute includes them in the academic community) comprise the remainder; the scientific board is appointed by the rector, between 25% -33% are external members .	Yes
Slovenia	No - Senate is elected by the senates of the faculties which are composed of university teachers and, if the statutes provide, by the scientific staff; students comprise 20% of Senate. Members of the University Board are drawn from representatives of the state, academic and other staff, and the students, in accordance with statutes.	Yes
Spain	Yes - a majority of Senate are catedráticos de universidad, profesores titulares de universidad and contratados doctors, but statutes require that the various sectors of the university community shall be represented. The governing council comprises 53 members representing the university community, reflecting the composition of the senate (a majority of which are academic staff), and up to three members of the social council not belonging to the university community.	Yes
Sweden	No - The board of governors consists of the chair and 14 other members, three of whom are elected by the teaching staff, and three by the students.	Yes
U.K.	No – pre1992 universities have governing bodies with a lay (i.e. external) majority; membership is specified in statutes and typically includes officers of the university, (lay and academic); co-opted members; elected staff members; and student representatives. Senate regulates and directs the university's academic work; membership consists of academic staff, and student representatives are also included. Senates vary from under 50 to over 100 members. Post1992 corporations have 12-24 members, including up to thirteen external members, up to two teachers nominated by the academic board and up to two may be students and at least one and not more than nine co-opted members who have experience in the provision of education. Academic Board is responsible for academic affairs, and normally consist of not more than 30 members, individuals in senior management positions, i.e. PVCs, deans of faculty, heads of departments, must make up at least 50% of the membership.	No

Analysis of this data in the UK context, reveals some similarities and differences. The pre-1992 institutions were established by royal charter, and hence their statutes, rather than national legislation define their internal governance structures. The normal governance model in pre-1992 UK universities is to have a University Council, on which academic staff are in the minority, and a Senate, on which academic staff are in the majority – very much like the model in other EU states. Until the mid-1980s, power was relatively evenly distributed between these bodies. However, the Jarratt Committee Report recommended that the role of the Council should change to enable them to “assert their responsibilities in governing their HEIs notably in respect of strategic plans to underpin academic decisions and structures which bring planning, resource allocation and accountability together into one corporate process linking academic, financial and physical planning”. The Jarratt Committee did not foresee any changes to the role of Senates, which were

“to continue to play their essential role in co-ordinating and endorsing detailed academic work and as the main forum for generating an academic view and giving advice on broad issues to Council”.⁴³ This shift in the role of Senates meant that they became passive advisory bodies, rather than active participants in policymaking. This shift from collegial decision-making to management has produced disputes between managers and governors, operating via the Council, and the academic community in Senate. Consequently, universities’ governing instruments, Statutes and Ordinances, etc. have become of great significance. The unequal power between these two bodies is in distinction to Universities elsewhere in the EU, in some of which the academic staff are in the majority, and in which the Senate (or its equivalent) plays a key role. For example, in Austria, the University Council elects the University Rector, but has to choose from a shortlist of three candidates nominated by the senate. Similarly, within the Czech Republic, the Senate approves the budget of the h.e.i., which is submitted by the Rector, and monitors the financial management of the h.e.i. and votes on proposals to nominate or dismiss the Rector. Such powers are not unusual in other EU states, but were largely unheard of within British academia until, very recently. As was discussed on page 12, in response to the research review chaired by Ferdinand von Prondzynski, the Higher Education Governance (Scotland) Act of 2016 altered and standardised the composition of university governing bodies in Scotland. These bodies now need to include 2 staff representatives elected by the staff; 1 representative nominated by the academic staff who are members of an academic trade union that has a connection with the institution; 2 representatives nominated by a students’ association of the institution from among the students of the institution. This is not identical to the more generous governance provision under the Irish Universities Act, (which allows: between 2 to 6 representatives elected from the academic staff who are professors; 3 to 5 representatives from the other academic staff; 1 to 3 representatives from the non-academic staff; 2 to 3 student representatives), however, it does represent a strengthening of staff involvement in governance, in accordance with the UNESCO 1997 *Recommendation*.

Tenure is separate from, but connected with, university governance, in that it guarantees staff involvement in governance. As McPherson and Schapiro make clear: “Faculty members with tenure will have more independence. Administrators need to rely more on persuasion and less on negative sanctions ... Tenure increases the ability of faculty collectively to shape institutional decisions, through their actions in departments, colleges, or the institution as a whole”.⁴⁴

Assessing the importance of tenure in circumstances such as this, De George makes the point that: “By giving a large number of the faculty tenure ... they are in a position to defend the academic freedom not only of themselves but of all the non-tenured members of the institution, as well as the academic freedom of faculty at other institutions”.⁴⁵ Similarly Menand points out that “Academic freedom not only protects sociology professors from the interference of trustees and public officials in the exercise of their jobs as teachers and scholars; it protects them from physics professors as well”.⁴⁶

As has been considered, the granting of tenure in UK universities was abolished by the 1988 Education Reform Act, and although it is possible (but highly unlikely) that there are still staff

⁴³ CVCP, (1985) *Report of the Steering Committee for Efficiency Studies in Universities* (‘The Jarratt Report’), London: CVCP, p. 36.

⁴⁴ M. McPherson, and M. Schapiro, (1999) “Tenure Issues in Higher Education”, in Devlin. M.E. Montgomery, J.W. (eds.), *Forum Strategy Series, Forum Futures 1999 Papers*, Washington: Forum Publishing, p. 81.

⁴⁵ R. De George, (2003) “Ethics, Academic Freedom and Academic Tenure”, *Journal of Academic Ethics*, 1(1): 18.

⁴⁶ L. Menand, (1996) “The Limits of Academic Freedom”, in *The Future of Academic Freedom*, (ed.) Menand, L., Chicago: University of Chicago Press, p. 17.

employed in UK universities, who were granted tenure before the act was passed, their number must be very small. Despite tenure's demise in the UK, it is still largely intact in most of the other EU nations, albeit possessing different forms. All the EU states, except the UK, offer some form of legislative protection for employment security. However, it is noticeable that in many EU states tenure is now becoming harder to attain and keep. For example, in Lithuania academic contracts are initially for five years, and are twice renewed before an indefinite contract is offered, so staff will need to have been employed for 15 years before tenure is possible; even then, tenured staff are still subject to five yearly evaluations, with the prospect of redundancy following a poor evaluation. A similar system (tenure after an initial five yearly contract with two reappointments) operates in Croatia, although once receiving tenure, academics acquire the status of public servants. Many EU nations (Austria, Germany, the Czech Republic, Denmark, Hungary, and Poland) offer tenured posts but require applicants to have a habilitation (post-doctoral lecturing qualification) as a pre-requisite for tenured professorial posts. Consequently, research staff in these nations who do not undertake teaching are often only offered fixed appointment posts. Tenure is still strong, however, in countries like France, in which staff can apply for a permanent position as *Maître de Conférences*, after earning their doctoral degree. Such a position is generally considered a permanent position as a civil servant, with all the ensuing advantages. To proceed beyond this, applicants are required to earn a *habilitation de diriger des recherches*, which corresponds to the habilitation in other higher education systems. Once applicants have attained the *habilitation*, they can apply for a full professorship.

Following reforms initiated in the last decade, some nations have altered the provision of tenure and the mode of governance. The 2009 Universities Act in Finland, for example, made universities corporate entities, and ended the system whereby professorial and other academic had contracts with the state (i.e. academics were civil servants), and inaugurated a new system in which academic staff were employed on contracts with their individual universities. At the same time the governance system was altered, and the power of Rector increased. In Finland, and elsewhere, universities that once had probation style tenure schemes, or a system based on habilitation, having now acquired additional employment and contractual powers (under the convenient soubriquet of "institutional autonomy"), are now starting to institute new career paths based on a system of "tenure track" positions (i.e. fixed-term contracts advertised with the prospect of a tenured, permanent, position at a higher level, subject to positive evaluation, but without renewed advertising of, and application for, the next position), as are operated in universities in the USA. Sciewer and Jehle⁴⁷ have identified "tenure track" systems in Belgium (KU Leuven), Finland (University of Helsinki), Germany (University of Freiburg, LMU Munich, University of Heidelberg), Italy (University of Milan), the Netherlands (Universities of Amsterdam, Leiden, Utrecht), and Sweden (University of Lund); it seems likely that such schemes will become more widespread in the future. Currently, academics in the universities of the EU states do have legally protected employment rights which are not enjoyed by their counterparts in the UK. However, changes to tenure protection in nations like Finland have taken place in recent years, and are likely to accelerate, with consequent deleterious effects on the employment rights of those concerned. Even if, as is likely, the employment contracts in nations like Italy and Sweden, move towards a "tenure-track" system like that used in the USA, nevertheless people on such contracts will enjoy greater employment rights than are available to their counterparts in the UK.

⁴⁷ H. Schiewer and C. Jehle, (2014) *Tenure and Tenure Track at LERU Universities: Models for Attractive Research Careers in Europe*, Leuven: LERU, p.11

7 International Protection for Academic Freedom

As has been shown, the central importance of academic freedom to universities has been recognised in the majority of the national constitutions and legislations of the individual E.U. countries. In addition to these national legal safeguards, protection also occurs at supra national level. Hence, the E.U. Charter of Fundamental Rights, which includes the declaration that “The arts and scientific research shall be free of constraint. Academic freedom shall be respected”⁴⁸ was incorporated into the 2008 E.U. Revision Treaty.⁴⁹ Similarly, at the Assembly debate on 30th June 2006, the 47 members of the Council of Europe approved a *Recommendation on Academic Freedom and University Autonomy* and exhorted the Council’s Committee of Ministers to “strengthen its work on academic freedom and university autonomy as a fundamental requirement of any democratic society”.⁵⁰

However the most detailed such recommendation was issued in 1997 by UNESCO which affirmed that “the right to education, teaching and research can only be fully enjoyed in an atmosphere of academic freedom ... the open communication of findings, hypotheses and opinions lies at the very heart of higher education and provides the strongest guarantee of the accuracy and objectivity of scholarship and research”.⁵¹ The *Recommendation concerning the Status of Higher-Education Teaching Personnel*, which was adopted by the UNESCO General Conference in November 1997, was the result of extensive consultation with academic and legal experts, NGOs including the International Labour Organisation, and with member states. The *Recommendation* is not a stand-alone document but is well-embedded in other international regulations - as Beiter points out “in its preamble the *Recommendation* refers to article 26 of the Universal Declaration of Human Rights ... article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights, to the Convention against Discrimination in Education, (and) to the UNESCO/International Labour Organisation Recommendation concerning the status of teachers”.⁵² Subsequently UNESCO increased the responsibilities of the Committee of Experts on the Application of the Recommendation concerning Teaching Personnel (CEART) to include monitoring of the implementation of the 1997 *Recommendation*. Legal instruments such as the UNESCO *Recommendation* have the judicial status of “soft law” which, Hillgenberg advises, are often concluded “because the states involved do not want a full-fledged treaty which, in the event of non-fulfilment, would result in a breach of international law”.⁵³ However the Director-General of UNESCO has argued that in UNESCO’s case: “Although recommendations are not binding on Member States, in the same way as conventions that have been ratified by them, it is the underlying idea of common solutions to common problems that usually leads to the incorporation of their principles and precepts into national legislation”.⁵⁴

⁴⁸ European Union (2000) *Charter of Fundamental Rights of the European Union*, 18th December 2000, p. 11.

⁴⁹ European Union (2008) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union *Official Journal of the European Union Volume 51*, 2008/C 115/01, Luxembourg: Office for Official Publications of the E.U., p. 337.

⁵⁰ Council of Europe (2006) *Recommendation 1762: Academic Freedom and University Autonomy*, 30th June 2006.

⁵¹ UNESCO (1997) Records of the General Conference, Twenty-ninth Session Paris, 21 October to 12 November 1997, *Volume I Resolutions*, Paris: UNESCO, p. 26.

⁵² K. Beiter, (2005) *The Protection of the Right to Education by International Law*, Leiden/Boston: Martinus Nijhoff Publishers, p. 278.

⁵³ H. Hillgenberg, (1999) “A Fresh Look at Soft Law”, *European Journal of International Law*, 10(3): 504.

⁵⁴ K. Matsuura, (2007) “Forward” in A. Yusuf (ed.) *Standard-setting in UNESCO Vol. I: Normative Action in Education, Science and Culture Essays in Commemoration of the Sixtieth Anniversary of UNESCO*, Paris/Leiden: UNESCO publishing/Martinus Nijhoff, p. 12.

UNESCO's *Recommendation* was the first international attempt to provide a detailed description of the necessary parameters for academic freedom, seek international support for their implementation, and provide a mode of redress (via reports to the CEART). The *Recommendation* specifies the following major critical elements which are considered crucial to academic freedom:

- Institutional Autonomy - "that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities" (para 17).
- Individual rights and freedoms - "the principle of academic freedom should be scrupulously observed. Higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies". (para 27).
- Self-governance and collegiality - "Higher-education teaching personnel should have the right and opportunity, ... to take part in the governing bodies ... while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution. ... Collegial decision-making should encompass decisions regarding the administration and determination of policies of higher education, curricula, research, extension work, the allocation of resources and other related activities" (para 31, 32).
- Tenure – "Tenure or its functional equivalent, where applicable, should be safeguarded as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body", (para. 46).

In 2009 Karran undertook a macro-level analysis of the degree of compliance with these elements by the constitution and legislative instruments in each of the (then) 27 EU states.⁵⁵ The legislative data was examined to see whether or not it was in compliance with the UNESCO *Recommendation* by addressing the following questions:

Are the universities legally autonomous?

Is academic freedom protected either in the constitution or in law?

Do the academic staff elect the majority of representatives to academic decision making bodies?

Does academic tenure exist?

For some countries, the legislation was unequivocal - for example Article 17: 6 of the Greek Constitution guarantees tenure by stating: "Professors of university level institutions shall not be dismissed prior to the lawful termination of their term of service, except in the cases of the substantive conditions provided by article 88 paragraph 4 and following a decision by a council constituted in its majority of highest judicial functionaries, as specified by law". Similarly, but in stark contrast, paragraph 203 of the U.K. 1988 Education Reform Act had the purpose of "securing that the statutes of each qualifying (h.e.) institution include a provision enabling an

⁵⁵ T. Karran, (2009b) "Academic Freedom in Europe: Reviewing UNESCO's *Recommendation*", *British Journal of Educational Studies*, 57(2): 191–215.

appropriate body, ... to dismiss any member of the academic staff by reason of redundancy". However, in other states (such as Spain), tenure is offered following some form of competition but may be subject to periodic review, hence the nation concerned can be said to be in *qualified* rather than *absolute* compliance with the UNESCO *Recommendation*. Similarly, in Finland, academic staff are not in the majority on the University Board, but all members of the university board are appointed by the University Senate, which suggests *qualified* compliance with the UNESCO *Recommendation* on academic governance, as the majority of board members are either elected from, or appointed by, the academic staff. In addition, difficulties in adjudging compliance arise from the UNESCO *Recommendation* sometimes lacking clarity – for example paragraph 18 states that “the nature of institutional autonomy may vary according to the type of establishment involved” (but fails to specify what is required for compliance), while paragraph 46 states that “Security of employment in the profession, including tenure or its *functional equivalent*, where applicable, should be safeguarded” (my emphasis). For these reasons, on the basis of the relevant legislation, each nation was adjudged to be in **compliance**, **qualified compliance**, or **non-compliance** with the UNESCO *Recommendation*’s four critical elements. The different nations were then ranked in accordance with their degree of compliance with the four elements of the UNESCO *Recommendation*, and the results are shown in Table 4 below (the Appendix Tables contain illustrative examples demonstrating the approach on pages 35-37).

As can be seen in the top half of the table, only 7 of the (then) 27 EU states were fully compliant with all four elements, and ranked below them were a further 8 nations which were compliant with three elements, and in qualified compliance with the fourth. Interestingly, it is notable that this largely compliant cohort includes those states which have, until relatively recently, been under totalitarian control (e.g. Bulgaria, Hungary, Poland, etc.). These nations have only recently re-written their constitutions and their higher education legislation, and it is possible that their experiences of undemocratic rule have led them to better appreciate the benefits of academic freedom, both to the higher education sector, and society at large. Nevertheless in the majority of states, there is either complete or qualified compliance with the majority of UNESCO’s *Recommendation*.

At the bottom of the table is the UK, in which compliance exists with respect to autonomy – all pre-1992 universities have their autonomy protected by their royal charters, while the post-1992 institutions are designated as higher education corporations. However the UK is non-compliant with respect to protecting academic freedom in law, and also with respect to a majoritarian role for academic staff in governance, while tenure was abolished in the UK, nearly a decade before the UNESCO *Recommendation* was signed by Clair Short, the (then) Secretary of State for International Development, on behalf of the UK government.

