



**Code of Practice on Free Speech**

<b>Outcome requested:</b>	Council is asked to <b>approve</b> the proposed Code of Practice on Free Speech in place of the existing Freedom of Speech Policy in the light of advice from Senate.
<b>Executive Summary:</b>	<p>[a] It is a requirement of the University Charter, the Higher Education Code of Governance and the recent Freedom of Speech (Higher Education) Act 2023 that Council respects the principle of academic freedom and the University’s legal responsibility to uphold freedom of speech within the law. It does this by making and monitoring Ordinance B4, which embeds the principle of academic freedom in all employment policies, and by approving and monitoring a code on free speech. This also satisfies the Office for Students’ conditions of registration on public interest governance principles (Conditions E1 and E2).</p> <p>[b] It is also a requirement of the University Charter that Council consults the Senate before making any ordinance or code that affects academic policy. The proposed Code was considered and endorsed at the Senate meeting on 19 October 2023 (see item 8(a) on the Council agenda).</p> <p>[c] The proposed Code reflects the new Freedom of Speech (Higher Education) Act 2023, noting that some of the statutory duties therein will be fully defined and phased over the next two years. The Code has been subject to external legal review and, if approved by Council, will be kept under regular review as the detailed regulatory position becomes clear.</p> <p>[d] The Office for Students’ insight note on academic freedom and free speech is attached to provide context on relevant considerations for Council. The University’s existing Freedom of Speech Policy, which it is proposed will be replaced with this Code of Practice on Free Speech, is also attached as background.</p>
<b>QMUL Strategy:</b>	Free speech and academic freedom are fundamental to the University’s academic mission.
<b>Internal/External regulatory/statutory reference points:</b>	The Code was developed in reference to the Freedom of Speech (Higher Education) Act 2023 as well as other relevant legislation referred to in Section 3 of the Code. The 2023 Act requires the Office for Students in due course to consult on a new condition of registration on free speech and academic freedom. Meanwhile, Conditions E1 and E2 on the public interest governance principles are relevant.

<b>Strategic Risks:</b>	<ul style="list-style-type: none"> <li>• Academic reputation.</li> <li>• Failure to comply with the ongoing conditions of registration with the Office for Students.</li> </ul>
<b>Equality Impact Assessment:</b>	Universities have a statutory duty to take steps to secure free speech and academic freedom, with a duty to have <i>particular regard</i> to their importance, whereas the public sector equality duty is to have <i>due regard</i> to those particular duties. An equality impact assessment of the Code therefore has not been undertaken, but it remains our usual practice to consider equality impacts within risk assessments for individual events.
<b>Subject to prior and onward consideration by:</b>	The Code was considered at the Senate meeting on 19 October 2023 (see item 8(a) on the Council agenda).
<b>Confidential paper under FOIA/DPA:</b>	No.
<b>Timing:</b>	The Code was developed in response to the passing of the Freedom of Speech (Higher Education) Act 2023. Further updates to the Code may be required as the Office for Students assumes its new statutory duties (including the operation of a complaints scheme) from 1 August 2024 and establishes new conditions of registration from 1 September 2025.
<b>Author:</b>	Danny Hassell, Policy and Governance Lead
<b>Date:</b>	17 November 2023
<b>Senior Management Sponsor:</b>	Jonathan Morgan, Chief Governance Officer and University Secretary

## Code of Practice on Free Speech

### Introduction

1. The Higher Education (Freedom of Speech) Act 2023 ('the 2023 Act') is now law, having received Royal Assent in May. As a result, the University needs to update relevant policies. The proposed Code of Practice on Free Speech (which is the nomenclature used in the 2023 Act) would replace the existing Freedom of Speech Policy.
2. The proposed Code has been considered and endorsed by the Senate and has also been subject to external legal review.
3. Queen Mary Student's Union has agreed to adopt the proposed Code in place of the Freedom of Speech Policy and was consulted during the Code's development. This is significant, as the 2023 Act for the first time extends free speech duties in higher education to student unions as well as universities.
4. The Code is designed to address specific requirements in the 2023 Act:
  - the provider's values relating to freedom of speech and an explanation of how those values uphold freedom of speech;
  - the procedures to be followed by staff and students of the provider and any students' union for students at the provider in connection with the organisation of meetings which are to be held on the provider's premises and which fall within any class of meeting specified in the code, and other activities which are to take place on those premises and which fall within any class of activity so specified;
  - the conduct required of such persons in connection with any such meeting or activity; and
  - the criteria to be used by the provider in making decisions about whether to allow the use of premises and on what terms (which must include its criteria for determining whether there are exceptional circumstances).
5. The Code also reflects advice to the higher education sector from the Office for Students that '*such a code should provide a broader framework for ensuring free speech at the university or college. This means that we would expect a university's free speech code to include broader statements about free speech and academic freedom, and to extend to activities such as teaching and curriculum content*'. Appropriate wording has been incorporated, including on the requirement to uphold free speech principles in relation to work on tackling harassment, as well as on the role of institutional neutrality.

### Legislative and regulatory context

6. The Office for Students' insight note on academic freedom and free speech, published prior to the 2023 Act being finalised, is attached to provide context on relevant considerations for Council.
7. The following paragraphs highlight new considerations in the 2023 Act.
  - [a] The 2023 Act places the duty on higher education providers to take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take to secure free speech within the law for

staff, members, students and visiting speakers. In relation to academic staff, there is also the duty to secure their academic freedom. Academic freedom means freedom within the law to question and test received wisdom and put forward new ideas and controversial or unpopular opinions, without placing them at risk of loss of their job or privileges or the ability to secure promotion or employment at another institution.

- [b] There are several further practical elements as to how providers must demonstrate this, including maintaining a code of practice, preventing the use of non-disclosure agreements related to sexual abuse, sexual harassment or sexual misconduct, or bullying and harassment, and requirements related to the recording of overseas funding.
- [c] The 2023 Act, for the first time, places duties upon students' unions in relation to having particular regard to the importance of free speech.
- [d] There is new provision for civil claims for a breach of duty (a statutory tort), meaning a person can bring civil proceedings against a provider or the students' union in respect of a breach of any of the above duties if that breach causes the person to sustain a loss. However, proceedings may only be brought where the person has brought a complaint on the matter under the relevant complaints scheme and a determination made in respect of the complaint.
- [e] Providers are required to actively promote the importance of free speech and academic freedom.
- [f] The 2023 Act places duties on the Office for Students to promote the importance of free speech and academic freedom, including through the introduction of initial and ongoing conditions of registration related to free speech. In particular, the Office for Students must ensure institutions have in place adequate and effective management and governance arrangements to secure compliance by the governing body of the institution with their duties. This relates to existing Conditions E1 (ensuring governance documents uphold public interest governance principles) and E2 (having in place adequate and effective management and governance arrangements to adhere to governing documents and deliver in practice applicable public interest governance principles).
- [g] The 2023 Act introduces requirements for a free speech complaints scheme, to be operated by the Office for Students, and for the Office for Students to appoint a director for freedom of speech and academic freedom to oversee the performance its free speech functions.

## **Implementation and compliance**

8. The first Director for Freedom of Speech and Academic Freedom, Professor Arif Ahmed, took up his post in August 2023. The Office for Students has advised that it will take a phased approach to implementing its new regulatory approach. On 1 August 2024, the new statutory duties on free speech come into force, including for students' unions, and the Office for Students will launch its free speech complaints scheme. On 1 September 2025, new conditions of registration on free speech and academic freedom will come into force, together with the provisions related to the monitoring of overseas funding.

9. Subject to approval of the Code by Council, an implementation plan will be developed and taken forward iteratively as the regulatory position becomes clearer. Initial priorities have already been identified in discussion with the Senate in relation to providing training on free speech, reviewing other policies to ensure they align with the Code, and ensuring that arrangements for handling complaints are fit for purpose. Work is also under way in relation to records of overseas funding.
10. Audit and Risk Committee has identified compliance with the 2023 Act and future Office for Students conditions as suitable topics for a future deep dive.

