

NOTTINGHAM TRENT UNIVERSITY

CODE OF PRACTICE ON FREEDOM OF SPEECH

1. Introduction

- 1.1. Freedom of speech and expression is at the heart of what universities are for, where the freedom to express ideas and debate opinions is a fundamental principle.
- 1.2. In common with other higher education institutions, Nottingham Trent University (the University) has certain legal and regulatory obligations to protect freedom of speech and expression.
- 1.3. The University is committed to ensuring that its academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions without placing themselves at risk of losing their jobs or any privileges they may have at the University or the likelihood of their securing promotion or different jobs at the University being reduced.
- 1.4. At the same time, the University is conscious of its obligations to maintain good campus relations which safeguard the safety of students, staff and visitors.
- 1.5. This Code of Practice sets out the way in which the rights and obligations associated with freedom of speech, expression and debate operate at the University and how the balance of legal responsibilities is achieved.
- 1.6. The Chief Operating Officer and Registrar will oversee the implementation of this Code of Practice.

2. Scope

- 2.1. This Code of Practice applies to:
 - i) all members, staff and students of the University;
 - ii) visiting speakers and all other persons invited or otherwise lawfully on the premises; and
 - iii) the Nottingham Trent Students' Union, including its constituent societies, clubs and associations.
- 2.2. References to "the University's premises" means those premises over which the University exercises control.
- 2.3. This Code of Practice is not intended to apply to speakers at acts of religious worship. Any speakers at such acts of religious worship should be referred to the University's Chaplaincy service and be in accordance with the provisions of the University's Use of Prayer and Faith Facilities Policy.

3. Policy Statement

- 3.1. The University supports the right of individuals to express controversial or unpopular views, provided that the expression of those views does not constitute racial hatred, religious hatred, hate crimes, sexual harassment or other activities which are likely to cause a breach of the peace or public disorder, create a risk to health and safety or are otherwise unlawful.

- 3.2. The University reserves the right to determine that, where an event is allowed to proceed, speakers with extremist views can be and are challenged with opposing views as part of that same event and that all the speakers are of equal standing and profile.
- 3.3. Whilst upholding the principles of freedom to express potentially controversial or unpopular views, the University will not permit its premises or resources (including its virtual/remote working resources) to be used to promote or support violent or non-violent extremism. Where the University has concerns that an event might draw people into terrorism, it has the authority not to allow the event to proceed.
- 3.4. Where events may include the expression of potentially controversial or unpopular views, the University shall act in accordance with its wider legal duties set out in Appendix 2 of this Code of Practice.
- 3.5. Every person to whom this Code of Practice applies is required to assist the University in upholding its provisions.
- 3.6. The University shall take such steps as are reasonably practicable, including where appropriate the initiation of disciplinary measures, to secure compliance by groups or individuals with their obligations under this Code of Practice.
- 3.7. The University does not allow or condone 'no platforming' of events permitted under this Code of Practice. This means that no person or group to whom this Code of Practice applies shall prevent or seek to prevent the holding or continuation of any event, lecture, tutorial exhibition or other academic activity (whether or not within the University) because of the views held or expressed, which are reasonably likely to be expressed or which it is believed may be expressed.
- 3.8. Nothing in this Code of Practice shall be taken to prohibit the lawful exercise of the right to peacefully protest. However, protests against an event must be conducted without infringing the rights of others, including others' right to freedom of speech. No protest should prevent any event permitted under this Code of Practice from proceeding as scheduled.

4. General Principles and Legal Duties

- 4.1. Under Section 43 of the Education (No. 2) Act 1986, the University is required to take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for its members, students and employees, and for visiting speakers.
- 4.2. The Higher Education (Freedom of Speech) Act 2023 upon its implementation will replace the duty previously imposed on universities under section 43 of the Education (No. 2) Act 1986, expanding it and placing further responsibilities on universities to take steps to secure freedom of speech by inserting new provisions A1-A3 into the Higher Education and Research Act 2017. Universities are now required to promote, as well as secure, freedom of speech and academic freedom.
- 4.3. The University respects the rights and freedoms of individuals, and the principles of equality, diversity and inclusion. All members of its community share the responsibility for maintaining an environment of reasoned enquiry, mutual tolerance and civility. However, it is not the proper role of the University to attempt to restrict the discussion of ideas and opinions that are within the law, no matter how distasteful, unwelcome or offensive those ideas and opinions may seem to some. This is especially the case regarding matters of academic and public interest.