Table 4: UNESCO “Top Down” Analysis: Summary Table

Nation	Are the institutions legally autonomous?	Is academic freedom protected either in the constitution or in law?	Do the academic staff elect the majority of representatives to decision making bodies?	Does academic tenure exist?
Bulgaria	Compliance	Compliance	Compliance	Compliance
Czech Republic	Compliance	Compliance	Compliance	Compliance
Finland	Compliance	Compliance	Compliance	Compliance
Greece	Compliance	Compliance	Compliance	Compliance
Poland	Compliance	Compliance	Compliance	Compliance
Slovenia	Compliance	Compliance	Compliance	Compliance
Spain	Compliance	Compliance	Compliance	Compliance
Hungary	Compliance	Qualified Compliance	Compliance	Compliance
Ireland	Compliance	Compliance	Qualified Compliance	Compliance
Italy	Compliance	Compliance	Compliance	Qualified Compliance
Latvia	Compliance	Compliance	Compliance	Qualified Compliance
Lithuania	Compliance	Compliance	Compliance	Qualified Compliance
Portugal	Compliance	Qualified Compliance	Compliance	Compliance
Romania	Compliance	Qualified Compliance	Compliance	Compliance
Slovakia	Compliance	Compliance	Compliance	Qualified Compliance
Austria	Compliance	Compliance	Qualified Compliance	Qualified Compliance
Belgium	Compliance	Qualified compliance	Qualified Compliance	Compliance
Estonia	Compliance	Qualified Compliance	Compliance	Qualified Compliance
France	Compliance	Compliance	Non Compliance	Qualified Compliance
Sweden	Compliance	Qualified Compliance	Non Compliance	Compliance
Germany	Compliance	Qualified Compliance	Qualified Compliance	Qualified Compliance
Luxembourg	Compliance	Qualified Compliance	Qualified Compliance	Qualified Compliance
Netherlands	Compliance	Qualified Compliance	Non Compliance	Qualified Compliance
Cyprus	Non Compliance	Qualified compliance	Non Compliance	Compliance
Malta	Compliance	Non Compliance	Qualified Compliance	Non Compliance
Denmark	Non Compliance	Qualified Compliance	Non Compliance	Qualified Compliance
U.K.	Compliance	Non Compliance	Non Compliance	Non Compliance

The method adopted in this 2009 study was very simple to apply, as it was a ‘top-down’ approach utilising single benchmarks for individual elements. Consequently, it did not address other significant international agreements and their operation across the EU countries, or the technical minutiae of national legislation, and the operation of such laws in individual EU states. Moreover this approach only enables individual states to be compared (and ranked) with each other, with respect to their protection for academic freedom, thus the measures derived can be described as nominal or ordinal. In essence, this approach was norm referenced, and could enable an assessment of whether the protection for academic freedom in one nation is greater than that in another. However, this approach does not allow the derivation of individual scores, which would show how closely a nation comes to meeting all its commitments, or whether the level of protection over time has altered, as this could only be undertaken with an interval measurement and criterion referencing. Such an interval measure, derived from a ‘bottom up’ approach which embraces a wide set of criterion referenced parameters, would make it possible to see (for

example) if any nation scored 100% in terms of its protection for academic freedom, or show how the level of protection in individual nations has altered over time, or what the average score was for a group of nations, which was not possible with the previous nominal norm-referenced measure.

To overcome these problems, a new 'bottom up' analysis⁵⁶ was attempted which includes the measures utilized in previous studies, such as (for example) the granting of tenure but also utilises additional international and inter-related measures, and thereby provides a much clearer and richer picture of the legal protection for academic freedom within the contemporary European Union states. For example, previous studies examined the process of appointing the Rector, but did not examine the process for dismissing the Rector, or the staff input into appointment/dismissal procedures for middle managers (Deans and Departmental Heads). This new study addresses these elements but also examined (inter alia) whether or not collegial bodies (like Senate) are legislated for and, if so, how are they composed; moreover, if these bodies exist, what is their role in determining university strategy. Furthermore, this subsequent study includes an additional important dimension - the ratification by EU states of international agreements that are supportive of the protection of academic freedom

Previous analyses have examined compliance with the UNESCO *Recommendation*, but did not include other international legal instruments. This broader analysis includes the following European and International legal instruments. At European level, the European Convention on Human Rights offers indirect protection, as Article 10 specifies that "Everyone has the right to freedom of expression".⁵⁷ At global level, the International Covenant on Civil and Political Rights (ICCPR) was adopted in December 1966, and provides "the right to hold opinions without interference" and "the right to freedom of expression". Both these rights can be seen to be necessary (though not sufficient) for academic freedom. Article 2 of the same Covenant requires that "each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant" and that "each State Party to the present Covenant undertakes to take the necessary steps, ... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant".⁵⁸ Assessing Article 2, Sepúlveda concludes that "the duties to 'respect' and 'ensure' ... imply ... the duty to take positive actions necessary to ensure those rights".⁵⁹ Hence the ICCPR, like the 1st Amendment of the US Constitution on freedom of speech, protects academic freedom indirectly, while becoming a party to the Covenant by states who are not yet compliant, imposes on them the duty to introduce legislation to achieve compliance. The Optional Protocol to the ICCPR established an individual complaints mechanism for the ICCPR, under which parties agree to recognise the competence of the UN Human Rights Committee to consider complaints from individuals who claim that their rights under the Covenant have been violated.

⁵⁶ The measures described in this section of the report are taken from: Terence Karran, Klaus Beiter, Kwado Appiagyeyi-Atua, "Measuring Academic Freedom in Europe: A Criterion Referenced Approach" forthcoming in *Policy Reviews in Higher Education*.

⁵⁷ European Court of Human Rights, (2010) *European Convention for the Protection of Human Rights and Fundamental Freedoms*, (as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13), Strasbourg: Council of Europe, p. 11.

⁵⁸ United Nations, (1966) "International Covenant on Civil and Political Rights", *United Nations Treaty Series*, Vol. 993, No. 14668, New York: UN, p. 178, 173

⁵⁹ M. Sepúlveda, (2003) *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*, Antwerp: Intersentia, p. 126.

The second international Covenant included in this broader appraisal is the International Covenant on Economic, Social Cultural Rights (ICESCR) also adopted in 1966. Article 15(3) calls on nations to “respect the freedom indispensable for scientific research and creative activity”.⁶⁰ Moreover, in General Comment 3 (paragraph 10) the ICESCR states: “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. ... If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*”. Academic freedom is considered a core obligation under the right to education (Article 13) - in *General Comment 13: Right to Education*, the ICESCR states: “it is appropriate and necessary for the Committee to make some observations about academic freedom. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction”. The Committee adds, “violations of article 13 include ... the denial of academic freedom of staff and students” (para. 59). In terms of implementation, the ICESCR (article 2(1)) requires a state to “take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.⁶¹

Hence the ICESCR firstly, recognises academic freedom as a core obligation, and secondly requires states’ parties to adopt legislative measures to recognise this right. As with the ICCPR, the ICESCR’s Optional Protocol creates an individual complaints mechanism to consider complaints from individuals or groups who claim that their rights under the Covenant have been violated. In toto this ‘bottom up’ measurement method utilizes a total of 37 different legislative elements (these are shown in detail in Table 5 below) for each EU nation state which enables the calculation of a composite measure of the legal protection for academic freedom out of 100%, and comprises the sum of the scores for five dimensions, each worth 20%. These dimensions are: academic freedom for teaching and for research; institutional autonomy; self-governance; academic tenure; and adherence to international agreements.

The scores for the five elements and the overall score are given in Table 6 below.

⁶⁰ United Nations, (1966) “International Covenant on Economic, Social and Cultural Rights”, *United Nations Treaty Series*, Vol. 993, No. 14531, New York: UN, p. 9.

⁶¹ Economic and Social Council of UNESCO (2002) “Right to Education: Scope and Implementation” *General Comment 13 on the right to education, (Art. 13 of the International Covenant on Economic, Social and Cultural Rights)*, Paris: UNESCO, p. 12, 59, 15.

Table 5: Measures used for Composite “Bottom-Up” Analysis

Description of Measure	% Weighting
Measure (1): Legal and Constitutional Protection for teaching and research	20
Measure (2): Legal and Constitutional provision for institutional autonomy	4
Composite Measure: Internal operation of autonomy:	8
(3) Rector’s Appointment	1
(4) Internal Structures	1
(5) State Funding	1
(6) Commissioned Research	1
(7) Staff Appointments	2
(8) Student Recruitment	1
(9) Degree Accreditation	1
Measure (10): State regulation of university autonomy	4
Measure (11): Private sector constraints on autonomy	4
Measure (12): Legal provision for self-governance:	2
Composite Measure: Operational self-governance:	12
(13) Existence of Collegial Bodies	1
(14) Composition of Collegial Bodies	2
(15) Composition of Senate	3
(16) Strategic Decision Making	6
Composite Measure: Staff powers of appointment and dismissal	6
(17) Dean’s/Head of Department’s Credentials	1
(18) Appointing the Dean/Head of Department	1
(19) Dismissing the Dean/Head of Department	1
(20) Rector’s Credentials	1
(21) Appointing the Rector	1
(22) Dismissing the Rector	1
Composite Measure: Protection for academic tenure and promotion:	20
(23) <i>De jure</i> Protection: Duration of contracts	4
(24) <i>De facto</i> protection: Duration of contracts	4
(25) Provision for contract termination in h.e. legislation	3
(26) Provision for contract termination in other legislation	3
(27) The provision for academic advancement	6
Composite Measure: Constitutional protection for academic freedom	10
(28) Provision on freedom of speech	2
(29) Provision on academic freedom	2
(30) Reference to institutional autonomy	1
(31) Reference to self-governance	1
(32) Robustness of provisions	4
Composite Measure: International protection for academic freedom	10
(33) ICCPR (free speech provision)	1.5
(34) OP-ICCPR (complaints procedure before UN)	1.5
(35) ICESCR (right to education provision)	1.5
(36) OP-ICESCR (complaints procedure before UN)	1.5
(37) ECHR (free speech provision)	4

Table 6: “Bottom-Up” Analysis: Summary Table of Results

Nation	Total	Academic Freedom in Legislation	Institutional Autonomy in Legislation	Self-Governance in Legislation	Job Security	Constitution & International Agreements
Croatia	69.0	20.0	13.0	14.0	4.5	17.5
Spain	66.5	15.0	8.5	12.0	11.0	20.0
Bulgaria	65.5	15.0	9.0	14.5	9.5	17.5
Germany	64.5	17.5	9.25	12.25	8.0	17.5
Austria	63.5	20.0	12.0	9.0	5.0	17.5
France	63.0	20.0	7.0	6.5	15.5	14.0
Portugal	61.0	10.0	9.0	11.5	10.5	20.0
Slovakia	60.5	20.0	8.5	12.5	1.5	18.0
Latvia	60.0	20.0	10.0	10.5	3.0	16.5
Lithuania	59.5	20.0	11.0	6.0	5.0	17.5
Italy	57.5	10.0	9.0	8.0	11.5	19.0
Greece	55.5	5.0	4.5	10.5	20.0	15.5
Finland	55.0	15.0	15.0	3.0	3.0	19.0
Poland	54.5	10.0	9.5	12.5	5.0	17.5
Romania	53.5	15.0	8.0	12.5	5.5	12.5
Cyprus	53.0	10.0	8.0	12.5	10.0	12.5
Ireland	52.5	15.0	12.5	3.0	10.5	11.5
Slovenia	52.5	5.0	8.5	11.0	10.5	17.5
Czech Republic	51.5	15.0	8.0	11.0	2.0	15.5
Belgium	49.25	10.0	8.5	7.5	9.25	14.0
Luxemburg	47.5	15.0	9.0	6.0	3.5	14.0
Netherlands	44.0	10.0	9.0	5.5	3.5	12.5
Sweden	39.5	5.0	6.5	3.0	8.5	16.5
Denmark	38.5	5.0	9.0	6.5	5.5	12.5
Hungary	36.0	5.0	2.5	9.0	8.0	11.5
Malta	36.0	0.0	10.5	6.0	8.5	11.0
U.K.	35.0	5.0	13.5	0.0	5.5	11.0
Estonia	34.0	0.0	10.5	4.5	1.5	17.5
Mean (St Dev)	52.8 (10.5)	11.9 (6.3)	9.3 (2.6)	8.6 (3.9)	7.3 (4.3)	15.6 (2.9)

This study is the most comprehensive and concise attempt to measure the *de jure* protection for academic freedom in the EU states, encompassing very detailed data from constitutions, legislative instruments and international agreements. The previous study, utilising the UNESCO framework, showed some that nations which had not long emerged from totalitarian rule (the ex-USSR and Warsaw Pact nations and Spain), tended to score higher than the other EU nations. This new analysis shows no discernible pattern between the nations in this group, or possible patterns between states that might be considered to have some symmetry owing to shared history, such as (inter alia) the Nordic states in the sample. Nevertheless, the ranking of the EU nations shows some symmetry with the previous study in which (for example) both Denmark and the UK languished near the bottom of the table. The UK has an aggregate score of 35%, which compares with an EU average of 52.8%, and is virtually half that of Croatia, which sits at the top of the table with 69%. Indeed, the data in this table for the UK is consistent with all those tables previously used, in that it shows the UK to be, yet, again, among the worst nations in Europe with respect to the *de jure* protection for academic freedom. In the rest of the report the *de facto* protection is assessed.

8 The UCU Academic Freedom Survey

In 2013, the lead author was awarded an EU funded two year research grant of €299,558.40 to bring a Research Fellow, Dr. Klaus Beiter, to the University of Lincoln to undertake a study of academic freedom in the European Union. A major plank of this work was the creation of an on-line survey on academic freedom. This survey was piloted in the University of Lincoln, which enabled possible problems to be eliminated. The corrected survey was then made available for online completion via the Survey-Monkey website. The survey had four sections: Academic Freedom in your Department/Faculty, Institution and Nation (15 questions); Your Personal Experiences of Direct Challenges to Academic Freedom (14 questions); Some Questions About You (22 questions); About Your Academic Work and Responsibilities (18 questions). Using an online survey delivered via Survey-Monkey in this way has various distinct advantages.⁶²

- it can reach a large number of intended participants very easily;
- it expedites the data collection process, as respondents can fill in the survey from a remote server;
- data is collected on a remote server and so guarantees anonymity, which complied with the EU ethical guidelines and requirements for the research;
- the Survey-Monkey website provides various analytical tools for generating frequencies for each question;
- participants' responses can be automatically stored in a database, which means that the data can be downloaded using excel or exported into SPSS, thus eliminating the task of manually inputting each individual data sheet, and the coding of a large number of questionnaires;
- in terms of time and money, this method is quick and highly cost effective.

Once the survey was ready, a personal printed letter was sent to the Rector of every university in all of the EU states, explaining the purpose of the study, indicating the URL to enable the survey to be completed online, and requesting that an email be sent to all academic staff members at their institution, inviting them to complete the survey. Subsequently, contact was made with Education International, a global union federation of teachers' trade unions comprising 401 member organisations in 172 countries and which represents over 32 million education personnel, and to which the majority of higher educational trade unions and professional associations, such as the UCU, belong. Educational International agreed to send a letter to all their h.e. member organisations in the EU, explaining the purpose of the study, indicating the URL to enable the survey to be completed online, and requesting that an email be sent to all academic members of their respective organisations, with a request to complete the survey. Finally, websites of the largest universities in each EU nation were used to identify the names and email addresses of all academic staff, who were then sent a personal email, inviting them to participate in the survey. This work is still ongoing, to try to increase the response rate in the smaller EU states. At present the total number of responses to the European survey exceeds 5300, of which circa 500 are from the United Kingdom. The sample size is such that, it represents an accurate snap-shot of the state of academic freedom in the majority of EU states, and can therefore act as a good comparator against which to bench mark the equivalent data obtained from UCU staff in the UK. The success of this survey, as a research instrument for gathering data, was such that it made sense to adopt a similar approach, albeit with bespoke elements, to gather data from UCU members. Consequently, after discussions with Rob Copeland (UCU Policy Officer) and Matt

⁶² For a comparison of the relative merits of using email and web-based surveys, when compared with postal surveys and face-to-face and telephone interviews, see A. Bryman, (2016) *Social Research Methods*, (5th Ed.). Oxford: OUP, p. 236

Waddup (UCU's Head of Policy and Campaigns), it was decided to retain the basic structure of the previous survey, but in a slimmed down form, by removing some questions that were less relevant to the British context, as it was thought that this would help to increase the response rate. Furthermore, some of the questions were slightly re-formatted, while others were added to reflect the British context (for example, on ethnicity), and also to address the UCU's ongoing work and policy concerns in this area. Response rates can be influenced by questionnaire design, readability, layout and length,⁶³ as well as time constraints, bad timing, work load and low respondent motivation.⁶⁴ Hence, as with the European survey, these were all taken into consideration in the UCU study as far as possible. In addition, it was agreed that people completing the survey would have the chance to have their names and email addresses entered into prize draw, with the possibility of winning John Lewis vouchers worth £100, as previous studies⁶⁵ had shown that such strategies can increase survey response rates.

The resultant questionnaire, like the previous European survey, had four sections as follows: Section A - Academic Freedom in your Department/Faculty and your Institution (10 questions); Section B - Your Personal Experiences of Direct Challenges to Academic Freedom (12 questions); Section C - Some Questions About You (15 questions); Section D - Union Membership and Any Other Comments (3 questions). (The on-line survey appears in the Appendix Tables, on pages 38-56) Once completed and approved, the survey was uploaded onto the Survey-Gizmo website, for which UCU has a subscription. Survey Gizmo has comparable functionality and similar advantages to those described for Survey Monkey above. The survey was launched on December 14th 2016, when the following email was sent to all UCU members:

Dear Colleague,

The UCU's Education Committee is undertaking research into the current status of, and protection for, academic freedom in UK higher education, with a view to making a report to the UCU Congress in 2017.

We are working with Professor Terence Karran (University of Lincoln) on this issue, including a survey of members' personal experience regarding the protection of academic freedom.