### **Consultation and engagement**

11. Last academic year, Senate established a working group, including members of academic staff with relevant interests and expertise, and the Students' Union, to advise on the review of the Code. Key issues raised by the group and addressed in the proposed Code include:
  - aligning language as closely as possible with relevant legislation to avoid introducing unintended limitations on free speech;
  - clarifying the University's values as they relate to free speech; and
  - incorporating references to academic freedom, while noting that compliance with the principles of academic freedom is achieved primarily through the University's employment policies.
12. Senate has endorsed the proposed Code, noting some of the wider challenges involved in upholding free speech on campus especially around contentious issues of contemporary debate. It also supported proposals from two academic members of staff in relation to training, handling complaints and ensuring other policies are aligned with the Code (see paragraph 9 above). However, Senate did not support their proposal to establish a new Vice-Principal role for free speech and academic freedom, noting that this responsibility is appropriately shared through the leadership structure.
13. External legal advice was taken at relevant stages in the development of the Code, including prior to the submission of this draft for approval by Council.

### **Decision**

14. Council is asked to **approve** the proposed Code of Practice on Free Speech in place of the existing Freedom of Speech Policy in the light of advice from Senate.

## Freedom to question, challenge and debate

### Introduction and background

Freedom of expression and academic freedom are essential underpinning principles of UK higher education. The core mission of universities and colleges is the pursuit of knowledge, and the principles of free speech and academic

freedom are fundamental to this purpose.<sup>1</sup> They provide a necessary context for advancing new ideas, encouraging productive debate, and challenging conventional wisdom.

It is helpful to explain at the outset what we mean by academic freedom and freedom of expression or free speech. Please see the box on this page.

### Public interest governance principles

**Academic freedom:** This is the principle that academic staff are free within the law to question and test received wisdom, and put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or the privileges they may have at their university. This is included in the public interest governance principles that underpin the Office for Students' (OfS's) regulatory requirements relating to the management and governance of universities and colleges, and its inclusion is a statutory requirement.<sup>2</sup>

Academic freedom is a component of, rather than being entirely distinct from, freedom of speech.

**Freedom of speech:** The OfS's public interest governance principles also include a principle on freedom of speech. This principle requires governing bodies to take reasonably practicable steps to ensure that freedom of speech within the law is secured within their universities and colleges. It reflects the statutory duty on free speech with which higher education providers must comply.<sup>3</sup>

Although the OfS's principle (and the statutory duty) refer to freedom of 'speech', this will include written materials and other forms of expression. It is not limited to the spoken word.

**Framing of these principles:** Freedom of speech and academic freedom that are 'within the law' are protected. Unlawful speech is not protected. However, there is no need to point to a specific legal basis for particular speech. Rather, the starting point is that speech is permitted unless it is restricted by law. It is important to remember that free speech and academic freedom are bound by this requirement of lawfulness.

### Summary

Ensuring freedom of speech and academic freedom in English universities and colleges is not only essential to foster an open and enquiring academic mindset, but is also the subject of a number of legal duties and principles. This area has become increasingly contentious in recent years, and this brief summarises some key points before outlining the legal and regulatory framework within which universities and colleges must make decisions about matters relating to these freedoms. While this brief discusses the regulatory and legal landscape as at the time of writing, material relating to legislation currently before Parliament may become quickly out of date. And, while it provides commentary on a range of regulatory and legal issues, it is not intended to provide legal advice or a comprehensive statement or guide on the law relating to freedom of speech and academic freedom.

The Office for Students is the independent regulator of higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers. We regulate to promote quality, choice, competition and value for money in higher education, with a particular remit to ensure access, success and progression for underrepresented and disadvantaged groups of students.

While it is not a new issue, public debate over freedom of speech in higher education has intensified in recent years amid concerns that universities and students' unions may not be doing enough to uphold free speech and academic freedom. This has included a growing political focus.

In February 2021 the government set out proposals to strengthen freedom of speech and academic freedom in higher education in England, and a bill on free speech in universities and colleges is currently before Parliament.<sup>4</sup> The bill's proposals are discussed later in this brief.

In October 2022 organisations representing universities, colleges and students' unions issued a joint statement affirming their commitment to freedom of speech within the law and to academic freedom. The statement presents work on encouraging free speech as congruous with work on inclusion and ensuring all students can be heard.<sup>5</sup>

The debate over free speech, as it plays out in the media, in politics and in universities and colleges themselves, often connects to broader societal issues and concerns. This includes issues relating to identity and equality, harassment and discrimination, the regulation of social media, and even geopolitics. The implications of these concerns for free speech in universities are varied and often complex.

For some, the key concern is the erosion of free speech. Universities must be places where students and staff can openly and rigorously question current orthodoxies and beliefs, and explore new areas of intellectual enquiry, regardless of whether this involves or leads to the expression of views and opinions that may be uncomfortable, offensive or upsetting. Students, it is suggested, are being shielded from exposure to difficult and controversial subject matter, for instance in the denial of

a platform to controversial speakers. There are fears that a climate of self-censorship among academics and students has taken hold, in which the discussion of certain topics has become taboo.

Some commentators have suggested that an emphasis on free speech is at odds with work to reduce inequalities and tackle discrimination in higher education.<sup>6</sup> Some have drawn attention to the impact on groups who may feel silenced or threatened by the expression of certain views and perspectives. They believe that campuses should be inclusive environments or 'safe spaces', and they worry that an emphasis on free speech, which may encompass lawful but offensive or hurtful speech, might undermine work being done in this area.

Others have challenged claims of a free speech 'crisis'. They say that the debate is a distraction from other pressing issues in higher education.<sup>7</sup>

There have been numerous studies and reports on the state of free speech in English higher education. This Insight brief does not set out to evaluate this issue, although we summarise some key points for context. The focus of this brief is the legal and regulatory framework within which universities and colleges must make decisions about matters relating to academic freedom and freedom of speech. A consideration of that framework reveals some of the complex issues around free speech and equality law with which universities and colleges have been grappling. A sound understanding of this framework will support universities to make good decisions about free speech matters.

After all, it is not always the case that promoting free speech and supporting inclusivity are mutually exclusive. It might be argued, for example, that creating an inclusive environment in a university or college in which all are able to put forward their views and arguments, and each

contributor to a discussion is heard, facilitates and encourages free speech rather than stifling it.<sup>8</sup> The question arises of how best to achieve this in practical terms.

## Recent evidence

The state of free speech in higher education is not easy to measure, and some research findings on the subject have been contested or variously interpreted.

Policy Exchange's 2019 and 2020 publications, both entitled 'Academic freedom in the UK', highlighted evidence of self-censorship of speech by students and academic staff. The reports also set out policy recommendations for strengthening academic freedom.<sup>9</sup> A 2020 report by Civitas presented analysis of the policies and actions of 137 universities in the UK. It concluded that 48 of them (35 per cent) were performing badly on free speech, and called for government action on the issue.<sup>10</sup>

The latest update from the Academic Freedom Index project states that academic freedom in the UK declined between 2011 and 2021. According to this index, the UK is in the top 30 to 40 per cent of countries when it comes to academic freedom.<sup>11</sup>

Recent research by King's College London suggests that most students think academic freedom and freedom of expression are protected at their universities. Most agree that academic staff are free to express their views at their university, though their number seems to be declining (70 per cent, a seven percentage point decrease from an equivalent study in 2019); that free speech and robust debate are protected (65 per cent, about the same as in 2019); and that debates and discussions are conducted in a civil way (73 per cent, about the same as in 2019).