- 4.4. However, association with the University as an academic institution confers a degree of authority and legitimacy on views and provides privileged access to a scholarly audience for the speakers it hosts. In assessing what is reasonably practicable to do to ensure and promote freedom of speech and academic freedom in any case, the University does not regard itself as obliged to provide a platform to individuals who wish to promote views that are manifestly at odds with empirically verifiable objective facts or not susceptible to reasoned enquiry and debate. Staff and students making decisions about invitations to speakers should always assess carefully the contribution that a discussion or event will have to the advancement of education in a university setting, and what form the event should take to best deliver that outcome.
- 4.5. The University has the right and power to regulate the use of its premises, and is under no legal obligation to hold meetings on campus which are open to the outside public. In compliance with its duties under the above legislation, however, the University will ensure, so far as is reasonably practicable, that the use of its premises is not denied to any individual or body of persons on any ground connected with:
- i) the beliefs and views of that individual or any member of that body; or
 - ii) the policy or objectives of that body.
- 4.6. The University is also required to produce this Code of Practice setting out the procedures to be followed by students and staff in connection with the organisation of meetings and other activities which fall within any class specified in this Code of Practice , together with the conduct required of staff and students in connection with such meetings and activities.

5. Academic Freedom

- 5.1. The University is committed to ensuring that academic staff have the freedom to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions without placing them at risk of losing their jobs or privileges at the University, or reducing the likelihood of securing promotion or different jobs at the University. Academic freedom must be exercised within the law and is subject to this Code of Practice.
- 5.2. Academic freedom shall extend to all academic staff and to any visiting or guest lecturer invited by the University. The principles of academic freedom shall also extend to students presenting work produced during the course of their studies at the University.

6. University Courses, Policies and Procedures

- 6.1. The University will ensure that its teaching, curriculum, policies and procedures reflect its duty to secure, so far as is reasonably practicable, freedom of speech and academic freedom within the law. In particular, the University shall ensure that:
- i) no individual will be subjected to disciplinary action or less favourable treatment by or on behalf of the University as a result of the lawful exercise of their freedom of speech or academic freedom;
 - ii) its processes for course development and approval, academic assessment and quality assurance will respect the rights of freedom of speech and academic freedom; and

- iii) its processes for facilitating research will respect the rights of freedom of speech and academic freedom.

7. Steps the University will take to Ensure Freedom of Speech

7.1. The University will:

- i) ensure that this Code of Practice and the principles within it are brought to the attention of staff and students on arrival at the University;
- ii) draw this Code of Practice to the attention of students annually;
- iii) ensure that all relevant staff receive training on their role in helping to discharge the University's obligations in relation to freedom of speech and academic freedom;
- iv) where relevant policies and procedures are introduced, ensure that consideration is given to their impact on freedom of speech and academic freedom;
- v) ensure adequate and effective mechanisms are in place to raise concerns in relation to freedom of speech and academic freedom; and
- vi) where concerns are raised regarding freedom of speech and academic freedom, ensure that, so far as is reasonably practicable, such concerns are addressed and any lessons to be learned are incorporated into a review of relevant policies, procedures and practices.