Your views are crucial to the union's ongoing work on improving the protection for academic freedom. So, please help us by filling in the short survey here:

<https://www.surveygizmo.com/s3/3222927/Academic-Freedom>

Yours faithfully,

Sally Hunt, UCU General Secretary

This initial email resulted in 1470 responses by 5th January 2017 and, on 12th January 2017, a reminder email was sent to UCU members. This had the effect of increasing the number of responses substantially, such that when it was decided to close the survey, in order to analyse the data, there were 2340 responses from UCU members. As Sánchez-Fernández et al., point out, the use of web-based surveys has "experienced phenomenal growth in recent years" and, despite the expectations that such surveys would surpass those of traditional survey methods (such as postal or telephone surveys), response rates have instead "fallen in an alarming manner". They ascribe this fall, at least in part, to the "excessive number of surveys that individuals are requested

⁶³ W. Schofield, (2006) "Survey Sampling", in Sapsford, R., and Jupp, V., (eds.) *Data Collection and Analysis*. 2nd edition London: Sage/OUP, 26-55

⁶⁴ A. Oppenheim, (2000) *Questionnaire Design, Interviewing and Attitude Measurement*, London: Continuum, 103-8.

⁶⁵ K. Ralston, R. Connelly, S. Murray, C. Playford, (2010) "Methods in Survey Design to Improve Response Rates: A Review of the Empirical Evidence", School of Applied Social Science *Working Paper*, University of Edinburgh.

to complete”.⁶⁶ The number of requests to complete web-based surveys received by academics (from the UCU and elsewhere) is possibly a reason for the (relatively) modest response to the survey. During the week in which the first email was sent out advising UCU members about the academic freedom survey, they also received emails, from the UCU, requesting them to complete surveys on other subjects; moreover, the proximity of the Christmas holidays may also have had an impact in damping down the initial response rate.

Measured against the 104,285 membership of the UCU, the response rate of 2340 seems relatively low. However, the membership includes not only h.e academics, and f.e. lecturers, but also (inter alia) trainers, instructors, researchers, managers, administrators, computer staff, librarians and postgraduates in universities, colleges, prisons, adult education and training organisations across the UK. Within the total membership of 104285, 78058 were employed as Academics, Lecturers or Tutors. It is this group for whom academic freedom is crucially important in enabling them to successfully undertake their academic, scholastic and research duties. Although it is impossible to check, it is likely that other UCU members, who may have received an invitation but who work as librarians, or in learning support or computing, would be less likely to complete the survey, as they may perceive academic freedom to be less relevant to their job roles. Data cleaning to remove responses with insufficient completion rates (deemed to be <75% survey completion) resulted in the exclusion of 5 responses and a final dataset of 2335.

Statistically, a sample of circa 2330 would be required in order to make meaningful statements about a population sized 78058, with a 2% margin of error with a 95% confidence level. In this instance the actual response for the survey was 2335, i.e. just above this threshold value.

Margins of error refer to the plus-or-minus figure usually reported in newspaper opinion poll results. For example, if a margin of error of 2% is used and 47% percent of the sample picks an answer, you can be “sure” that if you had asked the question to the entire population, between 45% (47-2) and 49% (47+2) would have picked that answer. The confidence level indicates the certainty of the margin of error. It is expressed as a percentage and represents how often the true percentage of the population who would pick an answer that lies within the margin of error. With a 95% confidence level, there is 1 chance in 20 that we would get a false positive result. In this analysis, the significance level for the tests was set at 5%; however, where the significance of a statistical test is greater than 5% (for example, where it is 1%), this will be reported. The decision to use a 5% (as opposed to a 1% or 10% significance level) is arbitrary but as Gall et al.⁶⁷ and Cowles and Davis,⁶⁸ report, a 5% significance level is invariably used in studies of this kind, and across the social sciences.

Similarly, the statistical tests that are routinely employed in this study (ANOVA and Chi Square) are habitually used in analyses of social data of this kind. As required for the different questions in the survey, One-way ANOVA tests were carried out to determine the F statistic and the statistical significance of the difference between the means of the two independent groups, that is, between the UCU members and the EU academics. As appropriate, following Salkind,⁶⁹ ANOVA was used to compare the mean values of variables of the two independent (UCU and EU) samples. In line with standard statistical practice, the null hypothesis is accepted if there is no statistical difference

⁶⁶ J. Sánchez-Fernández, F. Muñoz-Leiva, F. Montoro-Ríos, (2012) “Improving retention rate and response quality in Web-based surveys”, *Computers in Human Behavior*, 28(2): 507

⁶⁷ M. Gall, J. Gall, & W. Borg, (2007) *Educational research: An introduction*, Boston, MA: Pearson Education

⁶⁸ M. Cowles & C. Davis, (1982) “On the origins of the .05 level of statistical significance”, *American Psychologist*, 37(5) 553-558

⁶⁹ N. Salkind, (2004) “Two groups too many? Try analysis of variance”, in (eds.) L. Shaw, M. Crouppen, D. Axelsen, & L. Lech, *Statistics for people who think they hate statistics*, Thousand Oaks, CA: Sage Publications Inc, pp. 193-211.

between the two means of the two groups, where $p > 0.05$. The null hypothesis is rejected if $p < 0.05$. ANOVA does have limitations, in that it assumes that the variables are normally distributed. Despite this limitation, ANOVA can still be used even if the data is not normally distributed, as it is not very sensitive to moderate deviations from normality. Studies by Harwell et al.⁷⁰ and Lix et al.⁷¹ have shown that results, using a variety of non-normal distributions, were not affected very much by this violation of the assumption of normality. Hence in this analysis, standard ANOVA techniques will be used; where the underlying assumptions of the ANOVA test are jeopardized, recourse will be made to Welch's correction⁷², which has been shown by Tomarken and Serlin⁷³ to be most effective. Additionally, where appropriate, the non-parametric Chi Squared test has been employed in this study. An advantage of Chi-Square over One-way ANOVA is that whereas the One-way ANOVA is based on the comparison of means between the two independent groups, Chi-Square compares the actual counts within the categories and compares this with the expected data that would be obtained according to a specific hypothesis. This test was appropriate to analyse categorical data where data had been counted and divided into categories according to the two groups, UCU and EU respondents. As necessary, the Chi-Square test was used to compare responses of the two groups to individual questions thereby determining whether there exists a significant difference between the groups for categorical variables. As some respondents deliberately omitted some questions, the sample may be subject to slight variation between questions. However, in sum, the statistical techniques used in this study, and the setting of the relevant parameters (sample size, confidence levels, etc.) are in line with standard social science research practice. The data gathered by the survey will be addressed in accordance with the differing sections of the survey used to gather it.

9 Academic Freedom in Respondents' Departments, Faculties and Institutions

The data from the UCU survey, and also from the European survey (less the responses from the UK, to avoid any possibility of double counting) were combined in one large 'working' Excel dataset file, which was then input into SPSS (Statistical Package for the Social Sciences) and used for all the statistical tests. SPSS is habitually used in social analyses of this kind, not only in academia, but also in business; for example, it is used by insurance companies to calculate mortality rates and assess insurance risks. The first part of the survey looked at academic freedom at institutional and departmental levels.

Question 1 was a free text question which asked: From your own perspective, please write in the comment box below what academic freedom means to you. This question was designed to provide an easy introduction to the survey and explicitly demonstrate that we wished to hear what people had to say on the topic. 2204 respondents answered this question, generating a huge volume of text (76,000 words). Constraints of time made it impossible to analyse this textual data in any meaningful way, however, Table 7 shows the first ten such comments by way of illustration, and the full data is available for scrutiny (on request) on pages 57-164 of the Appendix Tables. To protect the identity of some respondents, their comments were abridged and/or anonymised.

⁷⁰ M. Harwell, E. Rubinstein, W. Hayes & C. Olds, (1992) "Summarising Monte Carlo results in methodological research: the One and Two factor fixed effects ANOVA cases", *Journal of Education Statistics*, 17(4): 315-339.

⁷¹ L. Lix, J. Keselman, & H. Keselman, (1996) "Consequences of assumption violations revisited: A quantitative review of alternatives to the one-way analysis of variance F test", *Review of Educational Research*, 66(4): 579-61.

⁷² B. Welch, (1951) 'On the Comparison of Several Mean Values: An Alternative Approach', *Biometrika*, 38(3/4): 330-336

⁷³ A. Tomarken, & R. Serlin, (1986) 'Comparison of ANOVA alternatives under variance heterogeneity and specific noncentrality structures', *Psychological Bulletin*, 99(1): 90-99

Table 7: Example of Comments: “What Does Academic Freedom Mean to You?”

Response
The freedom to express opinions, pose theories or hypotheses and investigate issues without constraints.
That my University will uphold and not ride roughshod over its own Statutes, which should protect the right of an academic to challenge established wisdom, and propose controversial and unpopular ideas, without fear of disciplinary action. I have first-hand experience that this is not the case in my University.
The ability to undertake scholarly work or public/scholarly dissemination of that work on any topic of your choosing, without institutional censorship.
Freedom to do self-directed research
The right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies.
The right to express my views through whatever medium, my views on what I believe to be right on the basis of evidence I have my opinions either on my academic subject or any subject of my choosing.
The freedom to research and attempt to publish any areas I feel, as an academic, are worthy of research without implicit or explicit pressure to cease, amend, or overlook the relevant findings.
Freedom to research what I find interesting and rewarding for both me and society without being constrained by the current paradigm.
The freedom to pursue and present research untrammelled by commercial or political considerations or the whims of fashion.
That I can structure and determine the content of modules for which I'm given responsibility; that I can undertake and publish research in my field without the direction of that research being dictated by any other party

Question 2: Does the institution in which you work have an official policy documents outlining the protection for academic freedom?

Table 8 below provides the breakdown of responses for question 2. As can be seen, only 15% of respondents, in both the UCU and the EU cohorts, knew that there was an official policy document for academic freedom in their institutions. The relative numbers of respondents reporting that no such document existed in their university demonstrate that the existence of such documents is less pervasive in the EU nations, than in the UK. One possible reason for this could lie in the fact that, as was demonstrated in the earlier report on *de jure* protection, there is stronger constitutional and legal protection for academic freedom in the EU nations than in the UK; hence institutional documents may be unnecessary. What is startling about the figures in the table is the general level of ignorance, in both groups (but which is particularly marked in the UK), concerning whether their institution had an official policy document relating to academic freedom. Given the assumed importance of academic freedom, it is surprising that 7 out of 10 UK academics who responded to this question had no idea whether or not their university had a policy on academic freedom. The profile of responses displayed in table 1, and the resultant Chi Squared statistic, demonstrates that the differences in the responses between the UCU and EU cohorts are statistically significant.

Table 8: Existence of official institutional policy document for academic freedom

Response	% EU	% UCU
No	24.1	13.1
Yes	15.3	15.5
I don't know	60.6	71.5
All (n=6521)	100 (n=4194)	100 (n=2327)
$\chi^2 = 118.436$ 2 df Significant at 1% Level		

Question 3: To what extent do you believe that academic freedom is protected in your institution, on the scale of 1 (very low protection) to 9 (very high protection)?

Question 3 asked respondents to score the level of protection for academic freedom within their institution on a scale of 1 (very low) to 9 (very high); the results are shown in table 9.1 below. As can be seen, there are stark differences between the results for the two cohorts. 10% of the UCU cohort reported the lowest level of protection possible, which was three times that reported by EU respondents. At the other end of the scale, the positions are reversed, in that only 3% of UCU members believed that the protection for academic freedom in their institution was very high, compared with 9% in the EU nations.

Table 9.1: Level of protection for academic freedom in respondents' institutions

Response	% EU	% UCU
1 = Very Low Level of Protection	3.4	10.9
2	4.0	7.4
3	5.6	9.4
4	6.3	9.9
5= Average Level of Protection	20.6	30.7
6	11.0	9.9
7	20.8	11.3
8	18.5	7.5
9 = Very High Level of Protection	9.9	3.0
All (n=6483)	100 (n=4172)	100 (n=2311)
One Way ANOVA: F =593.854 1 df Significant at 1% Level		

Calculating the mean scores reveals similar differences – the mean scale score for UCU members was 4.7 out of 9, i.e. below the central scale point, while that for the EU was 6.0, i.e. above the central scale point. Similarly, collapsing the nine point scale into three categories produces an enhanced picture of the difference between the EU and UCU data, as is shown in table 9.2 below. Nearly half of the EU respondents believe that there is an above average level of protection for academic freedom in their institutions, while half of all UCU respondents consider the level of protection to be average. The proportion of UCU members who consider the level of protection to be generally low is more than twice that of their EU counterparts. The calculation of the χ^2 value for the aggregated raw data for these collapsed categories (which is necessary, as χ^2 cannot be calculated from percentages), shows these differences between the UCU and EU respondents to be significant at the 1% level

Table 9.2: Level of protection for academic freedom in respondents’ institutions: collapsed categories

Response	% EU	% UCU
Generally Low Level of Protection Categories 1 to 3	12.9	27.7
Average Level of Protection Categories 4 to 6	37.9	50.5
Generally High Level of Protection Categories 7 to 9	49.2	21.8
All (n=6483)	100 (n=4172)	100 (n=2311)
$\chi^2 = 515.282$ 2 df Significant at 1% Level		

These tables demonstrate that the generally low level of constitutional and legal protection for academic freedom in the UK, as was revealed by the *de jure* analysis, is mirrored by, rather than mitigated by, the cultural commitment to academic freedom that exists within universities at departmental level. This difference between the UK and the other nations of Europe is both striking and profound. A decade ago, when the first author initially examined the legal protection for academic freedom in EU, and revealed the comparatively parlous state of the UK, he was rebuked by Professor Conor Gearty, director of the Centre for the Study of Human Rights at the London School of Economics. Gearty⁷⁴ made the point that it was important to distinguish between formal constitutional law and how it was implemented, and stated: “Practice on the ground often reveals a stronger cultural commitment to freedom than is apparent from perusal of the laws.” The information in tables 9.1 and 9.2 would suggest that, in relation to the UK at least, he is in error.

⁷⁴ C. Gearty, (2007) “UK Lowest on Freedom List”, *Times Higher Education*, September 28th

Question 4: Does the department in which you work have an official policy documents outlining the protection for academic freedom?

Table 10: Existence of official departmental policy document for academic freedom

Response	% EU	% UCU
No	34.0	37.5
Yes	13.6	2.3
I don't know	52.3	60.2
All (n=6617)	100 (n=4302)	100 (n=2315)
$\chi^2 = 219.9$ 2 df Significant at 1% Level		

The results of the responses to question 4 (which follows on from question 2, which asked about the existence of an institutional policy document, as reported in table 8) are given in table 10 above. The results show that the same proportion (just over a third) of the UCU and EU cohorts report that they have no departmental policy document for academic freedom. However, a greater proportion of EU than UCU respondents report that such a document exists in their departments. The level of ignorance about whether such a document exists is similar for EU and UCU cohorts and, while still appalling (less than 50% of respondents knew whether such a document existed), is not quite as bad as was reported for institutional documents on academic freedom. As with the results in table 8, table 10 shows that the differences between the UCU and EU cohorts are significant; moreover the χ^2 value in table 10 (219.9) is greater than in table 8 (118.4) suggesting a more significant difference, but this inference has limited value as the differences between the χ^2 values could reflect differences between the samples, as people may have answered question 2, but not question 4, and vice versa.

Question 5: To what extent do you believe that academic freedom is protected within the academic unit in which you work, on the scale of 1 (very low) to 9 (very high)?

The results of the responses to question 5 (which follows on from question 3, that asked about the level of protection at institutional level, and which are reported in table 2.1) are given in table 11.1 below. As can be seen clearly, at the lower levels of protection (1 through 4) the proportions relating to the UCU cohort exceed those of the EU – for example 11% of UCU respondents report the very lowest level of protection in their departments, as against only 3% for the EU cohort. The position is then reversed when looking at the highest level of protection. So 12.5% of EU respondents believe that the level of protection at departmental level is very high, while the equivalent figure for the UCU is half that, at 6.3%. Comparisons reveal that the results in table 11.1 (protection at departmental level) are very similar to those of table 9.1 (protection at institutional level), although the differences between the UCU and the EU cohorts are somewhat greater for departmental (than institutional) protection at the lowest level of protection, and less marked at the highest level of protection.

Table 11.1: Level of protection for academic freedom in respondents' academic units.

Response	% EU	% UCU
1 = Very Low Level of Protection	3.0	11.0
2	3.7	8.1
3	4.6	8.4
4	5.2	8.5
5= Average Level of Protection	18.6	23.3
6	10.2	10.1
7	21.1	13.9
8	21.1	10.4
9 = Very High Level of Protection	12.5	6.3
All (n=6499)	100 (n = 4196)	100 (n = 2303)
Welch ANOVA: F=475.011 1 df Significant at 1% level		

Calculating the mean scores for the UCU and EU cohorts reveals similar differences – the mean scale score for UCU members was 5.0 out of 9, i.e. exactly on the central scale point, while that for the EU was 6.3, i.e. above the central scale point. Both these figures suggest a belief in a stronger level of protection at departmental level, when compared with institutional level, for both cohorts. As before, collapsing the nine point scale into three categories produces an enhanced picture of the difference between the EU and UCU data, as is shown in table 11.2 below. The proportion of UCU respondents considering the level of protection for academic freedom at departmental to be generally low was 11.3% - the comparable figure for UCU respondents is more than twice this, at 27.5. For the middle/average level of protection (scale scores 4-6), the respective total for the UCU was over 40%, compared to circa a third for EU respondents. At the highest levels of protection (i.e. scale scores 7-9), the proportion for EU respondents was over half (54.7) while that for UCU respondents was under a third (30%). Yet again, the level of protection for academic freedom perceived to operate at departmental level is markedly lower among UCU members than it is among EU respondents. The calculation of the χ^2 value for the raw data for these collapsed categories (which is necessary, as χ^2 cannot be calculated from percentages), shows these differences between the UCU and EU respondents to be statistically significant at the 1% level.