However, a significant minority of students believe that free speech is under threat. In the same research, 34 per cent report that free speech is 'very'

or 'fairly' threatened in their university (an increase of 11 percentage points from 2019). A quarter of students say that they 'very' or 'fairly' often hear of free speech being inhibited at their university (an increase of 13 percentage points from 2019).

A majority of students in the King's College research also indicated that they supported free speech, but within the confines of discrimination legislation. About three-quarters (74 per cent) said that protecting students from discrimination should have priority over allowing unlimited free speech.<sup>12</sup>

Research published by the Higher Education Policy Institute (HEPI), also in 2022, had similar findings: 61 per cent of students polled said that 'when in doubt' their university should 'Ensure that all students are protected from discrimination rather than allow unlimited free speech' (an increase of 24 percentage points from an equivalent poll in 2016). The HEPI poll also found that a minority of students (38 per cent) believed that universities were becoming less tolerant of a wide range of viewpoints (an increase of 14 percentage points from 2016).<sup>13</sup>

A recent HEPI report suggested that free speech is being inhibited in higher

education debating societies, where suitable speakers are not invited because they have previously expressed views that are deemed controversial or problematic, even though this does not make them unlawful.<sup>14</sup>

In 2022, the Times investigated the extent of content warnings and the removal of texts from university reading lists because of concerns about their content.<sup>15</sup> It found 1,081 examples across undergraduate courses where content warnings had been applied to texts, and ten universities that had withdrawn books from course study lists, or made them optional reading, because of content concerns. Its reporting on the findings concluded that concerns about students becoming upset or offended are limiting the range of study materials to which students are exposed.<sup>16</sup> However, students may welcome content warnings: 86 per cent of students responding to the HEPI poll supported them (an increase from 68 per cent in the 2016 poll).<sup>17</sup>

The OfS receives notifications from students, staff or others about issues or concerns relating to registered higher education providers. Since the OfS's inception in 2018, we have received approximately

800 notifications in total, of which around 60 were about free speech issues. Only a small number related to book lists or content warnings.<sup>18</sup>

The OfS will be collecting new evidence on freedom of speech in higher education. As of 2023, we will be collecting final-year students' views on free speech as part of the National Student Survey. A new survey question will test how comfortable students are to express themselves freely at university or college.<sup>19</sup> We will also be polling academics to ascertain their views on the state of free speech in higher education.

## The legal and regulatory framework for free speech

To outline the context in which free speech operates in English universities and colleges, it is necessary to consider both English law and the European Convention on Human Rights (ECHR).

Most of the universities and colleges that are registered with the OfS are 'public bodies' for the purposes of the Human Rights Act 1998. It is unlawful for those higher education providers, as public bodies, to act incompatibly with the ECHR. Article 10 of the ECHR relates to freedom of expression.

## Article 10

### Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

From the European Convention on Human Rights<sup>20</sup>

There is also legislation on freedom of speech in the specific context of higher education. Section 43 of the Education (No 2) Act 1986 requires universities and colleges to **'take such steps as are reasonably practicable'** to ensure that freedom of speech **within the law** is secured for their members, students, employees and visiting speakers ('the section 43 duty' or 'the free speech duty').

It is important to note that the framing of the section 43 duty is to 'take such steps as are reasonably practicable' and this is likely to entail a wide range of steps needing to be taken in practice. In our view, it is unlikely to be sufficient for a university only to make public statements in favour of free speech.

Section 43 also requires universities and colleges to issue and keep up to date a free speech code of practice.<sup>21</sup> The legislation specifically requires that code to set out the procedures that must be followed in connection with the organisation of meetings or other activities taking place on a university's premises, and the conduct required of staff and students in connection with those meetings and activities. The legislation also says that the code should deal with 'such other matters as the governing body' of the university 'consider[s] appropriate'.

In our view, it would not be sufficient for a university's free speech code only to deal with the organisation of meetings and speaking events. In our view, a free speech code should go a lot further than that. We consider that such a code should provide a broader framework for ensuring

free speech at the university or college. This means that we would expect a university's free speech code to include broader statements about free speech and academic freedom, and to extend to activities such as teaching and curriculum content.

The OfS is likely to consider the scope of freedom of speech policies across the sector in the future, for example in connection with the implementation of new regulatory powers that may arise from legislation, referred to below. Universities and colleges may wish to review their codes of practice now, with this in mind.

## Equality law considerations

### Protected characteristics

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

Some of these protected characteristics are commonly understood. Others are more complex and incorporate a legal definition that requires careful consideration. Issues relating to the protected characteristics of sex, gender reassignment and belief (which includes philosophical belief) have been the focus of much of the recent public discourse on free speech within universities.

Universities and colleges should ensure that their equality policies and processes do

not misrepresent the scope and meaning of the different protected characteristics, and that they properly consider all the characteristics that may be relevant in a particular situation.

The interaction between different protected characteristics may require careful consideration – for example, some religious beliefs and the protected characteristic of sexual orientation. Both characteristics are afforded protection from harassment and discrimination under the Equality Act, and it may be necessary for universities and colleges to balance the different protected characteristics in certain circumstances. The expression of beliefs in a way that amounts to unlawful harassment or discrimination does not constitute free speech within the law. Universities and colleges may therefore need to weigh up whether the expression of certain religious or philosophical beliefs amounts to unlawful harassment and discrimination, and whether expression of those beliefs should be restricted to protect people with other protected characteristics from unlawful discrimination or harassment.

### The public sector equality and Prevent duties

The protected characteristics underpin an overarching equality duty with which public organisations must comply. This is called the public sector equality duty (PSED), and is set out in the Equality Act 2010. Universities and colleges that receive public grant funding from the OfS are public organisations for these purposes and so must comply with the PSED.

**The public sector equality duty:** A public authority must, in the exercise of its functions have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [the Equality Act 2010];
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.<sup>22</sup>

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

Another duty that universities and colleges may often need to consider when dealing with matters relating to free speech is the ‘Prevent duty’.<sup>23</sup> This duty aims to safeguard people from becoming terrorists or supporting terrorism. Again, it is important to draw out the framing of the Prevent duty; it is a duty to have ‘due regard to’ the need to prevent people from being drawn into terrorism. It is not a duty to achieve the aim of

preventing people from being drawn into terrorism. Relevant legislation specifically states that, in complying with the Prevent duty, universities and colleges must have ‘particular regard’ to the duty to ensure freedom of speech and to the importance of academic freedom.<sup>24</sup>

Universities and colleges should ensure that their policies and processes, where they reference the PSED and the Prevent duty, do so in a way that accurately reflects the statutory framing of those duties. Similarly, decision-makers in universities should ensure that their consideration of these duties appropriately reflects their framing, particularly in the context of decisions about taking steps to secure free speech. In other words, universities should be mindful that the free speech duty requires them to act, whereas the PSED and Prevent duty require them to think about these matters as they act.

## Harassment and discrimination

In recent months, much of the public discourse on free speech in universities has centred around matters that are tightly bound up with equality law considerations; for example, issues relating to antisemitism or sex-based rights and free speech. Universities have commented publicly, including in the media and in evidence to parliamentary committees, about the challenges they experience in navigating this landscape. It may often be the case that universities and colleges need to consider their free speech duties, the PSED (if applicable) and other provisions of the Equality Act 2010 relating to harassment and discrimination.

The Equality Act 2010 prohibits unlawful discrimination. There are two types of discrimination, direct discrimination and indirect discrimination.

Universities and colleges may often need to balance competing interests. This may be more complex where competing protected characteristics are involved, for example sex and gender reassignment. Universities must ensure that they consider all the relevant protected characteristics in any particular case and do not, in focusing on a single protected characteristic, unlawfully discriminate (directly or indirectly) against people with other protected characteristics.

Where a university adopts a policy or practice that promotes a particular protected characteristic to the detriment of others, that may amount to unlawful discrimination. Such a policy may give rise to concerns in relation to freedom of speech and academic freedom if the effect of the policy is that it is curtailing the expression of protected beliefs.

