



Senate

<b>Paper Title</b>	<b>Measures to secure and promote Academic Freedom and Freedom of Speech</b>
<b>Outcome requested</b>	Senate is asked to <b>consider</b> new internal roles, processes, training and reviews as proposed in this paper, in response to the <a href="#">Higher Education (Freedom of Speech) Act 2023</a> .
<b>Points for Senate members to note and further information</b>	<p>The Higher Education (Freedom of Speech) Act 2023 introduces new duties and additional risks for universities. These include a new Free Speech complaints scheme at the OfS (Office for Students) and a new statutory tort.</p> <p>A QMUL Code of Practice on Freedom of Speech is required by the Act and should be considered for approval by Senate in its October 2023 meeting. However, as this paper explains, it is also of paramount importance that QMUL sets up appropriate internal roles within the university and new robust internal processes, mechanisms, training, and policy reviews to comply with the Act and minimise possible risks. Relevant sections of this paper may also need to be reflected in a Code of Practice on Freedom of Speech.</p> <p>This paper makes the following recommendations:</p> <ul style="list-style-type: none"><li>• QMUL should create a new role of Vice-Principal for Freedom of Speech and Academic Freedom who would oversee the duty to actively promote free speech and sit on appropriate high level committees. There should also be academic freedom leads at each faculty.</li><li>• QMUL should set up an internal free speech complaints scheme for staff and students mirroring the one at the OfS.</li><li>• QMUL should provide training for staff and students on the new Act and the university's freedom of speech duties.</li><li>• QMUL should review existing policies and governing documents for compliance with the legislation, including recruitment and promotion procedures, and policies around Dignity at Work, grievance, research approvals, IT, whistleblowing, and discipline; QMUL should consider liaising with external bodies to ensure its policies align with academic freedom best practices and legal requirements.</li></ul> <p>The above recommendations are closely aligned with recommendations made by leading legal experts (such as James Murray, one of the architects of the new Act). Moreover, many of the above steps are implemented or being considered for implementation at other leading UK universities. Therefore, they represent best practice in this sector.</p>

<b>Questions for Senate to consider</b>	<p>Do Senate members have any comments on the approach proposed in this paper?</p> <p>Is Senate happy to endorse the recommendations above?</p>
<b>Regulatory/statutory reference points</b>	<p>The Higher Education (Freedom of Speech) Act 2023</p> <p>The Education Act (No 2) 1986</p> <p>The Higher Education and Research Act 2017 (HERA)</p> <p>The Education Reform Act 1988</p> <p>The Equality Act 2010</p> <p>OfS conditions of registration A1-A3</p>
<b>Strategy and risk</b>	<p>Senate already has responsibility for academic freedom oversight.</p> <p>Aligns with the Queen Mary Strategy 2030 (Excellence in Education; Excellence in Student Engagement; Excellence in Student Employability Excellence in Learning Environment)</p> <p>Failure to have adequate structures to secure academic freedom and free speech for academic staff, students, and visiting speakers would carry significant monetary and reputational risks. The OfS can issue fines if it upholds a complaint under its complaints scheme. The OfS can also use its enforcement powers under the OfS conditions of registration (which can include suspension of registration or even de-registration). Moreover, eligible persons who pursue a civil complaint in the courts under the new statutory tort provision can be awarded large monetary compensation if they are successful.</p>
<b>Reporting/consideration route for the paper</b>	Senate October 2023
<b>Authors</b>	<p>Abhishek Saha (Professor of Mathematics and member of the task and finish group on freedom of speech policy),</p> <p>Prakash Shah (Reader in Culture and Law and member of the task and finish group on freedom of speech policy).</p>
<b>Sponsor</b>	

## 1 Background

The [Higher Education \(Freedom of Speech\) Act 2023](#) (henceforth referred to as “The Act”) creates new duties for universities to secure and promote freedom of speech and academic freedom. The most important parts of the Act are the new core duties for universities and student unions as set out in sections A1, A2, and A3 inserted into HERA (The Higher Education and Research Act 2017), protecting freedom of speech for academic staff, students and visiting speakers. Moreover, the Act introduces a new position of Director of Free Speech and Academic Freedom (henceforth referred to as “Director”) on the board of the OfS who will have overall responsibility for the free speech functions of the OfS.