Table 11.2: Level of protection for academic freedom in respondents' departments: collapsed categories

Response	% EU	% UCU
Generally Low Level of Protection Categories 1 to 3	11.3	27.5
Average Level of Protection Categories 4 to 6	34.0	41.9
Generally High Level of Protection Categories 7 to 9	54.7	30.6
All (n=6499)	100 (n = 4196)	100 (n = 2303)
$\chi^2 = 439.533$ 2 df Significant at 1% Level		

Question 6: Can complaints by staff regarding academic freedom violations in the institution in which you work be directed to an institutional and/or department/faculty grievance body?

Table 12: Existence of an institutional and/or department/faculty grievance body

Response	% EU	% UCU
No	15.9	11.0
Yes	33.5	18.6
I don't know	50.6	70.4
All (n=6515)	100 (n = 4198)	100 (n = 2317)
$\chi^2 = 245.684$ 2 df Significant at 1% Level		

The advancement of knowledge by university staff is premised on challenging, through research, whether existing knowledge is accurate and tenable. So, by definition, this process can be contentious, such that within the waft and warp of normal academic life, disagreements between individuals on a range of issues will occur. Sometimes such disputes will escalate, and lead to the infringement of one academic's freedom by another departmental member. Hence, in order to protect academic freedom, there needs to be a grievance body to which staff can turn, at an institutional or departmental level, that offers some form of adjudication. Table 12 above provides information relating to the existence of such bodies, and the knowledge of staff concerning them. As can one third of the EU respondents reported the existence of such a body, the comparable figure for UCU members was less than a fifth. By contrast, 11% of UCU respondents and 16% of EU respondents reported that such a body did not exist in their institutions. However the majority of staff, from both the UCU and EU cohorts, were unaware as to whether or not such a body existed. Arguably, it is difficult to see how academic freedom can flourish, in the face of such ignorance.

Question 7: To what extent do you believe that the protection for academic freedom at the institutional, faculty and departmental level has changed in recent years?

This question required respondents to reflect whether the protection for academic freedom at their institution and department had risen, fallen, or remained constant in recent years. The results are shown in table 13. In both UCU and EU cohorts many respondents were unable to say, or did not know, whether the protection for academic freedom had changed (35.2% and 29.6% respectively). A much greater proportion (52.1%) of UCU members than EU respondents (33.9%) thought that the protection for academic freedom had diminished or greatly diminished. Not surprisingly, relatively few respondents thought that protection for academic freedom had increased; however, there was a marked difference between the EU respondents and the UCU members; 6% of the EU respondents considered this to be the case compared with just 1.1% of UCU members. These figures are indicative of a lowering of protection for academic freedom across all EU states, but which is particularly noticeable in the UK, moreover the differences between the two cohorts is statistically significant at the 1% level.

Table 13: Changes in the protection for academic freedom

Response	% EU	% UCU
I don't know/cannot say	29.6	35.2
Greatly diminished	8.4	20.5
Diminished	25.5	31.6
Remained unchanged	30.6	11.7
Increased	5.3	0.9
Greatly increased	0.7	0.2
All (n=6534)	100 (n = 4207)	100 (n = 2327)
$\chi^2 = 519.341$ 5 df Significant at 1% level		

Question 8: Are you familiar with the following international and national legal instruments that protect and promote academic freedom: UNESCO's 1997 *Recommendation concerning the Status of Higher Education Teaching Personnel*; The 1988 Education Reform Act?

Question 8 refers to UK legislation on academic freedom (the 1988 Education Reform Act) and the more detailed UNESCO 1997 *Recommendation* which contains comprehensive guidelines for the protection of all the facets of academic freedom (for teaching and research, but also shared governance, individual and institutional autonomy and tenure). The UNESCO document, which was signed by the (then) Overseas Development Minister, Claire Short on the U.K.'s behalf, is widely recognised as an international benchmark for the protection of academic freedom. The Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation Concerning the Status of Teachers (CEART) was established to hear complaints by individuals, institutions and NGOs with respect to failures to honour the 1997 *Recommendation*. The responses to this question are shown in tables 14.1 and 14.2 below. Less than 10% of UCU respondents indicated that they were familiar with the UNESCO document, compared with 15% of EU respondents.

These relatively low figures are somewhat surprising, given that (as can be seen in table 15.3 below) 49.2% of EU respondents and 41.7% of UCU respondents claimed to have an adequate working knowledge of academic freedom and its associated rights and responsibilities. The question about knowledge of the 1988 Education Reform Act, under which tenure was abolished in the U.K., has no salience for EU academic staff, and hence did not appear in the EU survey.

Table 14.1: Knowledge of UNESCO's 1997 Recommendation concerning the Status of Higher Education Teaching Personnel

Response	% EU	% UCU
Yes	15.6	9.9
No	84.4	90.1
All (n=6550)	100 (n = 4215)	100 (n = 2335)
$\chi^2 = 41.881$ 1 df Significant at 1% Level		

Table 14.2: Knowledge of the U.K.'s 1988 Education Reform Act

Response	% UCU
Yes	20.6
No	79.4
All (n=2335)	100 (n = 2335)

The results in table 14.2 show that 20% of UCU respondents had heard of this legislation. Clearly (and not surprisingly), UCU respondents had greater knowledge of UK than international legal instruments. However, given that the ERA is frequently cited as providing protection for academic freedom in the UK, indeed, Farrington states categorically that: "The only formal protection of academic freedom in English law is under the Education Reform Act 1988 s202(2)(a)",⁷⁵ it is surprising that only one 1 in 5 UCU respondents claims to be familiar with it. It is difficult to understand how +40% of UCU respondents can claim to have an adequate knowledge of academic freedom, when half this proportion do not know about the 1988 Education Reform Act.

Question 9: Respondents' personal knowledge/experience of academic freedom issues:

Question 9 was a composite question which required respondents to utilise a five point scale to indicate the extent of their relative agreement/disagreement with the following statements:

- *My institution has provided me with an adequate introduction to the concept of academic freedom.*
- *Institutions at which HE courses are taught should be encouraged to organise academic freedom readings and discussions for staff.*
- *I have an adequate working knowledge of the concept of academic freedom and the rights and responsibilities associated with it.*

⁷⁵ D. Palfreyman (2007) "Is academic freedom under threat in UK and US higher education?", *Education and the Law*, 19(1): 24.

- *I would welcome additional information on the concept of academic freedom and the rights and responsibilities associated with it.*
- *I have an adequate working knowledge of the regulations, practices and policies governing the protection for academic freedom within the institution in which I work.*
- *I would welcome additional information on the regulations, practices and policies governing the protection for academic freedom within the institution in which I work.*
- *I have a better understanding of the concept of academic freedom today than I did when I began working in higher education.*

The results are shown in tables 15.1 to 15.7 below.

The tables provide an enlightening empirical mosaic as to the knowledge of h.e. staff in the UK and EU concerning the concept of academic freedom, and their desire to improve their understanding, by means of additional information and training. As with the previous tables, although there are similarities in sentiment between the two UCU and EU cohorts, in five instances out of six, the differences between the two are statistically significant.

Turning first to table 15.1, only 5 in 100 UCU respondents strongly agreed/agreed that their institution had provided them with an adequate introduction to academic freedom; the comparable figure for the EU cohort was nearly triple this. Over 80% of UCU respondents thought that their institution had failed to provide an adequate introduction to the concept; the comparable figure for the EU was 66%. It is therefore not surprising that table 15.2 shows both cohorts were equally unanimous (EU=74.3%, UCU=72.7%) in agreeing that their institution should organise readings on academic freedom and staff discussions on the topic.

Table 15.1: My institution has provided me with an adequate introduction to the concept of academic freedom

Response	% EU	% UCU
Strongly Agree	2.8	1.3
Agree	12.8	3.3
Neither agree nor disagree	24.3	14.3
Disagree	33.9	36.5
Strongly disagree	26.1	44.7
All (n=6501)	100 (n = 4189)	100 (n = 2312)
Welch ANOVA: F=440.958 1 df Significant at the 1% level		

Table 15.2: Institutions at which HE courses are taught should be encouraged to organise academic freedom readings and discussions for staff

Response	% EU	% UCU
Strongly Agree	25.6	29.4
Agree	48.7	43.3
Neither agree nor disagree	19.3	19.1
Disagree	5.1	5.0
Strongly disagree	1.3	3.1
All (n=6518)	100 (n = 4195)	100 (n = 2313)
Welch ANOVA: F=0.239 1 df Not Significant		

Tables 15.3 and 15.4 address whether respondents have an adequate working knowledge of academic freedom, and whether they need additional information on it. Despite being ignorant as to whether their department or institution has an academic freedom policy document (tables 8 and 10), and believing that the level of protection is low, indeed, has diminished in recent years (table 13), nearly half the EU respondents and 41.7% of the UCU respondents claimed to have an adequate working knowledge of academic freedom. Hence a greater proportion of staff claimed to have an adequate working knowledge, than made a contrary claim, and the difference between the two (EU and UCU) cohorts was statistically significant. However, despite the majority claiming to have adequate knowledge of academic freedom, table 15.4 shows that 74% of EU and 81.6% of UCU respondents said they would welcome more information on the subject. It is worth considering: if your knowledge of the topic is adequate, why would you want more information? These unusual results suggest that the knowledge that academics profess to have with respect to academic freedom, is probably at variance with the reality of the situation.

Table 15.3: I have an adequate working knowledge of the concept of academic freedom and the rights and responsibilities associated with it:

Response	% EU	% UCU
Strongly Agree	11.2	7.8
Agree	38.0	33.9
Neither agree nor disagree	23.9	25.0
Disagree	21.3	24.8
Strongly disagree	5.6	8.5
All (n=6504)	100 (n = 4188)	100 (n = 2316)
One way ANOVA: F=51.133 1 df Significant at the 1% level		

Table 15.4: I would welcome additional information on the concept of academic freedom and the rights and responsibilities associated with it

Response	% EU	% UCU
Strongly Agree	24.3	33.4
Agree	49.7	48.2
Neither agree nor disagree	18.4	13.8
Disagree	6.0	3.5
Strongly disagree	1.6	1.1
All (n=6485)	100 (n = 4182)	100 (n = 2303)
Welch ANOVA: F=81.348 1 df Significant at the 1% level		

Table 15.5 provides data on respondents' working knowledge of the regulations and practices governing academic freedom protection in their institutions. As can be seen this table mirrors that of 15.3. above, in that only 12% of UCU respondents claimed to have an adequate working knowledge of institutional regulations governing the protection for academic freedom; in contrast the comparable figure for European respondents was 27.6%, more than twice the UCU figure, which suggests either that higher education institutions in Europe are better able to keep their staff informed about such matters, or that staff in Europe are more concerned about institutional policies and therefore make the effort to ensure that they are aware of what they comprise.

Table 15.5: I have an adequate working knowledge of the regulations, practices, and policies governing the protection for academic freedom within the institution in which I work

Response	% EU	% UCU
Strongly Agree	5.1	2.0
Agree	22.5	10.0
Neither agree nor disagree	26.4	19.6
Disagree	34.4	44.4
Strongly disagree	11.6	24.1
All (n=6481)	100 (n = 4173)	100 (n = 2302)
Welch ANOVA: F=408.413 1 df Significant at the 1% level		

Table 15.6 gives information on whether staff would welcome additional practical information on the regulations and policies on academic freedom in their institutions. This table's results largely mirror those of table 15.4, but with slightly more staff wishing for practical advice (table 15.6) than for information on the concept of academic freedom (table 15.4). Table 15.7 examines whether respondents' understanding of academic freedom is greater now than when they first began working in higher education. Half of the EU cohort thought that their understanding had improved, when compared with 37.3% of UCU cohort; conversely, a greater % of UCU (33.0%), than EU (22.4%) respondents disagreed that their understanding of the concept had improved. This data could be a reflection of, *inter alia*, the age of respondents and the length of time they have been working in h.e. If an academic was employed at (say) a Finnish university for 20 years, their understanding of the concept would doubtless have improved to a greater extent than a UK lecturer in post for only two years.

Table 15.6: I would welcome additional information on the regulations, practices and policies governing the protection for academic freedom within the institution in which I work

Response	% EU	% UCU
Strongly Agree	22.5	33.5
Agree	52.0	49.9
Neither agree nor disagree	18.2	11.9
Disagree	6.0	3.4
Strongly disagree	1.3	1.3
All (n=6481)	100 (n = 4178)	100 (n = 2303)
One way ANOVA: F=106.128 1 df Significant at the 1% level		

Table 15.7: I have a better understanding of the concept of academic freedom today than I did when I began working in higher education

Response	% EU	% UCU
Strongly Agree	14.5	9.4
Agree	36.3	27.9
Neither agree nor disagree	26.7	29.6
Disagree	15.7	22.9
Strongly disagree	6.7	10.1
All (n=6492)	100 (n = 4177)	100 (n = 2315)
One way ANOVA: F=126.643 1 df Significant at the 1% level		

Question 10: Asked respondents to write down any other comments/opinions that they wished to make, concerning academic freedom in their department/faculty and institution. Non-relevant text responses, such as 'n/a' and 'see above' were removed resulting in 779 written responses (a total of over 42,000 Words), much fewer than the +2000 respondents who completed question 1. As respondents had been given the invitation to express their personal thoughts on the topic in the first question on the survey, they were less likely to respond to this question. Constraints of time made it impossible to analyse this textual data in any meaningful way, however, the full set of comments are provide on pages 196-219 in the Appendix Tables (which are available on request), and by way of illustration, the first 10 comments are given below in table 16.

Table 16: Examples of “other comments about academic freedom in department/faculty and institution”

Comments
It's never been an issue that has impinged upon me or my work, so far as I am aware.
The concept of 'protecting freedom' is potentially subject to abuse. The individuals who make use of their academic should be protected, but the freedom itself must simply be promoted/not violated. Once we enter the domain of 'protecting freedom' all forms of legal processes will be devised to restrict freedom in the name of its 'protection'. This is what power always does. I therefore expected the survey to make much less use of the paternalistic concept of 'protection' and greater use of 'defending', 'upholding', 'promoting'. This is what a healthy academic environment requires - not regulation of freedom, but deregulation to expand this freedom (in the field of ideas and the production and exchange of knowledge)
Recent 'restructuring' of the Department has meant a considerable loss of academic freedom and overt censorship in terms of topics that are 'acceptable' for research grants, publications and public outreach events.
HE in FE there is a clear motion from management to completely disregard academic freedom.
I have not experienced any limits to academic freedom - but that is probably because I do not research or teach very controversial areas. Probably the most controversial topics I deal with concern energy supply and debates about political response to climate change. I guess that if a colleague or student were to complain that my approach to these issues were biased, then I would have to understand better the overall issues of academic freedom.
My institution has a habit over many years of closing down innovative programmes - rather than working out ways to build upon its history.
It's something I've read around, the only time I needed to know more as I wanted to teach something controversial management were helpful in enabling me to develop the lesson plan
Junior researchers (postdocs) are completely exposed to the whims and agenda of senior Faculty.
The STERN review and outside monitoring makes department control somewhat irrelevant
The working conditions and the respect for academic freedom are so compromised in my institution that I am thinking to leave the academia for good. We are required to do more for less. No support, no respect whatsoever for our research and no acknowledgment of the multiple successful outcomes. The salary is humiliating too. Only the students seem to acknowledge what we do. Most of them, at least.

10 Respondents' Personal Experiences of Direct Challenges to Academic Freedom

The second part of the survey looked at respondents' personal experiences of direct challenges to their academic freedom. As before, this section used a series of dichotomous (yes/no) and Likert scale questions.

Question 11: Respondents' experience of challenges to their academic freedom resulting from disciplinary action, or the threat of it:

Question 11 was a composite question which examined intra-mural and extra-mural utterance, and required respondents to indicate whether they had ever been subjected to informal or formal disciplinary action, or the threat of disciplinary action (up to, and including, dismissal) because of:

- *Academic views they expressed in their teaching*
- *Academic views they expressed in a research publication*
- *Views they expressed in a non-public forum within your institution (for example, in a meeting of Senate or Academic Board)*
- *Views they expressed in a public forum outside your institution (for example, in a local or national newspaper, or in a television or radio programme)*
- *Views they expressed elsewhere*

The results are shown in tables 17.1 to 17.5 below. Although there are statistically significant differences between the UCU and EU cohorts in three out of five instances, with respect to these questions (and the results in Tables 17.1 to 17.5) generally, it appears that the use of disciplinary action, or the threat of such action, is relatively rare – in most cases the proportion of staff reporting such threats is 6% or less. The occurrence of threats which result from academic utterance, with respect to teaching or research dissemination (two major aspects of academic freedom), is very low. Threats appear most likely to occur following academic views expressed within the institution, in non-public bodies such as Senate or Academic Board, suggesting that academic shared governance (another major supportive element of academic freedom) may be more contentious, than freedom for teaching or research, but even then, such occurrences affect only 1 person in 12 (8%) of the academic community. Generally, the formal or informal use, or threat, of disciplinary action is negligible.

The low occurrence of such actions, however, does not diminish the devastating effect they may have on the small number of staff affected, as the examples of (inter alia) Hicham Yezza and Rizwaan Sabir⁷⁶ from the University of Nottingham, and Aubrey Blumsohn⁷⁷ from the University of Sheffield, make clear.

⁷⁶ For full details, see M. Daly & S. Matthews, (2009) *Academic freedom and the University of Nottingham*, York: Zoilus Press

⁷⁷ C. Dyer, (2009) "Aubrey Blumsohn: Academic who took on industry", *British Medical Journal*, 339: b5293.