8. Limitations on Freedom of Speech

- 8.1. Nothing in this Code of Practice shall interfere with the right to assemble, demonstrate, protest and speak or otherwise express oneself within the law. However, illegal and unlawful acts will not be tolerated.
- 8.2. The University has a duty to protect its staff and students from unlawful discrimination, harassment, intimidation or threats of violence on the grounds of race, sex, age, religion or philosophical belief, sexual orientation, disability, gender reassignment, marriage and civil partnership, or pregnancy or maternity. However, the provisions of the Equality Act 2010 should not be interpreted to undermine freedom of speech and academic freedom. As a result, students' learning experience and the working environment of staff may include exposure to research, course material, discussion or speaker's views that they find offensive, contentious or unacceptable, but are nonetheless lawful, and unlikely to be considered unlawful harassment or discrimination under the Equality Act 2010.
- 8.3. The University is subject to the public sector equality duty and when it is exercising its functions it must have due regard to the following three aims:
 - i) the need to eliminate unlawful discrimination, harassment and victimisation;
 - ii) the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - iii) the need to foster good relations between people who share a relevant protected characteristic and persons who do not share it.

In the context of its duties in relation to freedom of speech and academic freedom, the University will consider the potential impact on staff and students who may feel upset, vilified or marginalised by views expressed and how to ensure those staff and students feel included and welcome within the University environment and are able to participate fully in activities and discussions.

9. Events

- 9.1. Where any person or group subject to this Code of Practice wishes to hold any event for the expression of views or beliefs held or lawfully expressed on University or NTSU premises, or which are funded or endorsed by the University or NTSU, approval shall be sought in accordance with the Event Approval Procedure attached to this Code of Practice. Approval shall not be unreasonably refused. Any conditions imposed on the holding of the event shall be kept to the minimum necessary for the risks identified in holding the event.
- 9.2. It shall be reasonable to refuse consent, withhold facilities (including online resources) or impose conditions on any event to which this Code of Practice applies where the University reasonably believes or anticipates that (from the nature of the speakers or from events at similar meetings in the past whether at the University or otherwise):
- i) the views likely to be expressed by any speaker are contrary to the law;
 - ii) the speaker and/or the organisation they represent advocates or engages in violence or non-violent extremism in the furtherance of their political, religious, philosophical or other beliefs;
 - iii) the event will include or is likely to include the denial to hold or to express an opposing opinion;
 - iv) the intention of any speaker is likely to be to incite breaches of the law or breaches of the peace to occur;
 - v) the views likely to be expressed by any speaker are for the promotion of any illegal organisation or purpose, including organisations listed on the government's list of proscribed terrorist groups or organisations; and
 - vi) adequate arrangements cannot be made to safeguard the safety of participants in the event, and other people within the vicinity, and to ensure that public order is maintained.
- 9.3. The University will consider whether any mitigating actions can be put in place to reduce or manage any identified risks which would enable the request to be approved. These may include but are not limited to: requirements as to the provision of security/stewards; variation of location and time; whether such a meeting shall be open to the public at large; the speaker being part of a panel debate; the appointment of an independent chair; the recording of the speech; or ensuring that a member of staff is in attendance. The University shall ensure that such conditions or requirements go no further than is necessary to address the risks identified. Other than in exceptional circumstances, the costs of security relating to the use of premises shall not be passed to the person or organisation arranging the event. Exceptional circumstances are where the cost of facilitating the event are wholly disproportionate to the scope and/or timing of the event in question or where there are safety concerns that cannot be reasonably mitigated without incurring security costs.
- 9.4. Where the University is reasonably satisfied that the otherwise lawful expression of views at any event is likely to give rise to disorder or threats to the safety of participants or the wider University community, the University shall consider the steps necessary to take to ensure:
- i) the safety of all persons;
 - ii) the maintenance of order; and
 - iii) the security of University premises.

- 9.5. Gender segregation is not permitted in any academic meetings or at events, lectures or meetings provided for students, or at events attended by members of the public or employees of the University or NTSU (unless an exemption applies in accordance with the Equality Act 2010).
- 9.6. Should the event involve public processions then the organiser of the event is required to notify the police in writing ahead of the event and comply with the conditions imposed by the police and/or the Public Order Act 1986.
- 9.7. Should the event involve demonstrations on either the University's or NTSU's premises then the organiser of the event should note that in accordance with the provisions of the Public Order Act 1986, such demonstrations may be subject to conditions imposed by the police.
- 9.8. In cases where it is reasonable for the University to believe that disruption may occur at an event, whether at the approval request stage or at any time thereafter in the run-up to the event, the University shall be entitled to consult with the police as to the measures necessary to prevent or minimise any such disruption. These measures could, in rare circumstances, include cancellation of the event.
- 9.9. Should the event be aimed at students of the University studying Further Education programmes a member of University staff is required to be present at the event.