Speech that amounts to unlawful discrimination (direct or indirect) is by its nature unlawful. It therefore falls outside the protections afforded to lawful free speech and academic freedom. Similarly, universities and colleges may lawfully restrict speech that amounts to harassment, since such speech is itself unlawful and so is not protected.

**Direct discrimination:** Broadly, direct discrimination may occur where someone is treated less favourably than others, because of their protected characteristics. Direct discrimination is always unlawful, except in some situations where discrimination on grounds of age may be lawfully justified.<sup>25</sup>

**Indirect discrimination:** Broadly, indirect discrimination may occur where a practice, policy or rule applies to everyone in the same way, but has a worse effect on someone (treating them less favourably) because of their protected characteristics. For example, an employer may decide to introduce rules that treat its part-time workers less favourably than its full-time workers. If the majority of those part-time workers are women, and the majority of full-time workers are not women, the employer’s actions may amount to indirect discrimination on grounds of sex.<sup>26</sup>

Indirect discrimination can be objectively justified, if it can be shown to be a ‘proportionate means of achieving a legitimate aim’. Whether it can will depend on the individual circumstances of the case. Things like health and safety reasons may amount to a ‘legitimate aim’. In determining whether something is proportionate, the university or college should carry out a balancing exercise. This should consider whether the action is targeted at the legitimate aim and is likely to be effective; and, insofar as there are a range of options available, which is the least onerous or intrusive of those that are likely to be reasonably effective, and likely to result in benefits that outweigh the disadvantages (e.g. unintended consequences). It will be harder to justify discriminatory action if another action that has a less discriminatory impact could achieve the same aim.

**Harassment:** Harassment (as defined by section 26 of the Equality Act 2010) means unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person because of, or connected to, one or more of the person's relevant protected characteristics. (Marriage and civil partnership and pregnancy and maternity are not relevant protected characteristics for these purposes.)

In deciding whether conduct has the effect referred to, it is necessary to take into account: the perception of the person who is at the receiving end of the conduct; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect.

The last point is important because it introduces an element of objectivity into the test. The perception of the person who is at the receiving end of the conduct is not the only relevant consideration in determining whether the conduct amounts to unlawful harassment.

Universities and colleges should ensure that any consideration of harassment within their policies and processes reflects the correct legal definition. Policies and processes that define 'harassment' too broadly, and so conflate what may be lawful speech with harassment, may act to curtail free speech. Where academic staff could be subject to disciplinary action if they contravene such a policy, that policy may interfere with the academic freedom of those staff.

The Equality and Human Rights Commission guidance to further and higher education providers explains that universities and colleges:

'are not restricted in the range of issues, ideas and materials [they] use in [their] syllabus and will have the academic freedom to expose students to a range of thoughts and ideas, however controversial. Even if the content of the curriculum causes offence to students with certain protected characteristics, this will not make it unlawful unless it is delivered in a way which results in harassment or subjects students to discrimination or other detriment.'<sup>27</sup>

## Example

A student society at a publicly funded university invites a speaker to an event. The speaker takes a strong anti-immigration stance, and has been accused on social media of holding extreme right-wing views and promoting racial hatred.

Some issues and duties that the university will need to consider, when deciding whether the event can go ahead include the following:

- Whether the proposed speech is lawful – for example, could it amount to harassment, noting the objective element of the test for harassment? Speech that is offensive and hurtful, but lawful, is protected.
- Having 'due regard' to the need to achieve the different elements of the PSED.
- Having 'due regard' to the need to prevent people from being drawn into terrorism, while having particular regard to the need to secure free speech.
- What reasonably practicable steps the university or college can take to secure free speech within the law for its students.

## The OfS's current regulatory approach

The Office for Students stands for the widest possible definition of free speech within the law. It is not our role to take sides in the contested debates that feature in the higher education sector. We must, and will, apply our understanding of the law to the facts of an individual case and do so with care and impartiality.

The Higher Education and Research Act 2017 requires the OfS to 'have regard to', among other things, the need to protect the autonomy of universities

and colleges, which includes academic freedom, when we exercise our functions.<sup>28</sup> Again, this framing does not mean that the OfS is required under its general duties to protect institutional autonomy, including academic freedom, but to 'have regard to' the need to protect institutional autonomy. In any given case, the OfS will have regard to each of its duties, affording them appropriate weight, in performing our functions.

Currently, the OfS regulates matters relating to free speech

and academic freedom through the relevant public interest governance principles, which underpin initial and ongoing conditions of registration relating to management and governance (the E conditions).<sup>29</sup> The public interest governance principles on freedom of speech and academic freedom (which are relevant to the OfS's E conditions) are set out at the beginning of this Insight brief.

**Condition E1:** The higher education provider's governing documents must uphold the public interest governance principles that are applicable to the higher education provider.<sup>30</sup>

**Condition E2:** The higher education provider must have in place adequate and effective management and governance arrangements to, among other things, deliver, in practice, the public interest governance principles that are applicable to it.<sup>31</sup>

Governing documents include documents that are directly relevant to issues set out in one of the OfS's public interest governance principles. This will include a university's free speech code, and may include its broader policies relating to equality matters, where those policies may be relevant to a consideration of free speech matters or set out the university's objectives and values.

In deciding whether a university's governing documents uphold the **freedom of speech** public interest governance principle, under **Condition E1**, we may consider questions such as:

- Do those governing documents provide for reasonable steps that facilitate securing lawful speech?
- Do those governing documents include content

that provides for steps that may undermine free speech?

In deciding whether a university's governing documents uphold the **academic freedom** public interest governance principle, under **Condition E1**, we may consider questions such as:

- Is there anything in those documents that would result in less favourable treatment of staff because of their lawful academic opinions?
- Is there anything in those documents that would result in disciplinary action against staff because of their lawful academic opinions?

Condition E2 requires universities and colleges to have adequate and effective management and governance arrangements to deliver in practice the freedom of speech and academic freedom public interest governance principles (as well as other relevant principles that are not the focus of this Insight brief).

In deciding whether a university is complying with those requirements of **Condition E2**, we may consider questions such as:

- Does the university have robust decision-making arrangements, which require it to consider the impact of its decisions on free speech and academic freedom as part of the decision-making process?
- Does the university have checks and balances to ensure that its policies and processes do not adversely affect free speech or academic freedom?
- Does the university ensure that staff are appropriately trained, in particular those who are making decisions that may affect free speech and academic freedom matters?

If we consider that a university or college has breached or is at increased risk of breaching

our regulatory requirements, we can intervene. We may decide to impose specific conditions of registration requiring the university to take specific action to safeguard free speech and academic freedom. In the event of a breach of a condition of registration, we may impose a formal sanction, for example a monetary penalty.

## Changes to the legal and regulatory landscape

Legislative changes are proposed that would strengthen the legal requirements on universities and colleges in relation to free speech and academic freedom, and the OfS's regulatory role, even further. Note that, while this brief is accurate at the time of writing, material relating to legislation currently before Parliament may become quickly out of date.

In the Higher Education (Freedom of Speech) Bill, which is currently going through Parliament, the government has proposed new duties on universities, colleges and their students' unions, and an enhanced role for the OfS in promoting free speech.<sup>32</sup>

Key features of the government's bill are:

- A new duty on the OfS to promote the importance of freedom of speech within the law and academic freedom.
- New OfS conditions of registration for universities and colleges relating to free speech and academic freedom. These include conditions requiring universities and colleges to comply with new free speech duties, thereby giving the OfS a direct role in determining whether universities and colleges are meeting those statutory duties.
- Reframed free speech duties, to include a duty for universities and colleges to 'actively promote' freedom of speech, and an extension of the duty, and the OfS's

regulation, to apply directly to students' unions.<sup>33</sup>

- A new complaints scheme, operated by the OfS, to consider free speech complaints about universities and colleges or their students' unions, from students, staff or visiting speakers.
- A new role of Director for Freedom of Speech and Academic Freedom in the OfS, to champion free speech and oversee the OfS's functions in this area.
- The introduction of a statutory tort for breach of the duty (meaning that individuals would be able to seek legal redress for any loss they have suffered because of a breach of the free speech duty).