Table 17.1: Subjected to disciplinary action, or the threat of disciplinary action because of academic views expressed in teaching

Subjected to/threatened with disciplinary action for:	Response	% EU	% UCU
Academic views expressed in teaching	Yes	5.3	5.7
	No	94.7	94.3
All (n=6439)		100 (n = 4141)	100 (n = 2298)
$\chi^2 = 0.473$ 1 df Not Significant			

Table 17.2: Subjected to disciplinary action, or the threat of disciplinary action because of academic views expressed in a research publication

Subjected to/threatened with disciplinary action for	Response	% EU	% UCU
Academic views expressed in a research publication	Yes	5.0	2.8
	No	95.0	97.2
All (n=6428)		100 (n = 4142)	100 (n = 2286)
$\chi^2 = 16.55$ 1 df Significant at 1% level			

Table 17.3: Subjected to disciplinary action, or the threat of disciplinary action because of academic views expressed in a non-public forum in your institution (e.g. Senate, Academic Board)

Subjected to/threatened with disciplinary action for	Response	% EU	% UCU
Academic views expressed in a non-public forum in your institution (e.g. Senate, Academic Board)	Yes	7.8	8.4
	No	92.2	91.6
All (n=6440)		100 (n = 4141)	100 (n = 2299)
$\chi^2 = 0.71$ 1 df Not Significant			

Table 17.4: Subjected to, or threatened with, disciplinary action, because of academic views expressed in a public forum outside your institution (local/national newspaper, radio/tv programme)

Subjected to/threatened with disciplinary action for	Response	% EU	% UCU
Academic views expressed in a public forum outside your institution (e.g. local newspaper)	Yes	5.6	4.1
	No	94.4	95.9
All (n= 6429)		100 (n = 4140)	100 (n = 2289)
$\chi^2 = 7.068$ 1 df Significant at 1% level			

Table 17.5: Subjected to disciplinary action, or the threat of disciplinary action because of academic views expressed elsewhere - neither within the institution or a public forum)

Subjected to/threatened with disciplinary action for	Response	% EU	% UCU
Academic views expressed elsewhere (neither within the institution or in a public forum)	Yes	4.6	6.8
	No	95.7	93.2
All (n= 6489)		100 (n = 4215)	100 (n = 2274)
$\chi^2 = 18.319$ 1 df Significant at 1% level			

Question 12: This question was designed to enable respondents who had been subjected to disciplinary action, or the threat of it, for expressing their academic views elsewhere, to provide details. As can be seen in table 17.5, the number of respondents for whom this question was relevant were relatively small; in fact only 142 respondents provided details. Common themes included expressing academic views via social media and email. Full details of these comments are provided on pages 220-224 in the Appendix Tables (available on request), and by way of illustration, the first 10 comments are given below in table 18.

Table 18: Example of “disciplinary action, or the threat of disciplinary action, for academic views expressed elsewhere”

Response
At a recent university training session I expressed concern at some of the views being promoted by the tutor; I was required to repeat the training session with the strong hint that I should keep my mouth shut.
in union meetings at a previous institution
Meetings with line managers.
Informal conversations with line manager. Always ready to create problems, rather than solving them
It is generally discouraged in public engagement work that we do not speak out against management styles inside institutional life even though they are often out-dated.
Some years ago I was suspended from a joint university/NHS post because of accusations that I had disclosed poor practice in another NHS trust to a Community Health Council
within department meetings
In team meetings which included former line manager.
At a lecture setting and a blog.
At a previous institutions. As a PhD student. I was disciplined for asking certain questions.

Question 13: was a composite question which asked respondents to indicate whether, because of their academic views they had ever been subjected to/threatened with the following sanctions:

- *Denial of promotion.*
- *Demotion to a lower position.*
- *Being moved to another department/centre/unit.*
- *Being given different/fewer/additional administrative tasks.*
- *Being given different/fewer/additional teaching or research duties.*
- *Removal of research funding/facilities/equipment.*
- *Bullying by academic colleagues.*
- *Another form of sanction*

The results are shown in tables 19.1 to 19.8 below. The first two elements of question 13 concern threats with respect to changes in the employment contract of respondents (promotion denial and demotion) for academic views expressed. As can be seen the threat of demotion is relatively uncommon - less than 4% of both cohorts report this occurrence. The situation with respect to denial of promotion is more common: 1 respondent in 10 among the EU cohort, and 1 in 8 of the UCU cohort reported such sanctions being used against them. The χ^2 statistic shows that the differences between the cohorts is significant – such threats are more likely in institutions in the UK, than in the EU nations. However, such threats may have greater occupational salience in the EU, in that in some nations (such as Spain), the denial of promotion may constitute a denial of tenure for the person affected.

Table 19.1: Subjected to/ threatened with promotion denial because of academic views expressed in teaching

Subjected to/threatened with the following sanctions because of academic views held:	Response	% EU	% UCU
Denial of promotion	Yes	10.2	11.9
	No	89.8	88.1
All (n=6403)		100 (n = 4120)	100 (n = 2283)
$\chi^2 = 4.508$ 1 df Significant at 5% level			

Table 19.2: Subjected to/ threatened with demotion because of academic views expressed in teaching

Subjected to/threatened with the following sanctions because of academic views held:	Response	% EU	% UCU
Demotion to a lower position	Yes	3.7	3.8
	No	96.3	96.2
All (n=6378)		100 (n = 4113)	100 (n = 2265)
$\chi^2 = 0.117$ 1 df Not Significant			

The next three elements concern threats to move staff, or to alter their administrative and teaching and research duties, because of the academic views they may hold. Table 19.3 shows that being moved to another department is a very rare event, and that its occurrence is as frequent among UCU respondents as it is among EU respondents. This may be because such moves would require the acquiescence of another departmental head and, moreover, possible approval at a more senior level (e.g. Dean, or Pro-Vice Chancellor). By contrast, as tables 19.4 and 19.5 show, being given different and/or additional tasks is a more frequent modus of sanction. 1 in 12 EU respondents and 1 in 8 UCU respondents reported having changes made to their administrative tasks as a form of sanction, and the difference between the two cohorts is statistically significant. Table 19.5 shows that changes to teaching and research duties were also used as a form of punishment, and at a greater level of frequency. Yet again, UCU members are more likely to report such practices than their EU counterparts. Such statistics reflect badly on the UK academic profession, suggesting (as they do) that in an average sized department (circa 30

staff⁷⁸) of a UK university or f.e. institution, 3 or 4 staff may have been routinely subjected to such punitive treatment.

Table 19.3: Subjected to/ threatened with being moved to another department/centre/unit because of academic views expressed in teaching

Subjected to/threatened with the following sanctions because of academic views held:	Response	% EU	% UCU
Being moved to another department/centre/unit.	Yes	4.2	3.8
	No	95.8	96.2
All (n=6382)		100 (n = 4117)	100 (n = 2265)
$\chi^2 = 0.481$ 1 df Not Significant			

Table 19.4: Subjected to/ threatened with being given different/fewer/additional administrative tasks because of academic views expressed in teaching

Subjected to/threatened with the following sanctions because of academic views held:	Response	% EU	% UCU
Given different/fewer/additional administrative tasks	Yes	8.2	12.2
	No	91.8	87.8
All (n=6383)		100 (n = 4119)	100 (n = 2264)
$\chi^2 = 27.051$ 1 df Significant at 1% level			

Table 19.5: Subjected to/threatened with different/fewer/additional teaching or research duties because of academic views expressed in teaching

Subjected to/threatened with the following sanctions because of academic views held:	Response	% EU	% UCU
Given different/fewer/additional teaching or research duties	Yes	9.2	13.2
	No	90.8	86.5
All (n=6391)		100 (n = 4120)	100 (n = 2271)
$\chi^2 = 24.625$ 1 df Significant at 1% level			

The next element of question 13 looked at threats to remove research funding and facilities, because of the academic views staff hold. Table 19.6 shows that this occurs to about 1 in 14 of respondents, in both the UCU and EU cohorts, and hence this sanction seems to be used relatively infrequently. This is probably because such punishments are not within the purview of Heads of Departments. Grants from government and other funding bodies (e.g. charitable foundations like the UK Leverhulme Foundation), are awarded to individual researchers, and

⁷⁸ M. Deschryvere, (2009) "A comparative survey of structural characteristics of Finnish university departments", *ETLA Discussion Paper No. 1195*, Helsinki: ETLA, p. 4

attempts to remove them would probably risk the institution being accused of fraud or financial maladministration. Additionally, many academics, because of their chosen subject specialism, may not require dedicated technical equipment. Hence the threat of removal of access to (e.g.) chemical laboratories or television studios may pose a threat to Professors of Chemistry or of Media Studies, but could not easily be deployed against a Professor of Divinity or of Italian Studies, although the latter could be threatened by reduced funds for travel.

Table 19.6: Subjected to/threatened with removal of research funding/facilities/equipment because of academic views expressed in teaching

Subjected to/threatened with the following sanctions because of academic views held:	Response	% EU	% UCU
Removal of research funding, facilities or equipment	Yes	7.2	7.1
	No	92.8	92.9
All (n=6367)		100 (n = 4104)	100 (n = 2263)
$\chi^2 = 0.005$ 1 df Not Significant			

The next element of question 13 examined whether respondents were subjected to bullying because of the academic views they held. As can be seen in table 19.7, 14.1% (1 in 7) of the EU respondents reported being subjected to bullying, and 23.1% (almost 1 in 4) of the UCU respondents reported similar occurrences. The χ^2 test shows that the difference between the EU and UCU cohorts is statistically significant. Given that a major premise of academic freedom (and, moreover, freedom of speech) is the freedom to express one's professional opinion, the presence of such statistics with respect seats of higher learning are truly appalling, and are a disgrace to higher education institutions across the EU, and more particularly the UK. Such research as has been done on this topic,⁷⁹ suggest that the figures reported here are typical rather than aberrant. It is worth considering, if academics routinely bully (and allow others to routinely bully) their colleagues to such a degree that it is commonplace, what example is being passed on to those whom they teach?

Table 19.7: Subjected to/threatened with bullying because of academic views expressed in teaching

Subjected to/threatened with the following sanctions because of academic views held:	Response	% EU	% UCU
Bullying by academic colleagues.	Yes	14.1	23.1
	No	85.9	76.9
All (n=6396)		100 (n = 4106)	100 (n = 2290)
$\chi^2 = 82.887$ 1 df Significant at the 1% level			

⁷⁹ See, for example, L. Keashly, & J. Neuman, (2010) "Faculty Experiences with Bullying in Higher Education: Causes, Consequences, and Management", *Administrative Theory & Praxis*, 32(1): 48-70.
D. Lewis, (1999) "Workplace bullying — Interim findings of a study in further and higher education in Wales", *International Journal of Manpower*, 20(1/2):106-119.

The final element of question 13 looked at other forms of sanction to which academic staff may have been subjected, and the results are given below in table 19.8. As can be seen, with respect to the UCU cohort, more than 1 in 10 reported other forms of sanction to which they had been subjected – more than twice the proportion of the EU respondents. Hence 229 (10.2%) of 2247 UCU respondents who completed this question, had been subjected to other forms of sanction. Given that many punitive forms of sanction have been covered in question 13, it is worth considering what other methods may have been employed.

Table 19.8: Subjected to/threatened with another form of sanction because of academic views expressed in teaching

Subjected to/threatened with the following sanctions because of academic views held:	Response	% EU	% UCU
Another form of sanction	Yes	4.5	10.2
	No	95.5	89.8
All (n=6462)		100 (n = 4215)	100 (n = 2247)
$\chi^2 = 79.747$ 1 df Significant at the 1% level			

Question 14: This question was designed to enable respondents who had been subjected to/threatened with another form of sanction to supply information concerning this. A total of 214 responses were received for this question, of which 17 mentioned dismissal, or the threat of dismissal. Some of the responses provide graphic accounts of how severely some universities seek to punish staff even when, for example, staff whistleblowing reveals serious fraud. Full details of these comments are provided on pages 225-231 in the Appendix Tables (available on request), and by way of illustration, the first 10 comments are given below in table 20.

Table 20: Example of “actual or threatened disciplinary actions”

Response
Dismissal for bringing the University into Disrepute
I didn't receive a sanction but colleagues I worked with were fired at a previous institution
Forms of (diplomatic) harassment from line manager
Non verbalised and hidden exclusions from a range of activities in which my views are seen as subversive to marketisation, commodification and top down management
Written warning
Poor evaluation due to lack of commercial research grants
Threatened with losing additional lecturing if I didn't 'comply'
Rather than a denial of promotion, what is as mendacious is a delaying of promotion. Selection measures are introduced which are about stalling progression until you come into the fold of management-speak.
I was threatened with dismissal for being brave enough to speak up against things.
Denial of sabbatical on several occasions

Question 15: This question invited those respondents who had experienced bullying to provide more detailed information about the treatment to which they had been subjected. As above non-relevant text such as 'n/a' for example was removed giving a total of 608 responses for this question. Full details of these responses, which demonstrate a range of negative and abusive tactics routinely used against staff, which range from the petty and trivial (being ignored) to

serious, possibly criminal, activity (stalking, sexual harassment and assault), are given on pages 232-261 of the Appendix Tables (which are available on request); by way of illustration, the first 10 comments are given below in table 21 (and have been abridged/anonymised, as necessary).

Table 21: Examples of bullying

Response
Isolation, exclusion, direct conflict, passive aggression, mobbing. Thankfully, this mostly happened in the past and only in a few instances. The relationship with colleagues tends to be good. Not collegial, but good. The problems mostly concern management.
Bullying on grounds of my gender, age and political ideology (with the implication that these features undermined my academic credibility) from a colleague (who has since left the institution).
Thinly veiled threats and undermining by line manager
shouting
Threats were made about possible sanctions I was asked to stop research work and threatened with sanctions if I didn't I was brought to a large meeting to account for my actions - no wrongdoing was discovered All of this was in a previous institution
Gossip and isolation.
Political wranglings to take away courses and research interests
University life is rife with institutional bullying in many, many departments. The typical scenario is that management committees in departments are peopled by those chosen for their insider status. Others are then effectively ostracised. This is endemic in academe.
resistance to the relaxation of academic standards regarded as not being a team player

Question 16: was a composite question which asked respondents to indicate whether, because of their academic views they had ever been subjected to/threatened with the following modes of abuse by people within the institution in which they worked:

- *physical harm.*
- *psychological pressure.*
- *sexual abuse or assault.*
- *sexual harassment (e.g. derogatory remarks)*
- *false charges brought against them*

The results are given in tables 22.1 to 22.5 below

The first two elements of question 16 concern threats of physical and psychological pressure. As can be seen from table 22.1, occurrences of physical harm are very rare indeed – less than 1% of respondents from both EU and UCU cohorts reported this form of physical threat. The situation with regard to psychological pressure is, however, very different. Table 22.2 shows that 15.7% (1 in 7) of the EU cohort, and 26.6% (more than 1 in 4) of the UCU cohort report being subjected to psychological pressure. When comparing the various abuses highlighted in these tables, psychological pressure is more common even than bullying (indeed, there is probably an overlap between these, as psychological pressure is a form of bullying). As with most of the analyses in this study, respondents in the UCU cohort demonstrate a greater familiarity with this form of indefensible behaviour, than their EU counterparts – reports of psychological pressure is nearly twice as prevalent among UCU respondents as their EU counterparts.

Table 22.1: Subjected to/ threatened with physical harm because of academic views

Subjected to/threatened with the following because of academic views held:	Response	% EU	% UCU
Physical harm	Yes	0.9	1.3
	No	99.1	98.7
All (n= 6406)		100 (n = 4106)	100 (n = 2300)
$\chi^2 = 3.548$ 1 df Not Significant			

Table 22.2: Subjected to/ threatened with psychological pressure because of academic views

Subjected to/threatened with the following because of academic views held:	Response	% EU	% UCU
Psychological pressure	Yes	15.7	26.6
	No	84.3	73.4
All (n= 6422)		100 (n = 4111)	100 (n = 2311)
$\chi^2 = 111.906$ 1 df Significant at 1% level			

The next two elements concern threats of sexual abuse, assault and harassment. Table 22.3 shows that the experience of, or threat of, sexual abuse or assault is even more rare than physical harm, with an occurrence of less than 1% in both EU and UCU cohorts. The situation is more negative with respect to sexual harassment (table 22.4), and its occurrence is more frequent among UCU, than EU respondents. Although these figures are very low, it can be considered surprising that such events occur at all, given that all universities strive to improve awareness through campaigns that ensure that sexual harassment among the student body is not considered tolerable behaviour.

Table 22.3: Subjected to/ threatened with sexual abuse or assault because of academic views

Subjected to/threatened with the following because of academic views held:	Response	% EU	% UCU
Sexual abuse or assault	Yes	0.6	0.7
	No	99.4	99.3
All (n=6395)		100 (n = 4111)	100 (n = 2284)
$\chi^2 = 0.056$ 1 df Not Significant			

Table 22.4: Subjected to/ threatened with sexual harassment because of academic views

Subjected to/threatened with the following because of academic views held:	Response	% EU	% UCU
Sexual harassment	Yes	2.6	3.5
	No	97.4	96.5
All (n= 6390)		100 (n = 4109)	100 (n = 2281)
$\chi^2 = 4.727$ 1 df Significant at 5% level			

The final element of question 16 looked at the threat of legal charges being brought against an individual because of their academic views. Table 22.5 shows that this form of coercion is more frequent than might commonly be imagined. 10.6% of UCU respondents, and 6.3% of EU respondents reported that this form of sanction had been used against them.

