



**Senate**

<b>Paper Title</b>	Letter from the Minister of State for Universities, Science, Research and Innovation (Jo Johnson, MP) to the Chief Executive of Universities UK (Nicola Dandridge) on Freedom of Speech.
<b>Outcome requested</b>	Senate is asked to <b>note</b> the contents of the letter which was prompted by the discussion of freedom of speech during the consideration of the Higher Education and Research Bill (now the Higher Education and Research Act 2017).
<b>Points for Senate members to note and further information</b>	Senate will review QMUL's Freedom of Speech Policy at its meeting in October 2017.
<b>Questions for Senate to consider</b>	n/a
<b>Regulatory/statutory reference points</b>	Education (No.2) Act 1986 Higher Education and Research Act 2017
<b>Strategy and risk</b>	n/a
<b>Reporting/consideration route for the paper</b>	n/a
<b>Authors</b>	n/a
<b>Sponsor</b>	Jonathan Morgan, Academic Registrar and Council Secretary



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Dear Nicola,

## Freedom of Speech

You will no doubt have been following the recent House of Lords debates on Government and Opposition amendments to the Higher Education and Research Bill regarding freedom of speech. I have welcomed the opportunity this has provided to restate the Government's commitment to support free speech in our higher education institutions, and I am delighted the Lords approved the Government's amendment to bring the freedom of speech duty in the Education (No.2) Act 1986 (the Duty) up to date, by extending it to all providers on the Office for Students (OfS) register.

Promoting a culture in our universities where free speech thrives, and where students learn the skills of critical thinking, challenge and debate, is crucial to a student's higher education experience. I know universities take this role seriously and there is a lot of good practice across the sector.

Nevertheless, the debate exposed concern from some quarters (particularly in the context of no-platforming) that some institutions could be doing more to promote free speech. As the Prime Minister has said 'We want our universities not just to be places of learning, but to be places where there can be open debate which is challenged and people can get involved with that... We want to see that innovation of thought taking place in our universities; that is how we develop as a country, as a society and as an economy.'

This letter takes the opportunity provided by these Parliamentary debates to recap what the current legal duty requires of the sector, including with regards to students, students' unions and the premises of both the university and students' unions.

I appreciate this is a sensitive and often complex issue for universities and students alike. I know I can count on Universities UK's help in communicating these important messages to the sector. Indeed, Universities UK has published its own guidance on external speakers in higher

education institutions, which is a useful resource to support universities to navigate these issues within the complex legal framework in which they operate. It also includes a summary of some of the relevant legal considerations.

### Application of the freedom of speech duty including to students, students' unions and premises

The freedom of speech duty is set out in section 43 of the Education (No.2) Act 1986 and the full text can be found at: <http://www.legislation.gov.uk/ukpga/1986/61/section/43>. It requires all those concerned in the governance of universities and certain other higher education institutions to take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students, employees and visiting speakers. This includes an express duty to ensure, so far as is reasonably practicable, that the use of any of the institution's premises is not denied to any individual or body on any ground connected with their beliefs or views, policy or objectives. However, this does not mean that any organisation or individual can speak at any university, nor does it mean that universities are required to invite anyone that wants to speak.

As part of discharging their freedom of speech duty, universities must also issue and keep up to date a code of practice setting out the procedures to be followed by members, students and employees in connection with the organisation of meetings and activities on any of their premises, and the conduct required of members, students and employees in connection with such meeting or activity.

It is important to note that the Duty extends to both the premises of the university and premises occupied by the students' unions, even when they are not part of the university premises (section 43(8)). The duty therefore legally obliges universities to ensure, so far as is reasonably practicable, that the use of premises occupied by the students' union is not denied to any individual or body on the grounds of their beliefs, views, policy or objectives. Further to this, any code of conduct issued by the university should cover the organisation and conduct of meetings and activities taking place on students' unions' premises.

### Implementation of the freedom of speech duty

It is apparent that the sensitivities around free speech crystallise most clearly with regard to external speaker events. I recognise that universities and students' unions must take into account a number of important factors, such as the security of speakers and attendees at events, and their obligations and potential liability under the Equality Act 2010 and other legislation.

I therefore welcome the support UUK has given to the sector through its guidance on external speakers in higher education institutions. I expect universities to recognise the importance of this guidance in the discharge of their duties, including the importance of taking swift action - disciplinary if necessary - where there are attempts to undermine free speech. This is consistent with the Duty, which requires institutions to take such steps as are reasonably practicable, including where appropriate the initiation of disciplinary measures, to ensure that their codes of practice are complied with.

The UUK Changing the Culture report also recently highlighted that the implementation of disciplinary processes is an area where universities must embed a zero-tolerance approach. Although its remit did not extend to free speech, the same principles should nevertheless apply.

That said, I am encouraged by the way the sector, on the whole, balances a range of factors and legal considerations with the need for free speech. I was pleased to see that, as part of HEFCE's monitoring of the Prevent duty in higher education institutions, it found that 93% had put in place robust policies for assessing and managing risks around speaker events. And I have been especially reassured to see that, in several cases recently, universities have taken robust action against those found to be impeding free speech.

But policies and codes of practice should not be allowed to gather dust. They are crucial in demonstrating to students that free speech should be at the heart of a higher education community. They need to be meaningful, living documents that students and staff alike understand and, crucially, adhere to.

This is important to get right, particularly as in cases where the freedom of speech duty is not complied with, legal proceedings can, and have been, brought against institutions. The Charities Commission also have an important role to play here, particularly as students' unions established at universities are mostly charities, subject to the requirements of charity law.

#### OfS consultation on public interest governance conditions

One final point. As you know, the Bill enables the OfS to impose a public interest governance condition on registered higher education providers. Such a condition would require providers to ensure their governing documents are consistent with a set of public interest principles. There will be a consultation in due course on what the principles should cover.

As part of this, the Government proposes to raise the issue of freedom of speech, with a view to ensuring that a principle underscoring the importance of free speech in higher education is given due consideration. Subject to the outcome of the consultation, this could require providers that are subject to a public interest governance condition to include a principle about freedom of speech principles in their governance documents.

I am conscious of the need to strike the right balance between ensuring the higher education sector remains a place for debate and discussion whilst ensuring that institutions are not subject to unreasonable and unnecessary burdens.

However, freedom of speech is vital in society, and in particular in higher education, where it is at the heart of how institutions operate. I know how important freedom of speech is to universities and students and I will continue to work with the sector and others, such as HEFCE and eventually the OfS, to ensure this continues.

Yours sincerely,



**JO JOHNSON MP**