These provisions may be subject to change as the bill progresses through Parliament. For instance, an amendment was passed in December to include provisions in the bill to prohibit universities and colleges from using non-disclosure agreements in relation to complaints of misconduct.<sup>34</sup>

The OfS is looking forward to working with the government to implement the provisions of the bill, once it has received royal assent. We expect to consult on our approach to the new mandatory conditions of registration and to publish guidance to support universities, colleges, staff and students to understand the new legal and regulatory requirements.

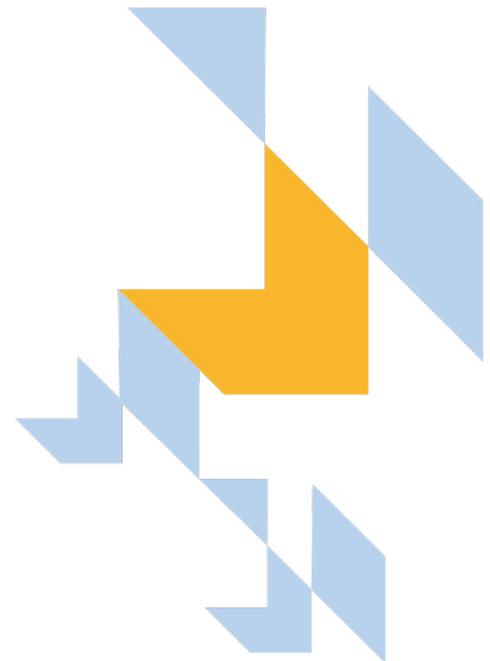
## Conclusion

Freedom of speech and academic freedom have always been essential features of higher education in England. But universities and colleges have not always found it easy to navigate the complexities in this area in practice. There are different views among students and academics about the approaches that would best serve vigorous debate in pursuit

of new knowledge, particularly where there is disagreement about strongly held beliefs.

Universities and colleges recognise that, in upholding free speech and academic freedom, they will have to uphold the rights of those whose views are regarded by some as offensive. In doing so they must ensure they operate with an accurate understanding of equality matters, and the extent of their duty to take reasonably practicable steps to secure freedom of speech within the law. New legislation, subject to parliamentary approval, may go further in placing a duty on universities and colleges to promote free speech.

Understanding how to engage with and address the full range of relevant requirements will be essential – for universities and colleges, and for the OfS – as higher education navigates the free speech landscape in the coming years.



# Notes

<sup>1</sup> In this brief, for the sake of readability, we have used ‘universities and colleges’, or sometimes simply ‘universities’, to refer to what our regulatory framework and other more formal documents call ‘higher education providers’.

<sup>2</sup> Section 14 of the Higher Education and Research Act 2017 requires the OfS to determine and publish a list of principles applicable to the governance of English higher education providers, which must include this principle on academic freedom (section 14(7)).

<sup>3</sup> Under section 43 of the Education (No.2) Act 1986, the governing bodies of English universities and colleges are required to ‘take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers’.

<sup>4</sup> Department for Education (DfE), ‘Higher education: Free speech and academic freedom’, February 2021 (<https://www.gov.uk/government/publications/higher-education-free-speech-and-academic-freedom>); UK Parliament, ‘Higher Education (Freedom of Speech) Bill’, (<https://bills.parliament.uk/bills/2862>).

<sup>5</sup> Universities UK, Advance HE, Committee of University Chairs, GuildHE, National Union of Students (NUS) Charity, ‘Higher education sector statement on promoting academic freedom and free speech’, first issued October 2022, last updated November 2022 (available at <https://www.universitiesuk.ac.uk/latest/news/higher-education-sector-statement>).

<sup>6</sup> For a discussion of the issue of ‘safe spaces’ see Hubble, S, and Lewis, J, ‘Freedom of speech in universities’, March 2021 (available at <https://commonslibrary.parliament.uk/research-briefings/cbp-9143/>), pp17-18.

<sup>7</sup> For examples of the discussions on free speech and higher education, see Hubble, S, and Lewis, J, ‘Freedom of speech in universities’, March 2021 (available at <https://commonslibrary.parliament.uk/research-briefings/cbp-9143/>); Lewis, J, ‘Higher Education (Freedom of Speech) Bill: Progress of the Bill’, House of Commons Library, July 2022 (available at <https://commonslibrary.parliament.uk/research-briefings/cbp-9295/>); House of Commons Education Committee, ‘Oral evidence: Free speech and research content in English universities, HC 673’, 7 September 2022 (available at <https://committees.parliament.uk/committee/203/education-committee/publications/oral-evidence/>).

<sup>8</sup> For example, see Universities UK, Advance HE, Committee of University Chairs, GuildHE, NUS Charity, ‘Higher education sector statement on promoting academic freedom and free speech’, first issued October 2022, last updated November 2022, (available at <https://www.universitiesuk.ac.uk/latest/news/higher-education-sector-statement>); and West, S, ‘Universities stepping up to promote free speech and academic freedom’, Higher Education Policy Institute (HEPI), October 2022 (<https://www.hepi.ac.uk/2022/10/31/universities-stepping-up-to-promote-free-speech-and-academic-freedom/>).

<sup>9</sup> Simpson, Tom, and Kaufman, Eric, ‘Academic freedom in the UK’, Policy Exchange, November 2019; Akekoya, Remi, Kaufman, Eric, and Simpson, Tom, ‘Academic freedom in the UK: Protecting viewpoint diversity’, Policy Exchange, August 2020.

<sup>10</sup> Civitas, ‘Academic Freedom in Our Universities: The Best and the Worst’, December 2020 (available at <https://www.civitas.org.uk/publications/academic-freedom-in-our-universities/>).

<sup>11</sup> Kinzelbach, K, Staffan, I, Lindberg, L, and Spannagel, J, ‘Academic freedom index 2022 update’, 2022 (available at <https://www.pol.phil.fau.eu/academicfreedom/>).

<sup>12</sup> The Policy Institute, King’s College London, ‘The state of free speech in UK universities: What students and the public think’, September 2022 (available at <https://www.kcl.ac.uk/news/free-speech-in-universities-new-data-reveals-student-and-public-perceptions>). The data is taken from representative surveys of UK university students.

<sup>13</sup> Hillman, N, “‘You can’t say that!’ What students really think of free speech on campus”, HEPI, June 2022 (available at <https://www.hepi.ac.uk/2022/06/23/you-cant-say-that-new-polling-shows-students-want-more-controls-on-free-expression/>). 1,000 full-time undergraduates were polled via YouthSight, a market research company.

<sup>14</sup> Freeman, J, ‘No platform: Speaker events at university debating unions’, HEPI, October 2022 (available at <https://www.hepi.ac.uk/2022/10/13/new-study-finds-quiet-no-platforming-to-be-a-bigger-problem-than-actual-no-platforming/>). It should be noted that the most prominent organisations discussed, the Oxford and Cambridge Unions, are private members’ societies not affiliated to their respective universities or students’ unions.

<sup>15</sup> A ‘content warning’ (sometimes known as a ‘trigger warning’) is a short message at the start of a book, film or other course material identifying elements that could be distressing or challenging for a reader or viewer.

<sup>16</sup> The Times, ‘Censorship on campus: Universities scrap “challenging” books to protect students’, 10 August 2022 (<https://www.thetimes.co.uk/article/censorship-on-campus-universities-scrap-challenging-books-to-protect-students-dp50d9fsd>). The Times sent almost 300 freedom of information requests to 140 UK universities asking for details of trigger warnings and of texts removed from reading lists because of concerns about their content.