10. Operational implementation of the Code of Practice

- 10.1. Deans are responsible for ensuring that the principles underpinning this Code of Practice are taken into account in the planning of teaching and learning activity and in the production of publications or other output from academic work.
- 10.2. In addition, any off-site event (i.e. one taking place away from the University's premises or NTSU premises) held in the University's or NTSU's name or on its behalf must, as far as reasonably possible, be organised and managed in compliance with the principles underpinning this Code of Practice.
- 10.3. For any other events or activities (particularly meetings and demonstrations) which are not part of the approved academic course content or officially authorised business of the University where it is expected, or reasonably foreseeable, that the event/activity will satisfy any of the criteria in 9.2 above, prior approval for use of University premises and or the use of its online resources to access the event must be secured in accordance with the Event Approvals Procedure which accompanies this Code of Practice. For the avoidance of doubt the intention of this clause is not to limit or restrict individual's rights to attend such other events or activities.
- 10.4. External speakers at conferences on University premises or external speakers at online events are covered by this Code of Practice. All such proposed external speakers must be notified to the Events team or NTSU as appropriate in accordance with the Events Approvals Procedure. Regular contact is needed between the University and conference organisers to assess the progress of conference arrangements to ensure any issues in respect of the Code of Practice are identified early.

11. Sanctions and Penalties

- 11.1. If an offence is allegedly committed at or in connection with an event or activity to which the provisions of this Code of Practice apply, in addition to any internal disciplinary procedures that may be appropriate, the University or NTSU as

appropriate may take steps to assist the police in identifying any persons committing offences.

12. Speakers at events booked by external individuals or organisations

12.1. In the event that the University receives a request to the Events team and/or Nottingham Conference Centre or elsewhere from an external organisation for the University to make its facilities available to them for an event, commercial or non-commercial, then for the avoidance of any doubt, the event organiser and any speakers connected to that event will have to comply with this Code of Practice.

12.2. The University will ensure that individuals who manage such bookings are aware of this Code of Practice and can manage the request in accordance with its provisions.

13. Review and Monitoring

13.1. The University shall periodically review and, where necessary, update this Code of Practice. To this end, the Governing Body shall receive a report on the operation of the Code of Practice, together with any recommendations for its revision, at intervals not exceeding three years.

13.2. An annual report on events involving external speakers approved in accordance with the terms of this Code of Practice will be provided to the Prevent Steering Group for information.

13.3. This version of the Code of Practice was approved by the Board of Governors on 25 September 2023.

NOTTINGHAM TRENT UNIVERSITY
CODE OF PRACTICE ON FREEDOM OF SPEECH
EVENT APPROVAL PROCEDURE

1. Application for approval

- 1.1. This Procedure applies to events and activities which are not deemed (by the relevant Executive Dean) to be part of the University’s internally authorised teaching and learning activity.
- 1.2. Any person or group wishing to hold an event on University or NTSU premises must seek formal approval to the same and complete this procedure in advance of the event taking place. This applies to both internal and external bookings for any venue controlled by the University. Event organisers following this procedure must agree to abide by the Code of Practice on Freedom of Speech set out above.
- 1.3. To seek formal approval, the organiser(s) of the event must submit a written request (using the relevant Event Request Form at Appendix 1 or in accordance with the NTSU Event Booking procedure available from NTSU) for consideration. The request must be submitted not less than 20 working days’ notice before the proposed date of the event, to the designated Approving Manager determined by the status of the event organiser(s), as follows:

Event Organiser(s)	Approving Managers
The Students’ Union (including any of its Societies, groups and Associations)	The CEO <u>and</u> the President of Nottingham Trent Students’ Union
Student(s) acting personally (i.e. independently of NTSU)	Executive Dean of School
Academic Staff	Executive Dean of School
Professional Services staff: in a School in Professional Services departments	Executive Dean of School/ Head of Service
External hirer (organisation or individual)	Head of Campus Services and the CEO and the President of the Nottingham Trent Students’ Union if an external hirer is requesting use of the NTSU premises.
NTU Sports Clubs	NTU Director of Sport

- 1.4. Any change to the planned event must be notified to the University or NTSU, as appropriate, not less than 5 working days in advance so that the University can reassess the request.
- 1.5. In the event of any doubt as to whether a proposed event might require approval under this procedure, the organiser(s) of the event shall consult the relevant Approving Manager at the earliest opportunity so that the correct procedures may be followed.
- 1.6. On receipt of the Event Approval Form the Approving Manager will undertake an appropriate review based on an assessment of risk of the event in question. In

considering whether to approve the event request, the Approving Manager shall take account of any actual and/or potential risks associated with the event, which may involve the completion of a formal risk assessment. The Approving Manager must note clearly the level of actual and/or potential risk associated with the proposed event.

- 1.5. The University may withhold or refuse consent to any external speaker or like event that has not been made in accordance with this Code of Practice including where the specified timescales have not been complied with.
- 1.6. The Approving Manager shall have discretion to refer the matter for consideration and decision by an Event Approval Panel (EAP) comprising the Approving Manager and two other senior officers of the University and the NTSU (such that at least one member of the EAP is a Member of University staff).
- 1.7. Based on the evidence, the EAP shall agree the level of actual and/or potential risk and a decision shall be made as to whether the request to hold the event is:
 - Approved, or
 - Approved with conditions, or
 - Rejected.
- 1.8. The EAP shall seek to provide written confirmation of their decision to the event organiser(s) within 5 working days of receiving the written request. However, the EAP may require more time to reach their decision; in such circumstances, the decision will be communicated as quickly as circumstances allow.
- 1.9. If the decision of the EAP is to approve the request with conditions, or to reject the request, the organiser(s) shall be entitled to submit an appeal against the decision. Any such appeal must be submitted in writing to the Vice-Chancellor's Office for referral to/consideration by a member of the University's University Executive Team ("UET") and to the Chair of the Board of Trustees of NTSU. This person cannot previously have been a member of the EAP which made the original decision. The decision shall be final and there shall be no further mechanism for appeal within the University or Students' Union.

2. Management of approved events

- 2.1. Following event approval, the event organiser(s) shall be responsible for liaising with the relevant members of University (and, where appropriate, NTSU) staff to secure the use of the premises and all associated facilities and services which may be required to facilitate the staging of the event.
- 2.2. The University shall be entitled but not obliged to nominate an Event Liaison Officer to act on its behalf during the planning and staging of an event. The Event Liaison Officer shall have authority to take any lawful action on behalf of the University and to issue reasonable instructions to the event organiser(s) in order to ensure the good conduct of the event and compliance with the Code of Practice on Freedom of Speech.
- 2.3. Event organiser(s) must comply with all lawful conditions imposed by the University (and, where appropriate, NTSU) in relation to the location and management of the event including stewarding, control over proceedings and ensuring adequate supervision of those attending.
- 2.4. Event organiser(s) shall be responsible for meeting any costs involved in organising and holding the event, and for ensuring as far as possible that nothing in the organisation and holding of the event infringes the law in any way.

- 2.5 Event organiser(s) shall make the external speakers aware of the Code of Practice on Freedom of Speech.
- 2.6 The organiser(s) of a virtual event shall ensure that the identity of the external speaker is verified prior to commencement of the event and ahead of providing access to the virtual event. This is to ensure that a substitute speaker who has not been approved is not able to join the meeting.
- 2.7 While an event is in progress, the University shall have the right to require the organisers to terminate the event if the conduct of the event gives rise to concerns for the University that the safety of persons attending cannot be reasonably guaranteed, or that a breach of the law or a material breach of the Code of Practice on Freedom of Speech or any of the conditions imposed in the event approval process occurs.
- 2.8 The University may also withdraw its consent and terminate an event either during or prior to its commencement if it becomes apparent that the content/nature of the event or the identity or numbers of speakers previously notified to the University have changed. This includes a situation where an attendee speaks at the event.
- 2.9 Events/speakers must not be advertised until written approval for the event to proceed has been received in accordance with this Procedure.