Table 22.5: Subjected to/ threatened with charges being brought a because of academic views

Subjected to/threatened with the following because of academic views held:	Response	% EU	% UCU
Charges being brought against you	Yes	6.3	10.6
	No	93.7	89.4
All (n=6354)		100 (n = 4086)	100 (n = 2268)
$\chi^2 = 36.979$ 1 df Significant at 1% level			

The greater frequency of the use of legal constraints to harass staff in the UK may be a reflection of the UK legal system. The law on defamation has led to the UK being described as “the libel capital of the Western world”,⁸⁰ and the ease with which such charges can be made in the UK, when compared with other EU states, may account for some of the difference.

Question 17: asked whether respondents had ever undertaken self-censorship (that is, refrained from publishing, teaching, talking or doing research on a particular topic), for fear of negative repercussions, such as loss of privileges, demotion, physical harm.

The results in table 23 below show that self-censorship is very common, with 19.1% of EU respondents admitting to have subjected themselves to self-censorship at work, while the comparative figure for the UCU was significantly higher at 35.5%. The data in previous tables in this analysis have shown that many staff have had their academic freedom abrogated and thereby been subjected to cruel and degrading treatment by their peers, on account of their academic views. The results in table 23 could suggest that it is only self-censorship by a sizeable cohort of staff that prevents the incidence of bullying, psychology pressure and other unconscionable behaviour from being even higher. Self-censorship at this level appears to make a mockery of any pretence by universities of being paragons of free speech and that of being advocates of unhindered discourse in the pursuit of knowledge and academic freedom.

⁸⁰ H. Maly (2006) “Publish at Your Own Risk or Don't Publish at All: Forum Shopping Trends in Libel Litigation Leave the First Amendment Unguaranteed”, *Journal of Law and Policy*, 14(2): 906

Table 23: Extent of self-censorship

Response	% EU	% UCU
No	19.1	35.5
Yes	80.9	64.5
All (n=6292)	100 (n = 3982)	100 (n = 2310)
$\chi^2 = 209.104$ 2 df Significant at 1% Level		

Question 18: This question invited respondents who had experienced self-censorship to provide more detailed information about the form of their self-censorship. After removing non-relevant text a total of 742 respondents provided information on self-censorship. These ranged in severity from “keeping my mouth shut” to “I no longer attend any staff meetings in my teaching department, or faculty meetings, or reply to any general email circulars from within my University asking for my opinion, and minimise contact with all other members of my University”. On reading these remarks, it is difficult to see how universities can operate as institutions of open and free debate, dedicated to the enhancement of knowledge. The responses to this question have been provided on pages 262-284 of Appendix Taables, and by way of illustration, the first 10 comments are given below in table 24.

Table 24 Examples of “self-censorship”

Response
I no longer attend any staff meetings in my teaching department, or faculty meetings, or reply to any general email circulars from within my University asking for my opinion, and minimise contact with all other members of my University for fear that any communication from me will be used against me in support of the ongoing disciplinary action.
Told I 'would not get any institutional PhD studentships or financial support for my selected area of research'
Avoided speaking out on the issues
refrained participating in expert reviews for funding bodies, organisation of conferences
Not addressing controversial issues
Modifying my research online
Not include things in teaching
Changing the direction of my research interest and switching to a teaching-intensive rather than research-intensive post
not talking publicly in university meetings
Refrained from discussion a topic due to someone else been reprimanded on a subject (I don't know how they worded it and I don't know if they voiced un professional opinions) I was merely told this by someone who has now left that they were reprimanded for voicing their opinion.

Question 19: was a composite question which asked respondents to indicate whether, because of their academic views they had ever experienced, or been threatened with, infringement of their academic freedom because of their:

- *Sexual orientation/identity.*
- *Ethnicity.*
- *Gender.*
- *Political views.*
- *Some other reason.*

The results are given in tables 25.1 to 25.5 below

All the results in tables 25.1 to 25.5 reflect the personal characteristics of staff (sexual orientation, gender ethnicity, etc.), but which should not, in a higher education institution founded on freedom of thought, opinion, etc., have any bearing on how staff are treated. The figures show that, with respect to sexual orientation and ethnicity, very few staff are affected – less than 4%. For gender, the figure for UCU staff reporting infringements of academic freedom rises to 6.8%, rising further to 9.3% with respect to political views. Discrimination on the basis of these characteristics is illegal under the UK 2010 Equality Act, which was enacted following the EU Equal Treatment Directives, whose powers and provisions it emulates and implements. The final element of this question concerns threats relating to another reason not specified in this question; 12.7% of the UCU respondents (1 person in 8) claimed that they had been subjected to constraints on their academic freedom. Although these proportions are relatively small, they demonstrate that the Equality Act is not working sufficiently well to safeguard those individuals for whom it should protect. What is striking about tables 25.1 to 25.5 is that, in every instance, the proportion of UCU members affected exceeds the comparable figure for the European cohort, and that all of these differences are statistically significant at the 1% level. For example, the proportion of UCU staff reporting that their academic freedom was abrogated on account of their political beliefs was 9.3% - more than twice the equivalent figures (4.5%) for the European respondents. Given that universities are founded on the basis of freedom of speech, and the advancement of knowledge via informed debate, such comparative figures reflect poorly on the academic community in the UK, and on broader British society more generally, in which, arguably, greater levels of intolerance exist than those which occur within universities.

Table 25.1: Subjected to/ threatened with infringement of academic freedom on account of sexual orientation/identity

Subjected to/ threatened with infringement of academic freedom on account of	Response	% EU	% UCU
Sexual orientation/identity	Yes	0.7	2.2
	No	99.3	97.8
All (n=6336)		100 (n = 4075)	100 (n = 2261)
$\chi^2 = 25.384$ 1 df Significant at 1% level			

Table 25.2: Subjected to/ threatened with infringement of academic freedom on account of ethnicity

Subjected to/ threatened with infringement of academic freedom on account of	Response	% EU	% UCU
Ethnicity	Yes	0.7	3.7
	No	99.3	96.3
All (n=6361)		100 (n = 4091)	100 (n = 2270)
$\chi^2 = 74.568$ 1 df Significant at 1% level			

Table 25.3: Subjected to/ threatened with infringement of academic freedom on account of gender

Subjected to/ threatened with infringement of academic freedom on account of	Response	% EU	% UCU
Gender	Yes	4.6	6.8
	No	95.4	93.2
All (n= 6390)		100 (n = 4108)	100 (n = 2282)
$\chi^2 = 14.00$ 1 df Significant at 1% level			

Table 25.4: Subjected to/ threatened with infringement of academic freedom on account of political views

Subjected to/ threatened with infringement of academic freedom on account of	Response	% EU	% UCU
Political views	Yes	4.5	9.3
	No	65.5	34.5
All (n=6379)		100 (n = 4103)	100 (n = 2276)
$\chi^2 = 57.930$ 1 df Significant at 1% level			

Table 25.5: Subjected to/ threatened with infringement of academic freedom for some other reason

Subjected to/ threatened with infringement of academic freedom on account of	Response	% EU	% UCU
Some other (unspecified) reason	Yes	3.2	12.7
	No	96.8	87.3
All (n= 6471)		100 (n = 4215)	100 (n = 2256)
$\chi^2 = 219.986$ 1 df Significant at 1% level			

Question 20: This question invited those respondents who had been subjected to/ threatened with infringement of academic freedom on account of some other reason to provide more detailed information about the reason their academic freedom had been negated. A total of 262 responses were received in respect to this question, which suggests that the options offered on the closed question on this topic covered the majority of reasons for the curtailment of academic freedom. Comments that recurred included ageism, disability, ethnicity, and religion – the full set

of comments are provided on pages 285-293 of the Appendix Tables (available on request), and by way of illustration, the first 10 comments are given below in table 26.

Table 26: Examples of threatened because of other reasons (ageism, disability, ethnicity, etc.)

Response
My views on research ethics
1) Being pressured into changing research subject 2) Being requested to surrender an awarded research grant 3) Being made to supervise a PhD student without my free consent.
being un-tenured, on temporary contract
Age
seniority reasons and rankism
Line manager's several forms of harassment, intrusion and passive aggression not motivated by academic matters but rather by several other matters (such as: power, budget related issues, jealousy for academic success, lack of competence, etc.). Constant interference has substantially affected my academic freedom in the last few years.
Different understanding of what my discipline is and should in regards to teaching.
My ethical views
Religious ethos
Views on education, challenging and other members of staff and student's ideologies

Question 21: Respondents' personal knowledge/experience of academic freedom issues:

Question 21 was a composite question which required respondents to utilise a five point scale to indicate their relative agreement/disagreement with the following statements:

- *Individual academic freedom for teaching is very important to me.*
- *Individual academic freedom for teaching has declined in my institution in recent years.*
- *Individual academic freedom for research is very important to me.*
- *Individual academic freedom for research has declined in my institution in recent years.*
- *My institution's autonomy (i.e. the widest practical measure of freedom from state regulation) is very important to me.*
- *Institutional autonomy has declined in my institution in recent years.*
- *Self-governance (i.e. the right of academic staff to participate in the governance of a higher education institution) in my institution is very important to me.*
- *Self-governance has declined in my institution in recent years.*
- *Employment protection for academic staff in my institution (i.e. permanent contracts, which are not easily terminable for institutional reasons) is very important to me.*
- *Employment protection for academic staff in my institution has declined in recent years.*
- *The commercialisation of higher education is of great concern to me.*
- *The commercialisation of higher education has increased in recent years.*
- *I believe that the implementation of the Government's Research Excellence Framework has diminished my individual academic freedom.*
- *I am concerned that the implementation of the Government's proposed Teaching Excellence Framework will diminish my individual academic freedom.*

In sum, this question addressed the importance respondents' attached to the substantive (freedom for teaching, freedom for academic freedom), and supportive elements (institutional autonomy, self-governance and employment protection) of academic freedom and whether they believed that these had declined in recent years. Respondents were then asked whether

commercialisation of higher education was a concern to them, and whether commercialisation had increased. Finally UCU members were asked their opinions of the impact of the Research Excellence Framework exercise, and the likely impact of the new Teaching Excellence Framework. The results are given below in tables 27.1 to 27.14

Table 27.1: Individual academic freedom for teaching is very important to me.

Response	% EU	% UCU
Strongly Agree	62.1	67.4
Agree	33.9	28.5
Neither agree nor disagree	3.5	3.5
Disagree	0.4	0.4
Strongly disagree	0.1	0.2
All (n= 6408)	100 (n = 4094)	100 (n = 2314)
Welch ANOVA: F=11.196 1 df Significant at the 1% level		

Looking first at the substantive elements – freedom for teaching and research. Although there are statistically significant differences between them, both UCU and the European cohorts agree/strongly agree that freedom for teaching (EU= 96.0%, UCU = 95.9%) and research (EU=97.8%, UCU 96.5%) is very important to them. However, when examining beliefs about the decline in academic freedom for these scholarly activities, there are clear and strong differences between the two cohorts. 43.0% of the UCU respondents agree/strongly agree that academic freedom for teaching has declined, compared with 25.1% of European respondents. Similarly, with respect to freedom for research, 45.6% of UCU respondents agree/strongly agree that this has declined, compared with 29.3% of European respondents. Assessing the reasons for these differences can only be speculative without further research (for example, qualitatively via interviews); however, it is likely that the absence of constitutional and strong legal protection for academic freedom in the UK, conjoined to the total lack of job security creates an organisational environment and culture in which, as was noted earlier, Barnett observed that “academic freedom is not taken away; rather, the opportunities for its realisation are reduced”.⁸¹

⁸¹ R. Barnett, (1997) *Higher Education: A Critical Business*, Buckingham: SRHE/Open University Press, p. 53.

Table 27.2: Individual academic freedom for teaching has declined in my institution in recent years

Response	% EU	% UCU
Strongly Agree	5.6	14.0
Agree	19.5	29.0
Neither agree nor disagree	33.3	43.0
Disagree	31.8	11.1
Strongly disagree	9.8	2.9
All (n= 6388)	100 (n = 4081)	100 (n = 2307)
Welch ANOVA: F=556.915 1 df Significant at the 1% level		

Table 27.3: Individual academic freedom for research is very important to me

Response	% EU	% UCU
Strongly Agree	71.9	77.1
Agree	25.9	19.4
Neither agree nor disagree	1.8	3.0
Disagree	0.2	0.4
Strongly disagree	0.1	0.1
All (n= 6392)	100 (n = 4081)	100 (n = 2311)
Welch ANOVA: F=6.764 1 df Significant at the 1% level		

Table 27.4: Individual academic freedom for research has declined in my institution in recent years

Response	% EU	% UCU
Strongly Agree	6.0	16.6
Agree	23.3	29.0
Neither agree nor disagree	31.7	41.6
Disagree	29.4	10.1
Strongly disagree	9.6	2.7
All (n= 6379)	100 (n = 4079)	100 (n = 2300)
Welch ANOVA: F=525.162 1 df Significant at the 1% level		

Turning to the supportive elements of academic freedom, focus concentrates on autonomy, governance, and tenure. More than 85% of both UCU and European respondents agree/strongly agree, that these three elements are important, the last perhaps slightly more than the previous two. As before, there are large differences between the two groups in terms of their perceptions of changes in autonomy, governance and tenure. A clear majority (57.8%) of UCU respondents agree/strongly agree that institutional autonomy has declined, compared with 42.5% of European respondents; indeed the UCU proportion that strongly agreed with this statement was twice the size (23.8%) of that of the European respondents (11.3%). Similarly, while 40.9% of the European respondents agreed/strongly agreed that self-governance had declined, this figure is much lower than that of 60.2% for the UCU cohort. Moreover, 1 in 3 of all UCU respondents strongly agreed with this sentiment, compared with 1 in 7 of the European respondents. The situation is possibly not as marked with regard to tenure – 66.6% of UCU respondents agreed that employment protection had declined (with 36.5% strongly agreeing), compared to 53.6% for the European cohort (with 23.5% strongly agreeing). Employment security has disappeared from UK universities and f.e. institutions, but continues to exist in many EU nations.

Table 27.5: My institution’s autonomy is very important to me

Response	% EU	% UCU
Strongly Agree	48.5	59.7
Agree	40.2	28.7
Neither agree nor disagree	9.5	9.6
Disagree	1.3	1.4
Strongly disagree	0.4	0.6
All (n= 6388)	100 (n = 4082)	100 (n = 2306)
Welch ANOVA: F=27.314 1 df Significant at the 1% level		

Table 27.6: Institutional autonomy has declined in my institution in recent years

Response	% EU	% UCU
Strongly Agree	11.3	23.8
Agree	31.2	34.0
Neither agree nor disagree	31.6	35.9
Disagree	20.4	5.2
Strongly disagree	5.4	1.0
All (n= 6368)	100 (n = 4074)	100 (n =2294)
Welch ANOVA: F=416.688 1 df Significant at the 1% level		

Table 27.7: Self-governance in my institution is very important to me

Response	% EU	% UCU
Strongly Agree	43.9	55.2
Agree	43.6	36.0
Neither agree nor disagree	10.9	7.9
Disagree	1.3	0.6
Strongly disagree	0.2	0.2
All (n= 6386)	100 (n = 4078)	100 (n = 2308)
Welch ANOVA: F=73.079 1 df Significant at the 1% level		

Table 27.8: Self-governance has declined in my institution in recent years

Response	% EU	% UCU
Strongly Agree	14.4	33.5
Agree	26.5	28.5
Neither agree nor disagree	33.3	30.9
Disagree	20.1	5.8
Strongly disagree	5.8	1.3
All (n= 6363)	100 (n = 4074)	100 (n = 2289)
Welch ANOVA: F=556.858 1 df Significant at the 1% level		

Table 27.9: Employment protection for academic staff in my institution is very important to me.

Response	% EU	% UCU
Strongly Agree	53.7	74.4
Agree	36.9	21.8
Neither agree nor disagree	7.6	3.2
Disagree	1.4	0.3
Strongly disagree	0.3	0.3
All (n= 6389)	100 (n = 4082)	100 (n = 2307)
Welch ANOVA: F=281.471 1 df Significant at the 1% level		

Table 27.10: Employment protection for academic staff in my institution has declined in recent years.

Response	% EU	% UCU
Strongly Agree	23.5	36.5
Agree	30.1	30.1
Neither agree nor disagree	23.6	25.0
Disagree	17.9	6.8
Strongly disagree	4.9	1.6
All (n= 6381)	100 (n = 4074)	100 (n = 2307)
Welch ANOVA: F=246.210 1 df Significant at the 1% level		

The next two elements of question 21 asked respondents to what extent they agreed that the commercialisation of higher education was of concern to them, and whether they thought that this had increased in recent years – the responses are summarized in tables 27.11 and 27.12, below. As can be seen, the majority of respondents in both UCU and European cohorts agreed that the commercialisation of higher education was of concern to them, although the proportion strongly agreeing among the UCU respondents was 75.1%, more than twice that of the European respondents (31.3%). The same differences are evident (but more marked) with respect to respondents' views about the increase in commercialisation. 94.9% of the UCU respondents strongly agreed/agreed that commercialisation of h.e. had increased, of which 74.5% strongly agreed, the corresponding figures for the European cohort were 89.5% and 26.4%. The increased salience of the commercialisation of h.e. among the UCU respondents probably relates (inter alia) to the increase in tuition fees in the U.K. When first introduced in 1998 the tuition fee was set at £1000, but has grown steadily and now stands at £9,000 per year. When compared with the other European nations the charging of fees at this level (or, indeed, any level) is aberrant. It is still the case that in the majority of EU nations, home students (and, often, students from other EU nations) are either not required to pay tuition fees at all, or a very small fee, often as part of their registration.