<sup>17</sup> Hillman, N, “‘You can’t say that!’ What students really think of free speech on campus”, HEPI, June 2022 (available at <https://www.hepi.ac.uk/2022/06/23/you-cant-say-that-new-polling-shows-students-want-more-controls-on-free-expression/>).

<sup>18</sup> House of Commons Education Committee, ‘Oral evidence: Free speech and research content in English universities, HC 673’, 7 September 2022 (available at <https://committees.parliament.uk/committee/203/education-committee/publications/oral-evidence/>), Q116.

<sup>19</sup> OfS, ‘Students to be asked about mental wellbeing services and free speech in National Student Survey shake-up’ ([www.officeforstudents.org.uk/news-blog-and-events/press-and-media/students-to-be-asked-about-mental-wellbeing-services-and-free-speech-in-national-student-survey-shake-up/](http://www.officeforstudents.org.uk/news-blog-and-events/press-and-media/students-to-be-asked-about-mental-wellbeing-services-and-free-speech-in-national-student-survey-shake-up/)).

<sup>20</sup> Referenced in the Human Rights Act 1998 (<https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>).

<sup>21</sup> Education (No. 2) Act 1986 (section 43) (<https://www.legislation.gov.uk/ukpga/1986/61/section/43>).

<sup>22</sup> See <https://www.gov.uk/government/publications/public-sector-quick-start-guide-to-the-public-sector-equality-duty>.

<sup>23</sup> The Prevent duty applies to the governing bodies or proprietors of ‘relevant higher education bodies’. For more information see [www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/counter-terrorism-the-prevent-duty/](http://www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/counter-terrorism-the-prevent-duty/).

24 Section 31 of the Counter-Terrorism and Security Act 2015, available at <https://www.legislation.gov.uk/ukpga/2015/6/contents/enacted>.

25 Direct discrimination is defined in Section 13 of the Equality Act 2010.

26 Indirect discrimination is defined in Section 19 of the Equality Act 2010.

27 Equality and Human Rights Commission, 'What equality law means for you as an education provider: Further and higher education' (available at <https://www.equalityhumanrights.com/en/publication-download/what-equality-law-means-you-education-provider-%E2%80%93-further-and-higher-education>), p39.

28 Section 2 of the Higher Education and Research Act 2017, available at <https://www.legislation.gov.uk/ukpga/2017/29/contents/enacted>.

29 OfS, 'Securing student success: Regulatory framework for higher education in England' (OfS 2018.01), February 2018 (available at [www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/)),

30 OfS, 'Securing student success: Regulatory framework for higher education in England' (OfS 2018.01), February 2018 (available at [www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/)), pp110-111.

31 OfS, 'Securing student success: Regulatory framework for higher education in England' (OfS 2018.01), February 2018 (available at [www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/)), pp112-117, especially paragraph 444, v, p114.

32 DfE, 'Higher education: Free speech and academic freedom', February 2021 (<https://www.gov.uk/government/publications/higher-education-free-speech-and-academic-freedom>).

33 At the time of publication of this Insight brief, the provisions of the free speech bill relating to students' unions apply only to the students' unions of providers registered in the OfS's Approved (fee cap) category. The student common rooms of the constituent colleges of collegiate universities such as Oxford and Cambridge would be exempt from this.

34 UK Parliament, 'Higher Education (Freedom of Speech) Bill', (<https://bills.parliament.uk/bills/2862>).

## Code of Practice on Free Speech

### 1. Introduction and Values

- 1.1 Queen Mary University of London ('the University') has a longstanding commitment to promoting and encouraging free debate and enquiry. This commitment is enshrined within the University Charter, which states that:

*The University shall uphold freedom of speech within the law and academic staff shall have freedom within the law to question and test accepted ideas, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges.*

- 1.2 The values of free speech are fundamental to the University's academic mission. The University:
- a) encourages members of its community, including staff, students and visiting speakers, to express themselves freely and to hold their own opinions, even if their views are unpopular or could upset or offend others;
  - b) expects members of its community to demonstrate mutual respect and tolerance of those with different views;
  - c) recognises that free speech must operate within the law.
- 1.3 This Code of Practice ('Code') refers to academic freedom and free speech. Free speech will include written materials and other forms of expression, including images, symbols and works of art; it is not limited to the spoken word.
- 1.4 Both free speech and academic freedom are bound by the requirement of lawfulness. Unlawful speech is not protected. However, there is no need to point to a specific legal basis for particular speech. Rather, the starting point is that speech is permitted unless it is restricted by law.
- 1.5 This Code replaces the previous 'Freedom of Speech Policy'.

### 2. Purpose

- 2.1 The purpose of this Code is to ensure that, as far as reasonably practicable, freedom of speech within the law is secured for students and staff of the University, as well as for visiting speakers, and that academic freedom within the law is secured for academic staff of the University.
- 2.2 This Code and the requirement to have particular regard to the importance of free speech must be considered in the implementation of all other codes, policies and procedures of the University.

### 3. Legislative Context

- 3.1 The University has adopted this Code to ensure that it acts in accordance with the duties imposed upon it by Section 43 of the Education (No 2) Act 1986, as updated by the Higher Education and Research Act 2017 and the Higher Education (Freedom of Speech) Act 2023.

- 3.2 There are other requirements that the University must also consider to comply with various elements of legislation and regulation, as well as the requirements of any relevant judicial authority relating to free speech and academic freedom.
- 3.3 The Education Act (No 2) 1986 (Section 43) imposes specific obligations on higher education providers ('providers') to protect freedom of speech and requires that they: 'shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers'. The 1986 Act includes a duty on provider governing bodies to issue and keep updated a code of practice setting out the procedures to be followed by students and staff in connection with meetings on the provider's premises.
- 3.4 The Higher Education and Research Act 2017 makes it clear that all universities and colleges which register with the Office for Students must follow its regulatory framework. Under the framework the governing bodies of registered universities should take 'such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.' The 2017 Act also includes a general duty for the Office for Students to protect institutional autonomy, including academic freedom.
- 3.5 The Higher Education (Freedom of Speech) Act 2023 requires higher education providers ('providers') to have particular regard to the importance of freedom of speech and take steps that are reasonably practicable to secure free speech within the law for staff, students and visiting speakers. It also requires providers to secure academic freedom within the law for academic staff and places a duty on students' unions to secure free speech.
- 3.6 Freedom of thought, conscience and religion (Article 9) and freedom of expression (Article 10) are safeguarded by the European Convention on Human Rights and incorporated into UK law by the Human Rights Act 1998. However, these are qualified rights and subject to certain qualifications which are necessary in a democratic society.
- 3.7 The Equality Act 2010 places a duty on the University to have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between all members of the University's community. It also imposes obligations not to discriminate on the grounds of the relevant protected characteristics.
- 3.8 The Protection from Harassment Act 1997 creates both civil and criminal offences for harassment and makes provision for protecting persons from harassment and similar conduct.
- 3.9 The Public Order Act 1986 contains a range of criminal offences relating to violent conduct and speech or actions that threaten violence causing someone to fear for their safety or causing another person harassment, alarm or distress. The 1986 Act also makes it an offence to use threatening, abusive or insulting words or behaviour either with the intention of stirring up racial and religious hatred, or in circumstances where it is likely racial or religious hatred will be stirred up, as well as stirring up hatred on grounds of sexual orientation.
- 3.10 The Terrorism Acts of 2000 and 2006 define certain criminal activities including inciting acts of terrorism, disseminating terrorist publications or belonging to or supporting proscribed organisations. Terrorism is defined as including the use or threat of serious violence against a person or serious damage to a property for the purpose of advancing a political, religious or ideological cause. The Counter Terrorism and Security Act 2015 places an obligation on the University to have due regard to the need to prevent people from being drawn into terrorism ('the Prevent Duty'), whilst also having particular regard for the duty to ensure free speech and to the importance of academic freedom.