**NOTTINGHAM TRENT UNIVERSITY
EVENT BOOKING REQUEST**

Principal Organiser's Details

Full name(s)	Status e.g. NTU staff; SU Official; Student; External Hirer	Contact phone no.	Email address

Acting on behalf of (name of group, external body or organisation)

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Purpose/Topic of Proposed Event

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Proposed Timing and Location of Event

Date	Start time	End time	Venue (also include details of online events)

Proposed Speakers

Name	Status

Organiser's Declaration

I declare that the information provided here is, to the best of my knowledge, a true and accurate statement of intentions and requirements. I/we will notify the University of any changes to the event.

I/we understand and accept that this event request is made under the provisions of the University's Code of Practice on Freedom of Speech, and I/we agree to comply with this Code of Practice in the event that permission to hold this event is granted. I/we acknowledge that the event may be cancelled at any time, if this is deemed necessary by the University.

Signature(s)	Date

When completed, this form should be submitted for consideration by the relevant Approving Manager not less than 20 working days before the date of the proposed event.

LEGAL FRAMEWORK

1. Higher Education (Freedom of Speech) Act 2023

The Higher Education (Freedom of Speech) Act 2023 replaces the duty previously imposed on universities under section 43 of the Education (No. 2) Act 1986, expanding it and placing further responsibilities on universities to take steps to secure freedom of speech by inserting new provisions A1-A3 into the Higher Education and Research Act 2017. Universities are now required to promote, as well as secure, freedom of speech and academic freedom.

Section 1 of the Act places a duty on the governing body of universities to take reasonably practicable steps to ensure freedom of speech within the law is secured for members, students and employees of the University and for visiting speakers. "Within the law" means that where speech breaches some other area of law, there is no obligation on the University to ensure it can be expressed.

This includes securing that the use of the University's premises are not denied on the following grounds:

- in relation to an individual, their ideas or opinions; and
- in relation to a body, its policy or objectives or the ideas or opinions of any of its members.

This extends to securing academic freedom for academic staff to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions without placing them at risk of being adversely affected by the loss of their jobs or privileges at the provider or by the likelihood of their securing a promotion or different jobs at the provider being reduced.

University governing bodies must secure that, except for in exceptional circumstances, the use of its premises by an individual or body is not on terms that require that individual or body to bear some or all of the costs of security relating to their use of the premises.

The Act also prohibits governing bodies of registered higher education providers from entering into non-disclosure agreements with persons in relation to certain types of complaints, such as bullying and sexual harassment.

The Act also imposes a duty on universities to publish a Code of Practice (e.g. freedom of speech policy) in relation to free speech setting out:

- the University's values relating to freedom of speech and how those values uphold free speech;
- the procedures to be followed by university staff, students and the students' union in connection with the organisation of meetings and other activities taking place on university premises;
- the conduct required of persons in connection with any such meetings or activities;
- the criteria used by the University in making decisions about whether to allow the use of premises and on what terms; and
- any other matters the university's governing body considers appropriate.

Universities must also take reasonably practicable steps to secure compliance with the code (e.g. initiating disciplinary procedures where appropriate) and must bring the steps it takes to secure freedom of speech and its Code of Practice to the attention of students once per year.

2. **Education (No. 2) Act 1986**

Section 43 of the Education (No. 2) Act 1986 states that every individual and body of persons concerned in the government of universities 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 University and for visiting speakers.

“Within the law” means that where speech breaches some other area of law, there is no obligation on the University to ensure that it can be expressed.

