

Freedom of Speech – how to prepare for the new statutory duties

04 July 2023  Matthew Alderton

The hotly debated Higher Education (Freedom of Speech) Act 2023 (“the Act”) places new duties on the higher education sector, meaning that policies and procedures should be updated and staff trained on the new legal requirements.

Whilst the majority of new provisions have yet to be brought into force by way of secondary legislation, we recommend universities get everything in order ready for the start of the new academic year.

The two core duties introduced by the Act are those placed on Governing Bodies and Students’ Unions to:

1. Promote the importance of freedom of speech and academic freedom. Any internal policies and guidance given to staff should be updated to reflect these new duties.
2. Prepare and maintain a code of practice setting out its values relating to freedom of speech and how these will be upheld, including procedures, conduct and criteria for managing activities that fall within the code.

It’s imperative that these documents are carefully designed and clearly worded to avoid the risk of legal challenge. This is particularly important given that the Act is also introducing:

1. A new duty on the Office for Students (OfS) to ensure that universities are compliant with their new duties
2. A Director of Free Speech and Academic Freedom (also known as the ‘Free Speech Tsar’), to be based at the OfS, who will have the power to fine bodies that are not compliant with the Act
3. A new complaint scheme to be run by the OfS to deal with free speech complaints
4. A new statutory tort that allows:
 - Academics to sue universities if they feel they have suffered reputational damage or adverse consequences to the progression of their career.
 - Staff and students to apply for an injunction in the county court on the basis that there has been an alleged breach of free speech duties (without waiting for the completion of any complaints procedure).

Finally, universities should keep in mind that non-disclosure agreements are no longer permitted to prevent people speaking out in relation to cases of sexual misconduct, abuse, harassment or bullying.

Please don’t hesitate to contact us with any questions about this article or to discuss what steps you should take to implement these new changes.

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