## **4. Scope**

4.1 This Code is applicable to:

- a) the legal personality of the University;
- b) all staff of the University and individuals undertaking duties on its behalf, including members of the Council;
- c) all students of the University, including those who are registered, in association, or affiliates, and including those taking part in activities organised by the Queen Mary Student Union ('QMSU') and by its affiliated clubs, societies and other groups;
- d) all live and recorded activities, including events, meetings and all education and research activities, that are held, endorsed, organised, funded or branded by the University or QMSU, or by individuals, groups or societies using the name of the University or QMSU, or that use University or QMSU managed spaces or digital platforms, whether or not they involve an external speaker (referred to as 'events');
- e) visitors speaking at, taking part in and attending events on University or QMSU managed spaces or digital platforms.

4.2 QMSU has agreed to adopt this Code for the purpose of maintaining a code of practice to comply with the requirements of students unions' in the Higher Education (Freedom of Speech) Act 2023.

## **5. Principles**

5.1 The University operates a presumption that exposure of students to course materials and statements made and views expressed by a person as part of teaching or research, and discussions about any subject matter that is connected with the content of a course, are unlikely to constitute harassment unless otherwise demonstrated that these matters do in fact amount to harassment.

5.2 The University Library will provide materials that illustrate and illuminate different views on controversial issues so that users may develop under guidance the practice of critical reading and thinking.

5.3 Except where expressly agreed by the Council in line with advancing the University's charitable objects (as defined in the University Charter), the University does not take an institutional position on political, cultural and religious debates to ensure that individuals are not discouraged from expressing themselves freely within the law.

5.4 Instead, the University endeavours to provide opportunities to facilitate discourse on contemporary issues by encouraging critical debate within the law, where expression of views within the law by different parties is tolerated.

5.5 As such, the University encourages a wide range of views which might entail the airing of opinions and ideas that are unpopular, controversial or provocative and foster an environment where academic freedom and freedom of speech and expression is secured within the law.

## **6. Roles and Responsibilities**

6.1 Council is responsible for the approval of this Code and for seeking assurance on its effective operation.

6.2 Responsibility for the interpretation and implementation of the Code is delegated by the Council to the President and Principal ('the Principal Officer').

- 6.3 Senior Officers, Heads of Schools and Institutes, Directors of University Research Institutes, Directors of Professional Services and the President of QMSU are responsible for the day-to-day implementation of this Code and accountable to the President and Principal for ensuring that this Code and its principles are applied consistently across all activities under their management.
- 6.4 In academic schools and institutes the responsibility of implementing this Code relates to all events held, endorsed, organised or funded by the school or institute.
- 6.5 The President and Principal shall report to the Council on the circumstances of any significant infringements of, or departures from, the provisions of this Code. Any such infringements or departures, in whatever respect, may render those responsible liable to disciplinary action under the relevant University policy or code.
- 6.6 For the purposes of procedures for events (Section 7, below), Heads of Schools and Institutes and Directors of Research Institutes are the 'Designated Officer' for events organised or sponsored by their respective school or institute, and the Director of Estates and Facilities, or their designated deputy, is the 'Designated Officer' for all other events.

## **7. Procedures for Events**

- 7.1 The following procedures will apply when arranging all events.
- 7.2 All spaces to be used for events will be booked in line with the relevant booking policies and procedures.
- 7.3 In considering whether to permit its premises and online platforms to be used for, or its name to be associated with, a particular event, the University will uphold free speech within the law. In doing so, the University will consider whether the views or ideas to be put forward, the manner of their expression, or the event in question:
- a) constitutes a criminal offence and whether a participant has a previous conviction in relation to their speech;
  - b) constitutes a threat to public order, including whether a participant is from an organisation that is officially proscribed by the UK Government;
  - c) constitutes a threat to the health and safety of individuals attending the event or in the locality which cannot be satisfactorily managed;
  - d) incites others to commit criminal acts;
  - e) infringes the legal rights of others or breaches legal requirements in respect of non-discrimination;
  - f) seeks to disrupt an authorised event or activity on University premises or online platforms, noting that any protest must be conducted without infringing the rights of others, including the right to freedom of speech.
- 7.4 The expression of views which are unpopular, controversial or provocative or which cause offence, shock or disturb do not, if lawful, constitute grounds for the refusal or cancellation of an event or an invited speaker.
- 7.5 The University reserves the right to impose such conditions upon the use of its facilities as are reasonably necessary for the discharge of its obligations relating to the health and safety of its registered students, staff and other persons lawfully upon its premises or for the efficient conduct and administration of its functions. Conditions for events may include, for example, restrictions on access by those outside the University.

- 7.6 The University reserves the right to decide that practical considerations such as the cost, short notice period or difficulty of providing the necessary mitigations may require an event to be modified, curtailed, postponed, or exceptionally, cancelled. The University will bear the cost of appropriate security for approved events to uphold freedom of speech within the law.
- 7.7 The University expects those attending events to respect the values noted in Section 1 above and to show tolerance to all sections of its community. These precepts apply in particular to the way in which views are expressed and the form of events, including any form of protest activity.
- 7.8 Permission may be withheld only on the grounds indicated in Sections 7.3, 7.5 and 7.6 of this Code, or if the organiser cannot or will not ensure compliance with any conditions set by the Designated Officer. It shall in all cases be open to the Designated Officer to invite the Police to be present at any event on University or QMSU managed spaces.
- 7.9 It shall be open to the Designated Officer to withdraw permission for an event if, having originally granted permission, they so judge that the event will not in fact conform to this Code.
- 7.10 It shall be open to the Designated Officer to withdraw permission for an event to be held in association with the University name or brand, whether or not the event is being held on University managed spaces or digital platforms, if it does not conform to the requirements of this Code.
- 7.11 The University reserves the right to impose conditions on the display of materials, symbols and images on University managed spaces or digital platforms outside the context of education, research and approved events where the display of such materials, symbols and images is in conflict with Section 5.3 of this Code.

## **8. Appeals and Complaints**

- 8.1 Appeals against the rulings of the Designated Officer in relation to events and speakers may be made to the President and Principal, whose decision shall be final. The President and Principal may delegate the consideration of such an appeal to a Senior Officer. Such an appeal must be received within two working days of the decision of the relevant Designated Officer.
- 8.2 Any complaints in relation to QMSU events will be subject to the relevant QMSU procedure.<sup>1</sup>
- 8.3 Students may submit a complaint related to concern about matters that affect the quality of a student's learning opportunities or student experience via the Student Complaints Policy.<sup>2</sup> Matters relating to the conduct of students will be considered under the Code of Student Discipline.<sup>3</sup>
- 8.4 Staff may submit a complaint related to their freedom of speech (or for academic staff, their academic freedom) under the Grievance Policy and Procedure.<sup>4</sup> If a member of academic staff claims that action taken against them under one of the HR Codes of Practice results from their exercising academic freedom, it will be considered by an Academic Freedom Panel.<sup>5</sup>
- 8.5 Any other complaints in relation to free speech may be considered under the Whistleblowing Procedure.<sup>6</sup>

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<sup>1</sup> [www.qmsu.org/governance/](http://www.qmsu.org/governance/)

<sup>2</sup> [www.qmul.ac.uk/governance-and-legal-services/policy/](http://www.qmul.ac.uk/governance-and-legal-services/policy/)

<sup>3</sup> [www.qmul.ac.uk/governance-and-legal-services/policy/](http://www.qmul.ac.uk/governance-and-legal-services/policy/)

<sup>4</sup> [hr.qmul.ac.uk/procedures/policies/grieve/](http://hr.qmul.ac.uk/procedures/policies/grieve/)

<sup>5</sup> [hr.qmul.ac.uk/media/hr/docs/working-at-qm/policiesprocedures/Introduction-2010.pdf](http://hr.qmul.ac.uk/media/hr/docs/working-at-qm/policiesprocedures/Introduction-2010.pdf)

<sup>6</sup> [www.qmul.ac.uk/governance-and-legal-services/policy/](http://www.qmul.ac.uk/governance-and-legal-services/policy/)

**9. Review**

- 9.1 This Code will be reviewed at least every three years by the Council. Senate will be consulted as part of any review and on any significant revisions of the Code.
- 9.2 Minor updates to this Code that do not affect the rules, principles or intent of this Code may be approved by the Chief Governance Officer and University Secretary on behalf of the Council.