Table 27.11: The commercialisation of higher education is of great concern to me

Response	% EU	% UCU
Strongly Agree	31.3	75.1
Agree	33.6	17.3
Neither agree nor disagree	19.6	5.1
Disagree	11.9	1.8
Strongly disagree	3.7	0.8
All (n= 6377)	100 (n = 4066)	100 (n = 2311)
Welch ANOVA: F=1402.492 1 df Significant at the 1% level		

Table 27.12: The commercialisation of higher education has increased in recent years

Response	% EU	% UCU
Strongly Agree	26.4	74.5
Agree	43.1	20.4
Neither agree nor disagree	22.1	4.4
Disagree	6.8	0.4
Strongly disagree	1.6	0.3
All (n= 6378)	100 (n = 4072)	100 (n = 2306)
Welch ANOVA: F=1837.246 1 df Significant at the 1% level		

The final two elements of question 21 refer to the impact of the Research Excellent Framework (REF), and the proposed Teaching Excellence Framework (TEF) on academic freedom. As can be seen from table 14.13, the majority (56.6%) of UCU respondents agree/strongly agree that the REF had diminished their academic freedom, and although over 30% were undecided as to its effect, only 11.7% thought that the REF had not adversely affected their academic freedom. The precursor of the REF, the Research Assessment Exercise (RAE), was first introduced in the UK in 1986. Subsequent RAE reviews took place in 1989, 1992, 1996, 2001, and 2008. The REF replaced the RAE for the 2014 exercise, and the next such is due to take place in 2021. Not surprisingly, the impact of the RAE and REF has been debated widely within academic and beyond. Murphy and Sage,⁸² for example, report that “The discussions around the REF ... have tended to be negatively skewed Our analysis here suggests that many academics have genuine concerns about the implications of the REF affecting their morale, their sense of their role and, potentially, their employment within the sector.” Its impact on academic freedom has been

⁸² T. Murphy & D. Sage, (2015) “Perceptions of the UK’s Research Excellence Framework 2014”, *Australian Universities Review*, 57(2): 31-36

more difficult to judge, with some, like Nolan et al.,⁸³ posing the question: “The Research Excellence Framework (REF): A major impediment to free and informed debate?”, while Smith et al. others have identified “threats to academic autonomy implied in the definition of expert review and the delimitation of reviewers, ... and the framing of knowledge translation by the stipulation that impact ‘builds on’ research”.⁸⁴ Similarly, Watermeyer’s assessment concluded that the REF “is viewed by academics as an infringement to a scholarly way of life; as symptomatic of the marketisation of higher education; and as fundamentally incompatible and deleterious to the production of new knowledge.”⁸⁵ On balance, although the impact of the REF is problematic to assess, it would be difficult to argue it has strengthened academic freedom.

Table 27.13 I believe that the REF has diminished my individual academic freedom

Response	% UCU
Strongly Agree	30.3
Agree	26.3
Neither agree nor disagree	31.8
Disagree	9.2
Strongly disagree	2.5
All (n= 2300)	100 (n = 2300)

The impact of the incoming the Teaching Excellence Framework on academic freedom is hard to judge, as it still going through the legislative process and has been heavily criticized in the House of Lords. However, it is likely that its central tenet, the use of metrics like the NSS scores to calculate the TEF, will remain unaltered. The response of UCU members completing the survey is unequivocal, and even more marked than their opinion of the REF. As can be seen in table 27.14 only 5.8% of respondents agree that the TEF will not diminish their academic freedom; by contrast, over 70% believe that the new legislation will diminish their academic freedom. Clearly the agreed calculation method for the TEF will be critical in ensuring its credibility among academics and students alike. However, as with the REF, it is difficult to see how the TEF might increase academic freedom. As has been noted, its focus on NSS scores, makes it more, rather than less, likely that academics will be required to reduce the difficulty of courses, to ensure that all students progress, and can hence demonstrate their satisfaction with such an outcome, thereby ensuring that the universities at which they study will get a good TEF score.

⁸³ M. Nolan, C. Ingleton, & M. Hayter (2008) “The Research Excellence Framework (REF): A major impediment to free and informed debate?”, *International Journal of Nursing Studies*, 45: 487–488.

⁸⁴ S. Smith, V. Ward, & A. House, (2011) “‘Impact’ in the proposals for the UK’s Research Excellence Framework: Shifting the boundaries of academic autonomy”, *Research Policy*, 40(10): 1369.

⁸⁵ R. Watermeyer, (2016) “Impact in the REF: issues and obstacles”, *Studies in Higher Education*, 41(2): 199-214

Table 27.14 I am concerned that the proposed TEF will diminish my individual academic freedom.

Response	UCU (%)
Strongly Agree	40.2
Agree	29.5
Neither agree nor disagree	24.5
Disagree	4.7
Strongly disagree	1.1
All (n= 2309)	100 (n = 2309)

Question 22: The final question in this section invited respondents to make any further comments concerning their experience of academic freedom. A total of 420 responses were received, and their critical tone and timbre is very similar to responses obtained from other open-ended questions, namely the adverse impact of greater managerialism and commercialisation in higher education. Other comments highlighted the stark choices facing concerned staff, for example “This week I have experienced fear for the first time...if I lose my job, I lose my home and I lose my community, so I have to shut up and put up”. The full set of responses to this question are available on pages 294-323 in the Appendix Tables (available on request), and by way of illustration, the first 10 comments are given below in table 28.

Table 28 Examples of further comments on experience of academic freedom

Response
Far too much to say under this heading. The marketisation / commercialisation of higher education has been an explicit objective of 'radical reform' in the UK since 2010. It has been pressed forward despite abundant evidence that it will drive standards down and prices up. At root, it represents the suppression of the genuine academic values proper to the university in favour of the monetary values of the Marketplace. We are still just beginning to go down this road, but its potential damage is incalculable. Take to its (il)logical conclusion, it means the death of the university.
I started teaching this year - that's affecting my answers
I feel being a permanent full-legged academic staff difficult when I see around me so many colleagues being put on zero-hours or temporary contract and as such in insecure working conditions as well as the rise of teaching only contract which make academic promotion difficult for younger staff and other colleagues who have ideas and research to contribute but need to make do with such contracts.
We seem to be recruiting students based on fee income rather than their capabilities for the courses they will be studying
My institution does not engage with academics in a meaningful way in relation to governance.
My answers are in respect of my current institution because you do not identify previous institutions separately. In a previous institution I have met much stronger control of my research agenda and enforcement by managers of a research agenda unrelated to academic enquiry but simply focused on requirements of previous REFS
I have seen several colleagues in the last three years who either have spontaneously left or they have been fired--with no official/transparent explanation--from one day to another.
It is unclear to me whether the decline of academic freedom in my institution is caused mainly by the loss of autonomy to the government or the corporate culture which dominates the institution. I often feel that the latter is a more important factor (and the excessive fear of bad publicity by management)
The commercialisation of HE in the past twenty years or so marks the greatest threat to academic freedom, both in terms of academics being pushed into having a more commercial direction to their work, and in the changed relations of staff and students. It's a bloody mess, basically!
Note that I am a mathematician. Therefore it is hardly possible for me to publish or say any (maths) academic views that would upset any one.

11 The Demographic Characteristics of Respondents

The final part of the survey examined the respondents' personal characteristics. This section of the survey contained some questions specific to the UK, and hence have no corresponding data from the European nations, but where comparable data is available it is reported.

Question 23: Please select your gender. This question asked respondents to select their gender, but the question was phrased differently for UCU members, who were also given the option: "I would rather not say". The results in table 29 below show that the majority of respondents are male in both cohorts. If it is assumed that the proportion of UCU respondents who preferred not to answer were equally split between male and female, this would suggest that the degree of gender inequality is slightly less in the UK than the EU.

Table 29: Respondents' gender

Response	% EU	% UCU
Male	61.9	57.0
Female	38.1	38.7
I would rather not say	-	4.2
All (n= 6449)	100 (n = 4140)	100 (n = 2309)

Question 24: Is your gender the same as you were assigned at birth. This question only appeared in the UCU survey, and as can be seen in table 30 below, less than 1% of respondents reported that their gender was now different from the birth gender.

Table 30: Gender same as at birth

Response	UCU (%)
Yes	96.0
No	0.4
I would rather not say	3.6
All (n= 2290)	100 (n = 2290)

Question 25: Please select your age range.

In the UCU survey, respondents were asked to choose an age group, while the European survey asked the year in which respondents were born. The European data was re-calibrated to make it comparable with the UCU data. The data, which is shown in Table 31, reveals an aging workforce – nearly a third of both cohorts are aged over 55.

Table 31: Age Range

Age Cohorts	% EU	% UCU
Under 25	0.2	0.1
25 – 29	2.8	2.2
30 – 34	8.6	6.5
35 – 39	13.9	11.7
40 – 44	15.4	11.3
45 – 49	13.5	15.3
50 – 54	13.5	19.4
55 – 59	11.9	15.7
60 – 64	9.6	11.4
65 and over	10.5	6.5
All (n= 6350)	100 (n = 4120)	100 (n =2230)
$\chi^2 = 114.775$ 9 df Significant at 1% level		

The bulk of respondents (EU=56.3%, UCU=57.7%) are aged 35-54, while the proportion under 35 is 11.6% for the European cohort and 8.8% for the UCU. These figures suggest that the academic profession is skewed towards the elderly for both cohorts. Assessing the reasons for this would require further research, but in the UK context these are likely to include greater job insecurity (following the removal of tenure) and salaries that have remained static (or declined) in real terms during the last decade, which have acted as a disincentive to those contemplating an academic career.

Question 26: Please select your ethnicity.

Question 26, which was only used for UCU members, asked respondents to indicate their ethnicity. The results in table 32 show that 87.3% of UCU respondents are white, which suggests that greater efforts are required by higher education institutions to encourage students from ethnic minorities to enter higher education, and go on to take post-graduate qualifications, and enter the academic profession.

Table 32: Respondents Ethnicity (UCU only)

Ethnic Group	UCU (%)
White – British	58.3
White - Irish	4.7
White – Other	24.3
Black or British Black- African	0.2
Black or British Black – Caribbean	0.0
Black or British Black – Other	0.1
Asian or British Asia – Bangladeshi	0.0
Asian or British Asia – Indian	0.9
Asian or British Asia - Pakistani	0.3
Asian or British Asia – Other	0.6
Chinese	0.5
Mixed – White and Asian	0.7
Mixed – White and Black African	0.0
Mixed – White and Black Caribbean	0.1
Other Ethnic group	2.8
I would rather not say	6.3
All (n= 2321)	100 (n = 2321)

Question 27: Do you have a registered disability?

Question 27 asked UCU respondents to state whether they had a registered disability. As can be seen from table 33, circa only 6% of respondents stated that they had a registered disability, with 5% indicating that they would rather not say.

Table 33: UCU respondents with a registered disability

Response	UCU (%)
Yes	5.9
No	89.2
I would rather not say	5.0
All (n= 2296)	100 (n =2296)

Question 28: If you have a political affiliation, whereabouts approximately on the following scale, would you consider your affiliation to lie?

Question 28 asked to respondents to determine, on a 9 point scale, their political affiliation. The results in table 34 show the UCU respondents to be more likely to affiliate with left, rather than right wing policies. The difference between the two cohorts is statistically significant, but may reflect, to some extent, the nature of the differing sampling frameworks adopted. The EU survey requested any member of the academic staff to participate, while the UCU survey was aimed just at UCU members. Hence it is possible that, if the European survey had been sent only to members of academic professional associations or trade unions (e.g. the Dansk Magisterforening in Denmark, the Sveriges Universitetslärare och Forskare in Sweden, etc.) the spread of political affiliations among the respondents would more closely resemble the UCU profile.

Table 34: Political affiliation

Response	% EU	% UCU
To the Left, Socialist, Social Democrat	18.2	27.6
2	17.3	21.9
3	20.9	23.1
4	13.7	11.2
Centre, Centrist	14.4	10.5
6	7.6	2.4
7	5.4	1.8
8	1.4	0.6
To the Right, Conservative, Republican	1.0	1.0
All (n= 5788)	100 (n = 3640)	100 (n = 2148)
$\chi^2 = 213.145$ 8 df Significant at 1% level		

Question 29: In what type of institution do you work?

Question 29 asked respondents to indicate in which type of institution they worked. The results in table 35 show that the overwhelming majority work in higher, rather than further, education. It is therefore likely that respondents working in further education are under-represented in the survey. It is conceivable that f.e. lecturers providing h.e. courses may believe that, as they do not undertake research, academic is not a salient issue for them. However, it may also be the case that f.e. staff are even less aware than their h.e. counterparts, with respect to academic freedom, and therefore less likely to complete the survey.

Table 35: Respondents' type of institution

Institution Type	UCU (%)
Higher Education Institution	96.5%
Further Education College	2.5%
Alternative Provider, e.g. private h.e.i.	0.1%
Other, please specify	0.9%
All (n= 2320)	100% (n = 2320)

Question 30: For how long have you worked in your present institution?

Question 30 asked respondents to indicate for how long they had worked in their present institution, and the results are shown below in table 36. Although the differences between the two cohorts are statistically significant, they do show quite similar profiles. However, a higher proportion of UCU respondents have spent less than 10 years in their current institution, when compared with the European respondents; conversely, a greater proportion of the European cohort had been in post in the same institution for 16 years or more. Some of these differences probably reflect different national customs. For example, in the UK, degree students do not chose to study at the institution nearest to their home and, furthermore, will seldom chose to study for a post-graduate award at the same institution. In contrast, in countries like Sweden and Finland, most students will study at the local university; it is not uncommon for Finnish or Swedish academics to study for their first and postgraduate degrees at their local university, and then go on to spend all of their academic careers at the same university, more especially if they have been granted tenure.

Table 36: Length of service in current institution

Length of Service	% EU	% UCU
Less than one year	4.3 ^a	3.8 ^a
1 – 5 years	20.7 ^a	24.8 ^b
6 – 10 years	18.7 ^a	19.8 ^a
11 – 15 years	17.4 ^a	18.6 ^a
16 – 20 years	12.2 ^a	12.0 ^a
21 – 25 years	9.0 ^a	9.1 ^a
More than 25 years	17.8 ^a	11.9 ^b
All (n = 6447)	100 (n = 4129)	100 (n = 2318)
$\chi^2 = 47.586$ 6 df Significant at 1% level		

Question 31: Please select your job role.

Question 31 asked respondents to specify their job role. The results in table 37 show that the sample is probably skewed towards more senior grades, such as Professor and Reader, as few

university departments would have 28% of staff occupying such grades. However, given that people in such posts are highly research active and likely to have been in academia for some time, they may be more likely to have encountered problems regarding academic freedom, which is why they were drawn to complete the survey.

Table 37: Job Role of Respondents

Job Role	UCU (%)
Professor	19.8
Principal Research Fellow	0.2
Principal Lecturer	4.2
Reader	8.3
Senior Research Fellow	1.4
Senior Lecturer	30.7
Lecturer	23.0
Research Fellow	2.7
Senior Teaching Fellow	0.6
Teaching Fellow	1.2
Research Assistant	1.3
Teaching Assistant	0.9
Section Head/Manager (non-academic)	0.4
Non-academic professional	1.0
Other	4.4
All (n=2318)	100 (n = 2318)

Question 32. What is/are your broad teaching/research discipline(s) (e.g. Economics, etc.)?

Question 32 asked respondents to name their academic area of research/teaching. The results displayed in table 38 show that 32.3% were drawn from the pure and applied sciences; 37.9% from the social sciences, plus business, law and education and 23.5% from the Arts and Humanities. In essence these figures suggest that the respondents were drawn from a full range of academic disciplines, rather than being skewed in the direction of a specific subject area.

Table 38: Subject Disciplines of Respondents

Response	UCU (%)
Agriculture/Veterinary Medicine	0.7
Engineering	4.4
Life Sciences	5.5
Medical Sciences, Health Sciences	9.0
Physical Sciences, Mathematics	8.3
Computer Sciences	4.4
Social and Behavioural Sciences	19.3
Business and Administration, Economics	9.1
Law	3.1
Education/Teacher Training	6.4
Arts and Humanities	23.5
Other	5.9
N/A - not an academic	0.5
All (n=2310)	100 (n = 2310)

Question 33. What is the nature of your present position?

Question 33 asked respondents to indicate whether they had full or part-time positions. As can be seen from table 39, over 80% of all respondents were in full time posts, with a greater proportion of UCU (than European) respondents holding part-time positions. The differences between these groups was statistically significant, but at the 5%, rather than the 1%, level.

Table 39: Present Position (PT/FT status)

Response	% EU	% UCU
Full time	83.4a	82.7a
Part time	11.6a	13.3b
Other	4.9a	3.9a
All (n = 6429)	100 (n = 4119)	100 (n = 2310)
$\chi^2 = 6.768$ 2 df Significant at 5% level		

Question 34. What type of contract are you on?

Question 34 asked UCU respondents only to indicate what type of contract they were on. The results in table 40 show that just over 80% were on permanent contracts. Hence one in five of all UCU respondents had little or no job security. Such job insecurity is not unusual among post-doctoral researchers, but as table 37 shows that approximately 2% of respondents were in such posts, the data in table 40 suggests a growing proportion of casualised labour, within academia with one person in five employed through the use of fixed term, zero hours, sessional and annualised hours contracts.