Prof Arif Ahmed has been appointed as the inaugural Director and he took up his new position officially in August 2023. He [wrote](#) shortly after his appointment was announced: *“New legislation means universities and colleges must promote, and take steps to secure, academic freedom and free speech within the law. The regulator will interpret this broadly. Breaches could include: cancelling a talk on women’s rights due to internal political pressure, or disciplining a lecturer for provocative anti-monarchist tweets. In response to a breach the regulator can issue fines.”* He has [previously described](#) suppression of free speech at universities as a step towards totalitarianism. It is therefore clear that Prof Ahmed will robustly enforce the new legislation. A recent [major speech](#) by Prof Ahmed at King’s College London sets out clearly his strong and wide-ranging vision for his new role.

The duties contained in the Act may be enforced in three ways: (1) a new statutory complaints scheme to be administered by the Director on behalf of the OfS; (2) the enforcement powers of the OfS (which can include large fines and even suspension of registration); and (3) a new statutory tort to allow claims in the civil courts for breaches of the A1 duties. Due to the new regulatory regime and enforcement mechanisms and the new duties introduced, the Act is [expected](#) to have a great deal of impact on the sector. James Murray, a leading legal expert on academic freedom and one of the architects of the Act, has [remarked](#) that there seems to be an attitude among some in the sector that the bill does not change much as it builds on existing duties. However, Murray has described the Act as a seismic event for universities. In his [words](#), *“Institutions are going to have to do a lot of work to get up to a baseline standard where they are compliant with the law. [...] There’s a lot to do and the head in the sand attitude that I’ve seen a lot at the higher levels of universities is something that is going to have to right itself pretty quickly as they get to grips with it.”*

A QMUL Code of Practice on Freedom of Speech is required by the Act and is being considered for approval by Senate. However, it should be clear from the above discussion that due to the new duties and enforcement mechanisms introduced by the Act much more is required. Failure to have adequate structures to secure academic freedom and free speech for academic staff, students, and visiting speakers would carry significant monetary and reputational risks for QMUL. The rest of this paper sets out some recommendations on new internal roles, processes, training and reviews QMUL should put in place.

## 2 A VP for freedom of speech and academic freedom at QMUL

The Act secures the freedom within the law of academic staff to put forward new ideas and controversial or unpopular opinions (which need not be related to their field of expertise), without placing themselves at risk of loss of their jobs or privileges or reduction in the likelihood of their securing promotion. The Act also introduces new duties to promote the importance of free speech and academic freedom. Earl Howe, the Government's representative when the Act passed through the Lords indicated that the duty was about creating a culture of free speech where students and staff felt able to express their views confidently. Additional guidance on how universities can carry out these core duties is expected from the OfS.

To ensure that these duties are carried out effectively and to mitigate risks, this paper recommends that QMUL creates a position with meaningful influence to oversee the university's duties with respect to freedom of speech and academic freedom. We believe that creation of this new role ("Vice-Principal for Freedom of Speech and Academic Freedom" at QMUL) is vital if QMUL is serious about creating the culture of free speech that the Act envisages. The President and Principal has overall responsibility for implementation of the Code of Practice on Free Speech as delegated by the University's Council. However, given that the President and Principal has many other duties and responsibilities, it makes sense to have another senior academic at the Senior Management Team who advises the President and Principal on free speech issues and who is entrusted with: actively promoting freedom of speech and academic freedom at QMUL in line with the new A3 duties (duty to promote the importance of freedom of speech and academic freedom); ensuring the development and implementation of improved policies; overseeing the internal free speech complaints scheme as and when it is created and defending free speech on campus; cultivating and championing a free-speech culture among students and staff through events, talks, communications, trainings and courses. The above duties cannot be taken over by the existing structure of Executive Deans of Faculties or Heads of Schools and Institutes because issues of freedom of speech cut across Schools and Faculties and need QMUL wide attention. In addition, executive Deans and Heads have many other responsibilities and therefore it is important that there is someone at college level with focused responsibility for free speech issues and who is directly accountable to the President and Principal.