## Freedom of Speech Policy

### Policy Context

1. As an institution of higher education, which sees academic freedom as central to its activity (including, in particular, critical independence and creativity), Queen Mary University of London (Queen Mary) is committed to promoting and encouraging free debate and enquiry. This means that we encourage a wide range of views, political as well as academic, which might entail the airing of opinions and ideas that are unpopular, controversial or provocative.
2. Queen Mary's policy on freedom of speech<sup>1</sup> is set within the context of our values, which were confirmed in consultation with staff and students through the development of the institution's Strategy<sup>2</sup>. These values note that our activities are shaped and influenced by the following commitments:
  - i. unequivocal adherence to our fundamental academic mission;
  - ii. acting with integrity and to the highest ethical standards;
  - iii. promoting a strong collegial community;
  - iv. promoting diversity and inclusiveness;
  - v. supporting and engaging with our local community.
3. Queen Mary's freedom of speech policy and approach must also be seen in the context of our legal obligations and duties. The institution has an explicit duty in law<sup>3</sup> to take such steps as are reasonably practicable to ensure that freedom of expression within the law is secured for members, students, employees and visiting speakers. This duty includes in particular a responsibility to ensure that the use of Queen Mary premises is not denied to any individual or group on the grounds of the beliefs or views of that individual or any member of that group, or on the grounds of the policy or objectives of the group.
4. This does not mean, however, that the right to freedom of speech has no boundaries. A significant strand in the regulatory framework is the duty (under the Equality Act 2010) to promote good relations between persons of different racial groups. Freedom of speech must also take place in the context of laws<sup>4</sup> to protect national security and public safety; to protect vulnerable individuals from being drawn into extremism; for the prevention of disorder or crime; for the protection of the reputation or rights of others; and to prevent the disclosure of information received in confidence.

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<sup>1</sup> For the purposes of this Policy, 'freedom of speech' is interpreted to include the written as well as spoken word.

<sup>2</sup> <http://www.qmul.ac.uk/strategy/the%20strategy/values/index.html>

<sup>3</sup> Under the Education (No 2) Act 1986.

<sup>4</sup> The Policy is drafted with reference to the following legislation: The Education (No2) Act 1986, The Education Reform Act 1988, specifically section 43, The Human Rights Act 1998, specifically article 10, The Terrorism Act 2006, specifically section 1; The Counter-Terrorism and Security Act 2015, and the associated guidance for universities.

## Implementation of the Policy

5. Activity at Queen Mary will be considered within the context of Queen Mary's values and the values of a democratic and inclusive society. We will wherever possible, practical and permissible within this Policy facilitate freedom of speech, scholarly enquiry and academic debate. In doing so we recognise these as fundamental and defining activities of a university and of Queen Mary in particular.
6. Queen Mary expects speakers and those taking part in activities to respect the values noted above, to be sensitive to the diversity of its community, and to show respect to all sections of that community. These precepts apply in particular to the way in which views are expressed and the *form* of activities.
7. In considering whether or not to permit its premises to be used for (or its name to be associated with) a particular activity, Queen Mary will apply a clear policy of **freedom of speech within the law**. In doing so, we will consider whether the views or ideas to be put forward or whether the activity in question:
  - i. constitutes a criminal offence (and whether a participant has a previous conviction in relation to words either written or spoken);
  - ii. constitutes a threat to public order (including whether a participant is from an organisation that is officially proscribed by the UK Government);
  - iii. constitutes a threat to the health and safety of individuals attending the event or in the locality, which cannot be satisfactorily managed;
  - iv. incites others to commit criminal acts;
  - v. is contrary to the civil and human rights of individuals.
8. The general rule is that Queen Mary would place a limit on freedom of speech and would not support or facilitate an event or activity **only** on the grounds indicated in Section 7 above.
9. Within this context it is important to note Queen Mary's legal duties, including those relating to preventing individuals from being drawn into extremism. As such, where events or activities might not fully trigger one of the clauses outlined in Section 7, but may still present some concerns in relation to these and other points, Queen Mary will consider mechanisms which may be deployed to provide reassurance and safeguards.
10. These mechanisms are explained in more detail in Queen Mary's Events Policy, but can include requirements concerning the composition of a speaking panel or the Chair; the presence of university officers at events to ensure this policy is adhered to; and specifications in terms of groups that can attend events.
11. In noting the above, we recognise the long-standing role of universities as places for the questioning of dogma, the dissection of prejudice and the challenge of unfamiliar and uncomfortable ideas. As such, Queen Mary views freedom of thought and freedom of speech as an essential component of efforts to counter violent extremism.

## Authority

12. The ultimate authority for the interpretation and implementation of this Policy is the President and Principal on behalf of Council (the Principal Officer). The day-to-day implementation of the Policy shall be the responsibility of the Designated Officer, who shall be the President and Principal's nominee. The President and Principal, and the Designated Officer shall appoint another appropriate member of staff to act on their behalf in their absence. Procedures relevant to this Policy (such as those for booking

rooms or arranging events on campus) shall be published separately and may be subject to change as the need arises.

13. The Designated Officer shall grant or withhold permission for the use of Queen Mary premises (including, as appropriate, Queen Mary, University of London Students' Union (QMSU) premises) for proposed activities. Permission may be withheld only on the grounds indicated in Section 7, or if the organiser cannot or will not ensure compliance with any conditions set by the Designated Officer. It shall, in all cases, be open to the Designated Officer to invite the Police to be present at any activity on Queen Mary or QMSU premises.
14. It shall be open to the Designated Officer to withdraw permission for an activity if, having originally granted permission, he or she so judges that the activity will not in fact conform to the Policy.
15. It shall be open to the Designated Officer to withdraw permission for an activity or event to be held in association with the name of Queen Mary University of London where the meeting or event is being held on premises not owned or controlled by Queen Mary.

### **Scope**

16. The Policy is applicable to:
  - i. the legal personality of Queen Mary University of London (Queen Mary);
  - ii. all persons (academic or otherwise) working for Queen Mary or undertaking duties on its behalf;
  - iii. all students at Queen Mary, including those who are registered, in association, or affiliates, and including those taking part in activities organised by QMSU and by its affiliated clubs, societies and other groups;
  - iv. visitors invited to speak at or take part in meetings, events or other activities on Queen Mary or QMSU premises;
  - v. events and activities organised and publicised under the Queen Mary name that are held off campus, whether in the UK or overseas.
17. The President and Principal shall report to Council on the circumstances of any significant infringements of, and departures from, the provisions of the Policy. Any such infringements or departures, in whatever respect, may render those responsible liable to disciplinary action under the relevant Queen Mary policy.

### **Appeals**

18. Appeals against the rulings of the Designated Officer may be made to the President and Principal, whose decision shall be final. Such an appeal must be received within two working days of the decision of the Designated Officer.

### **Implementation and Review**

19. Oversight for the implementation and review of the Policy shall belong to the Designated Officer and shall typically involve input from QMSU, Estates and Facilities, the Academic Registry and the Office of the Principal.
20. The Policy shall be reviewed not less than every three years from the date of the meeting when it was approved.

Updates approved by Senate in March 2016  
Reviewed in June 2019  
Due for review in June 2020