Table 40: Job Role of Respondents

Job Role	UCU (%)
Permanent	81.0
Open ended	6.6
Fixed term	7.1
Zero hours	1.0
Sessional	0.7
Annualised hours	0.1
Guaranteed minimum hours	0.2
Other	3.2
All (n=2311)	100 (n = 2311)

Question 35/36. Contractual focus – research and/or teaching

Question 35 and 36 (which were directed only at UCU staff) were related, as question 35 asked about the type of contract, while 36 asked what respondents said were their primary activities. The results are given in tables 41 and 42 below. 75.4% of respondents were on research only, or teaching and research contracts, and a similar proportion described their primary activities as research, and research and teaching. Although the use of teaching and scholarship contracts has been mooted for staff who are not research active, and hence unlikely to have their work included in the next REF, table 42 shows that such contracts are employed less frequently than research and teaching contracts, and that, for the majority of UCU respondents, research rather than teaching is their primary activity. Whether this will be the case after the Teaching Excellence Framework is implemented, remains to be seen.

Table 41: With which type of contract are you currently employed?

Contract Type	UCU (%)
Research	7.0
Research and Teaching	68.4
Teaching and Scholarship	15.2
Academic-related	6.3
I don't know	3.2
All (n=2300)	100 (n =2300)

Table 42. Please select your primary activity/ies: Teaching and Research

Response	UCU (%)
Teaching and research	62.3
Primarily research	11.9
Primarily teaching	21.1
Academic related (professional staff)	2.7
Faculty management	1.9
All (n=2294)	100 (n = 2294)

Question 38. Are you a member of the UCU?

Question 38 asked about UCU membership. Given that the survey was only sent to UCU members, it is not surprising that, less than 1% of respondents indicated that they were not a member of the Union.

Table 43: Are you a member of the University and College Union?

Response	UCU (%)
Yes	98.7
No	0.6
I would rather not say	0.6
All (n= 2312)	100 (n = 2312)

Question 39: This question, invited respondents to make any further comments concerning academic freedom, in connection with their academic work and responsibilities, concluded the survey. As with previous open ended questions, non-relevant text answers were removed, leaving a total of 306 responses in respect to this question. Some responses were, like those to the other open-ended questions, highly critical of the way in which UK higher education is managed; a number of respondents indicated that academic freedom was important and that they were glad that UCU was working on this issue. The full set of responses to this question are given

on pages 324-344 in the Appendix Tables, and by way of illustration, the first 10 comments are given below in table 44.

Table 44 Examples of “further comments on academic freedom”

Response
The assault in academic freedom has not been a single reduction but many years of 'chipping' away at it. It is getting to the point where there is less need for any kind of explicit denting of academic freedom because there is self-censorship or at attempt by institutions to direct research into less controversial areas.
My current institution is quite good on these issues but past experiences have been very different and very problematic.
One area in which I perceive a reduction in academic freedom is in the lack of real consultation during changes in University administration and organization, i.e. changes are imposed from the centre.
I have never been threatened or sanctioned because of my academic views, research or teaching, but do not feel I have the freedom to research what I want in the way that I want to because of constraints imposed by academic disciplines as recognised by the REF etc. I sit between two departments, and was not entered in the last REF because they could not decide which unit of assessment to enter me under.
award leader / partner college manager
The students themselves are schizophrenically torn between growing levels of pressure (re to assessments and requirements) and infantilization (re to attendance etc.), on the one end, and their transformation into customers/clients who have to have a say on everything, including what we teach, on the other. Academia doesn't deserve to be called as such anymore. Our responsibility is immense and our work is (/used to be) one of the most important means to facilitate the creation of new generations of informed, cosmopolitan, autonomous and responsible citizens; but the commodification of the HE is killing universities in this country.
In general I do feel that academic freedom is respected at both Faculty and University level, based on explicit comments by both Deans and vice chancellors (and other officers) in Senate.
This is likely to be become, regrettably, and even more significant under the TEF. UCU are right to campaign on this and to find common cause with others (NUT NUS)
Academic freedom also requires access to funding. If funding is denied, this can be, in effect, a form of censorship in and of itself.
We are paid to bite the hand that feeds us, albeit responsibly and for its own good.

In addition to comparing UCU with European respondents, a further analysis was undertaken comparing demographically defined cohorts within the UCU respondents. Constraints on academic freedom can affect all academic staff. However, there may be some personal characteristics of staff (age, gender, ethnicity, etc.,) which may lead to constraints on their academic freedom, which are disproportionately greater than their peers. To investigate on this, the responses by UCU staff were re-examined, but this time comparisons were undertaken between demographically defined cohorts within the UCU cohort, rather than with the European cohort, with respect to gender, age, ethnicity, and disability. Hence, for example, the incidence of sexual harassment was examined to see if male and female respondents in the UCU data set reported similar/dissimilar levels of occurrence. The use of the UCU survey in this way enables greater exploration of the data. However, although ANOVA and chi squared tests can be used in such analyses, the demographic characteristics concerned can undermine the validity of such tests. For example, less than 10 individuals, in a sample of over 2000 UCU respondents, indicated that they have had their gender reassigned, so trying to use groups as small as this for analysis produces meaningless statistics. Moreover, in some circumstances, the chi square statistic indicates there are significant differences, but the actual underlying pairwise significance between groups is negligible. i.e. the overall proportions look significant but as the group sizes are very disparate – for example, when looking at the age of respondents, there were only 2 in the

under 25 age range cohort. In consequence, there are minimal conclusions that can be safely drawn from such analyses of the data. This is in contrast to, for example, the gender differences, where the analysis uses only two very large groups, and thus significant differences really are significant.

Bearing such caveats in mind, the UCU data was split in accordance with the demographic groups defined in section 6 (age, gender, etc.) and then the relevant statistical tests re-run to see whether, for example, people from ethnic minorities are more likely to suffer restrictions on their academic freedom. In Sections 1-5 of the report above, a total of 51 tables have been used to examine the differences between UCU and European cohorts. In eight instances, the ANOVA or Chi Square statistics were not statistically significant at the 5% threshold. In two instances, the statistics were significant at the 5% level; in the remaining 41 tests undertaken, the differences between the two cohorts were significant at the 1% level. Comparing cohorts within the UCU responses (for example differences between male and female) produced a much smaller incidence of statistically significant relationships. The Appendix Tables contain all tables relating to gender, age, ethnicity and disability that were statistically significant at the 5% level, on pages 345-388. Drawing on the tables in the Statistical Appendices, in 23 instances there were statistically significant differences at the 5% level or above, in relation to gender. In respect to respondents' age, in 28 instances statistically significant differences were found, but some of these were suspect, owing to the small cell sizes in some instances. Similarly, in respect to ethnicity, the analysis showed 17 instances in which ethnicity was a significant factor, but some of the tables again revealed very small cell sizes, owing to the very small number of ethnic minority respondents in the sample, which undermines the validity of the statistics. Finally, with respect to persons with registered disabilities, the analysis showed 16 differences in which disability was a factor. This is very surprising and worthy of further analysis. 5.9% of the sample said that they were disabled, with a further 5% not wishing to say. These numbers, plus the dichotomous nature of the variable, suggests that the impact of disability, as evinced from the data analysis, is more likely to be real than to be a statistical aberration. In essence, people with a disability suffer greater encroachment upon their academic freedom than their peers who have no disabilities.

12 Conclusion and Recommendations

In sum, this study shows, unequivocally, that the levels of both the *de jure* and *de facto* protection for academic freedom are lower in the UK than in the other EU nations. Addressing these deficiencies will require a concerted effort by the UCU, both as an institution and in co-ordination with other relevant NGOs, first to raise awareness of the defining characteristics of academic freedom, such that the majority of UK academics have a more than adequate understanding of the concept and their (albeit meagre) legal protection, and second, to press for changes to the law.

Assessing the *de jure* protection for academic freedom, in their definitive UK text on *The Law in Higher Education*, Farrington and Palfreyman commence the section on individual academic freedom with a quote from Karran's comparative study, viz.: "in terms of the health of academic freedom, the U.K. is clearly the sick man of Europe". In a footnote they quote further from the same source: "in the U.K., there is no constitutional protection for either freedom of speech or academic freedom, the law on academic freedom is designed to ensure 'just cause' for employment termination, the academic staff have only a minor input in the decision making process, the Rector is an external appointment over which they have no rights, and academic

tenure exists for only a few staff, who are dwindling in number as retirement beckons”.⁸⁶ Farrington and Palfreyman make no attempt to question the veracity of this terse and uncompromising statement; moreover, as this study has confirmed, the constitutional and legal protection for academic freedom in the UK is among the very worst of all the EU nations. This lack of constitutional and legal protection is not peculiar to the liberties of academics, although it has a direct bearing on their work, which is not experienced in other professions. Rather, it is symptomatic of a democratic deficit which characterises the British unwritten constitution and its attendant political system, and which is brought into sharp focus when comparisons are made with other EU states, **all** of which have a form of written constitution, **most** of which use a proportional electoral system, **none** of which has an unelected second chamber. This situation is unlikely to change and, indeed, may get worse if the UK exit from the European Union is followed by a British revocation of the European Convention on Human Rights, for which some members of the government have called.

With respect to the *de facto* analysis, this study is the first such large scale, comprehensive, empirical analysis of the state of academic freedom among UCU members or, indeed, among the members of any h.e. professional association or union in the EU. The study demonstrates that UCU members have a limited, barely adequate knowledge of the concept, and a consequent strong desire for more information and practical advice concerning it. It also suggests that only a minority of UCU members were aware of their institution’s policy on academic freedom, or whether such a policy existed, suggesting higher education institutions need to do more to inform their staff about their academic freedom rights in relation to teaching, research, and governance. Despite not knowing much about the concept, most UCU respondents believed that recent years have seen a marked decline in their academic freedom. To address this lack of knowledge, the UCU could launch a national campaign to raise awareness, and provide training materials and guidance at Branch level, so that where abuses do occur, they are recognized, recorded and monitored, and support is provided to individual members to enable them to successfully meet their academic responsibilities in regard to their teaching and research activities.

In terms of respondents’ experience of academic freedom, the research has revealed that bullying, psychological pressure and self-censorship are all too commonplace within higher education institutions that are supposed to encourage their staff to pursue teaching and learning within an academic environment typified by the tolerance of others’ opinion and beliefs, and freedom of expression. Furthermore, it is evident that particular demographic groups within the UCU suffer disproportionately, with respect to abrogation of their academic freedom. Comparison of the UCU data with that from Europe shows that in the vast majority of cases reported, the situation in the UK (as typified by the UCU data) is significantly worse than in the European nations. The analysis of *de jure* protection showed that the level of protection in the majority of the EU states is greater than in the UK. It is likely that the higher level of *de facto* abuse of academic freedom experienced by UCU staff, is only possible because of the absence of any significant constitutional or legal protection for academic freedom in the UK. In countries like Spain, where academic freedom is protected in the constitution and via the Ley Organica, and where academics have employment security, the possibility of (for example) of staff being bullied, with threats of dismissal, will be significantly lower than occurs in the UK.

⁸⁶ T. Karran, (2007) “Academic Freedom in Europe: A Preliminary Comparative Analysis”, *Higher Education Policy*, 20(3): 309, as cited in D. Farrington, and D. Palfreyman, (2012) *The Law of Higher Education* (2nd Edition), Oxford: Oxford University Press, p. 456.

However, when there is no legal sanction available to counteract abuses to academic freedom, raising awareness of academic freedom among UCU members (which will make people more cognisant of the rights that they should be able to exercise, but are legally unable so to do), is likely to result in disillusionment for an increasingly demoralized profession. One possible option for the UCU would be to make a submission to the joint ILO-UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART), which is responsible for assessing complaints against national governments in respect to alleged breaches of the 1997 UNESCO *Recommendation on the Status of Higher Education Teaching Personnel*. This route was followed by the Danish equivalent of the UCU, the Dansk Magisterforening (DM), largely after lobbying at national level had failed, and to make an appeal internationally. Research that the lead author published in 2007 and 2009 showed that, utilising measures of academic freedom from the 1997 UNESCO *Recommendation*, (and reported above) the worst two nations in the EU for the protection of academic freedom were the UK and Denmark. This was reported in the press, and consequently discussed in the Danish Parliament. As a result the President of the DM, Ingrid Stage, set up an online petition requesting that the Danish parliament change the legislation on academic freedom, which attracted signatures from 6502 Danish academics. Consequently, the DM made a submission to the joint ILO-UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART), which is responsible for assessing complaints against national governments in respect to alleged breaches of the 1997 UNESCO *Recommendation*. Reporting in 2009, the CEART recommended that “the Government and the DM engage in social dialogue on issues of university governance”.⁸⁷ Previously, the government had largely ignored protests by DM at national level, however, the international appeal to UNESCO and its response, meant that the government was forced to act. In 2009, the Danish government established an evaluation team comprising five international academic experts from outside Denmark to examine the 2003 University Act. The Evaluation Teams report concluded (p. 39) “article 17.2 of the 2003 University Act. ... is seen by many academic staff members of the universities as a major symbol of the controversies around the Act, as it gives the institutional leadership the formal power to tell individual staff members which academic tasks to perform. The article could be regarded as an intrusion into traditional values and rights of academic university staff. ... we find that the question can be raised whether article 17.2 in all its details fits the Danish and European traditions with respect to academic freedom. ... Taking these considerations into account, the Panel recommends the Parliament to remove or reformulate the article 17.2”.⁸⁸ Consequently, the government was forced to draft a new university law in June 2011, Section 2 of which states explicitly: “The university has academic freedom. The university must protect the university's and the individual's research freedom”.⁸⁹

The Danish submission was reliant on the *de jure* analyses undertaken by the first named author in 2007 and 2009,⁹⁰ and which were considered in this report. At the time of the Danish

⁸⁷ Committee of Experts on the Application of the Recommendations Concerning Teaching Personnel (CEART) “Allegation received from the Dansk Magisterforening (DM) of Denmark” in *Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel Report: Tenth session Paris, 28 September – 2 October 2009*, Paris/Geneva: CEART/ILO, p. 38-44.

⁸⁸ A. Bladh, E. El-Khawas, A. Hasan, P. Maassen, G. Winckler, (2010) *Danish University Evaluation 2009 – Evaluation Report*, Copenhagen: Danish Ministry of Science, p. 39

⁸⁹ *LBK nr 695 af 22/06/2011 - Bekendtgørelse af lov om universiteter* (Law No. 695 of 22/06/2011 – Ordinance of Law on Universities), retrieved from <https://www.retsinformation.dk/forms/R0710.aspx?id=140435>, 20th October 2016.

⁹⁰ T. Karran, (2007) “Academic Freedom in Europe: A Preliminary Comparative Analysis”, *Higher Education Policy*, 20(3): 289-313.

submission the more detailed work on *de jure* protection, as detailed above, had not been undertaken. Moreover, the Dansk Magisterforening made no attempt to assess the *de facto* situation in Denmark by a survey such as has been undertaken for the UCU. Despite these deficiencies, Dansk Magisterforening's submission to UNESCO resulted in an external evaluation of the law in Denmark, which was subsequently changed. For the UCU to undertake a similar submission to UNESCO would involve little additional investment, and would be a tangible demonstration to its members (especially those who completed the survey) that the Union is aware of the problems of academic freedom experienced by its members, and is willing, if necessary, to devote appropriate resources to seek a remedy. Moreover such a move would also support the UCU's efforts to raise the awareness of these issues among its members, and bring them to the attention of the media. Indeed, and unlike as occurred in the Danish case, the detailed analysis of *de jure* and *de facto* protection for academic freedom in the UK revealed by this study, would provide a firm legal and empirical basis for such a submission, thereby markedly increasing its chances of success. Without action of this kind, it is likely that academic freedom in the UK will descend into further, probably irreversible, decline.

The UK is a signatory to the UNESCO 1997 *Recommendation*, and the other international covenants but national successive governments have repeatedly ignored the salient elements regarding academic freedom. The Danish experience shows that national governments are well experienced in, and adroit at, ignoring and/or muting protests about higher educational policy at national level. When the results of research in academic freedom by the lead author were reported in the Danish national press, and discussed in the Danish Parliament, the Danish Minister, Helger Sander, disparaged the evidence in the article, and argued in the press that, given that ex-communist nations headed the EU academic freedom ranking, he was glad that Denmark did not. In response, the DM President, Ingrid Stage stated in *ForskerForum*, (the monthly magazine of the Dansk Magisterforening) that: "The Danish university law's degrees of freedom must now be tested against the international UNESCO declaration in response to an inquiry by the English scientist Terence Karran from Lincoln University which showed that Danish academic freedom is fully depressed in western context".⁹¹ However, as the impact of the DM's submission to UNESCO showed, national governments are less practised at dealing with international NGOs, whose calls for action they cannot so readily ignore. The documentation submitted to UNESCO by DM is obtainable, use of which as a template would reduce the cost and the time of the UCU in preparing its own submission. Moreover, the inclusion of data relating to the UK's non-compliance with international agreements other than the UNESCO *Recommendation*, (like the ICCPR and the ICESCR, which were not included in the Danish submission) and the data gathered by this study on the low level of *de facto* protection would significantly strengthen such a submission, and increase the likelihood that the CEART would recommend that the UK government takes action to remedy the situation. Given that the CEART's response to a submission from UCU would be widely reported in the national and international media, it is difficult to see how the incumbent (or any future) Minister of State for Universities, Science, Research and Innovation could ignore it.

Terence Karran and Lucy Mallinson,

March 12th 2017

T. Karran, (2009) "Academic Freedom in Europe: Reviewing UNESCO's *Recommendation*", *British Journal of Educational Studies*, 57(2): 191–215.

⁹¹ I. Stage, (May 2008) "Sander ignorerer frihedsgrader" (Sander ignores degrees of freedom) *ForskerForum*, No. 214, p. 14.

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