The above recommendation is closely aligned with what has been recommended by various experts on academic freedom. In their article "Preparing for the Higher Education (Freedom of Speech) Bill: a Practical Guide and Compliance Checklist", leading legal experts [Murray, Lewis and Lomas](#) from the law firm Mishcon de Reya recommend that universities have "*an internal champion for academic freedom and freedom of speech who holds meaningful influence within the institution or who sits on the relevant executive body*". Similarly, [Suissa and Sullivan](#) recommend in their paper that universities should "*appoint a champion for academic freedom within the senior leadership team, in order to ensure that there is a voice positively promoting academic freedom and that it forms part of the discussion of all university policies and practice.*" Furthermore, the law (Sub-sections A1(1)-(2) of HERA) *requires* that QMUL take "the steps that, having particular regard to the importance of freedom of

speech, are reasonably practicable for it to take” and a recent [report](#) by the [Best Free Speech Practice](#) (a committee consisting of senior lawyers, academics and free speech campaigners) argues that appointing a dedicated Free Speech Officer for the staff, members and students of and visiting speakers to QMUL is clearly a reasonably practicable step which will be likely to make a material difference to its ability to secure freedom of speech.

This paper also recommends that there should also be academic freedom leads at each Faculty which would ensure protection and promotion of academic freedom across various disciplines and allow staff and students to raise any concerns about academic freedom to an appropriate person within their Faculty.

### 3 An internal free speech complaints scheme

The Act establishes a new statutory complaints scheme at the OfS that eligible persons (staff, students and visiting speakers) can use if they believe their free speech rights have been breached by a university or a student union.

While the OfS have not yet (as of October 10, 2023) consulted on the full details of their proposals for their free speech complaints scheme, we do know that this scheme will be specifically for free speech matters and will be overseen by the Director; moreover we know that the current [timeline](#) from the OfS expects the scheme to come into effect on 1<sup>st</sup> August 2024.

To mitigate risks, this paper recommends that QMUL should set up its own internal free speech complaints scheme overseen by the QMUL VP for Freedom of Speech and Academic Freedom. An internal complaints scheme would allow eligible persons who believe their free speech or academic freedom has been infringed to attempt resolution internally. The details of this scheme could be finalised over the next year to mirror the OfS proposals for their scheme so that the internal QMUL free speech complaints scheme is up and running by 1<sup>st</sup> August 2024 and takes into account any guidance from the OfS that arrives in that period.

As was pointed out by Matt Western MP in the debate at the Commons, each upheld free-speech complaint that goes to the courts could potentially cost over £100,000 for a university if the sums awarded by the courts are similar to those for violations of the Equality Act, and taking legal costs into account. An internal complaints scheme would be able to reduce the risk substantially. Furthermore, the Act allows for the new OfS complaints scheme to have a provision that a free speech complaint is not to be referred under the scheme until the complainant has exhausted any internal procedure for the review of complaints which is provided by the university; obviously, in order to make use of this provision, QMUL needs to set up an internal complaints scheme.

An internal complaints scheme that is dedicated to freedom of speech is a key item in the [compliance checklist](#) for the Act provided by Mishcon de Reya. Furthermore, several other universities (e.g., the University of Derby) have already set up an

internal free speech complaints scheme, while others are in the process of doing so. Therefore, QMUL would be following best practice by establishing such a scheme. In addition, such a complaints scheme should be accessible to staff, students and visitors, with a clear and visible information on how to make a complaint, applicable procedures, outcomes, and timings.

## 4 Training for staff and students

The Act requires that QMUL must, at least once a year, bring the main A1 provisions of the Act (duty to take steps to secure freedom of speech) and the QMUL code of practice for Freedom of Speech to the attention of its students. Moreover, there is a growing realisation within the sector that students and staff need training in the practice of productive disagreement. For example, Michael Spence, the president of UCL, [has argued that](#) “*practising the skill of disagreeing well is crucial, not only for the university to do its work, but for democracy more broadly to survive*”. Therefore, this paper recommends that QMUL organise regular training for all its staff and students on the main provisions of the Act, the legal duties to secure freedom of speech, the philosophical arguments and debates underpinning the value of academic freedom, and the practice of productive disagreement.

In organising such training, QMUL should consider partnering with external organisations who have developed resources for these purposes. For example, the Heterodox Academy has developed a [toolkit](#) consisting of two empirically validated interventions for use on college and university campuses that contribute to a climate of free expression, increase empathy and perspective-taking, intellectual humility, and open-minded cognition. The recently established London Universities’ Council for Academic Freedom is planning to develop resources to help promote academic freedom and best practices for universities. Furthermore, a [recent report](#) published by the Policy Institute at King’s College London reviews a range of policy interventions universities could put into place to enhance freedom of speech on campus. By effectively training its staff and students on freedom and academic freedom, QMUL will not just improve the climate of freedom of speech on campus but will also reduce the likelihood of breaches of free speech rights occurring and thus reduce its risks from the Act.

## 5 Review of existing policies

As noted by Murray in a [recent paper](#), the Act will have significant implications for employment relations and “in particular, the new duties around hiring and managing employees which merit very serious consideration, especially when hiring, disciplining and dismissing academics.” Therefore, it would be crucial to review existing QMUL policy around recruitment, whistleblowing, and discipline to ensure compliance with the Act.

Furthermore, as noted earlier, the Act secures the freedom of academic staff to express controversial or unpopular opinions without hurting their promotion

prospects. This applies equally to research and teaching. The initial [command paper from the government](#) which led to the Act warned that universities or department heads “*should not force or pressure academics to teach from their own ideological viewpoint, or to only use set texts that comply with their own viewpoint. This applies equally to contested political ideologies that are not associated with a particular political party or view, such as ‘decolonising the curriculum’.*” Therefore, it is imperative that QMUL ensures that its existing promotion procedure is fully compliant with these requirements and academics are not penalised in any way for exercising their academic freedom. Similarly, QMUL policies on research ethics and funding approvals may need to be reviewed to ensure that they adequately protect academic freedom.

[Murray, Lewis and Lomas](#) from the law firm Mishcon de Reya have also written: *“One issue which we often see is providers’ harassment policies not properly reflecting the interaction between unlawful harassment under the Equality Act 2010 and the law protecting academic freedom and freedom of speech. It is particularly important to get this right as disciplining an academic for harassment without considering their free speech rights can lead to further difficulties.”* Therefore, it would be important to ensure that QMUL’s Dignity at work policies as well as EDI policies reflect the protections arising from the Act. In fact, as [Suissa and Sullivan](#) explain, it would be important to *“assess all university policies to ensure their alignment with both academic freedom and equality legislation”*.

Other policies which may need to be reviewed are IT policies and policies governing social media usage. Notably, the [command paper](#) from the government is explicit that a disciplinary code which refers to ‘offensive speech’ or to ‘bringing the university into disrepute’ without reference to the right to free speech may act to inhibit free speech or academic freedom that is within the law.

A recent [Universities UK briefing](#) entitled “How can universities prepare for the Higher Education (Freedom of Speech) Act?” warns that the duty to have “particular regard to the importance of free speech” suggests that steps to protect free speech need to be prioritised above other institutional objectives. The briefing recommends that universities should review a wide range of their policies, procedures and codes and gives an extensive suggested list on page 26 of the briefing which could provide a starting point. This is also the position of this paper.

To summarise, this paper recommends that QMUL should review existing policies, procedures and governing documents for compliance with the legislation, particularly recruitment procedures, promotion procedures, Dignity at Work policy, grievance policy, research ethics and funding approvals, IT policies, and discipline policy. QMUL should consider liaising with external organisations working on academic freedom as well as seek specialist legal advice to ensure its policies align with academic freedom best practices and legal requirements. It is likely that there will be future guidance from OfS on some of these matters, which would also need to be incorporated into policy.



## 6 Key References

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