This includes in particular the duty to ensure, so far as is reasonably practicable, that the use of any University premises is not denied to any individual or body of persons on any ground connected with:

- a) the beliefs or views of that individual or any member of that body; or
- b) the policy or objectives of that body.

The Act requires that the University’s governing body shall issue and keep up to date a code of practice setting out:

- a) the procedures to be followed by members, students and employees of the University in connection with the organisation (i) of meetings which are to be held on University premises and which fall within any class of meeting specified in the code; and (ii) of other activities which are to take place on the premise and which fall within any class of activity so specified; and
- b) the conduct required of such persons in connection with any such meeting or activity.

The Act also states that every individual and body of persons concerned in the government of the University shall take such steps as are reasonably practicable to secure that the requirements of the code of practice are complied with.

3. **Human Rights Act 1998**

The University, as a public authority, is obliged under the Human Rights Act to act in a manner compatible with the European Convention on Human Rights (“the Convention”). If it acts in a manner incompatible with Convention rights it could face claims for damages and/or judicial review.

Freedom of Expression

Article 10.1 of the Convention states that 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.

The exercise of these freedoms, since it carried 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 reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of judiciary.

Freedom of thought, conscience and religion

Article 9 of the Convention provides that everybody has the right to freedom of thought, conscience and religion. The freedom to hold a particular belief is absolute, but the right to manifest religion or belief (i.e. through worship, observance, and teaching) is a qualified right.

Article 9 protects non-religious beliefs provided the following criteria are met:

- The belief must be genuinely held;

- It must be a belief and not an opinion or viewpoint based on the present state of information available;
- It must be a belief as to a weighty and substantial aspect of human life and behaviour;
- It must attain a certain level of cogency, seriousness, cohesion and importance; and
- It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.

4. Counter Terrorism and Security Act 2015 (Prevent Duty)

The Counter Terrorism and Security Act 2015 means the University must “have due regard to the need to prevent people from being drawn into terrorism” (Section 26(1)). The University must also “have particular regard to the duty to ensure freedom of speech” and “to the importance of academic freedom” (Section 31). Under Section 29, the University must “have regard to any such guidance in carrying out that duty”.

The University is complying with this duty in all its aspects, which in practice means striking a fine balance between concerns around extremism and concerns around censorship. This duty must be interpreted in a manner compatible with the legal duties on universities to secure freedom of expression, speech and academic freedom.

5. Equality Act 2010

Harassment

The Equality Act 2010 prohibits harassment related to a protected characteristic, such as gender reassignment, sex or religion and belief. Harassment consists of engaging in unwanted conduct related to the protected characteristic which has the purpose or effect of violating a person’s dignity or subjecting them to an intimidating, hostile, degrading, humiliating or offensive environment.

If the conduct has the effect (rather than the purpose) of violating dignity etc, it must be reasonable in the circumstances for the conduct to have had that effect, taking into account the perception of the individual. This is an objective test.

In the university context, guidance issued by the Equality and Human Rights Commission states as follows:

“The harassment provisions cannot be used to undermine academic freedom. Students’ learning experience may include exposure to course material, discussions or speaker’s views that they find offensive or unacceptable, and this is unlikely to be considered harassment under the Equality Act 2010.

Also, if the subject matter of a talk is clear from material promoting an event, then people who attend are unlikely to succeed in a claim for harassment arising from views expressed by the speaker.

Views expressed in teaching, debate or discussion on matters of public interest, including political or academic communication, are therefore unlikely to be seen as harassment, even if they are deeply offensive to some of the people who are listening, as Article 10 will protect them.”

It is therefore extremely unlikely that academic discussions, or discussions about matters of public interest will constitute harassment, even though some may find them deeply offensive or upsetting.

Public sector equality duty

The Equality Act 2010 imposes a general equality duty on public authorities (“PSED”). This means that the University must, when it is exercising its functions, have due regard to the following three aims:

- a. The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- b. The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c. The need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In the EHRC guidance referred to above, the discharge of the PSED in the context of freedom of expression is addressed as follows:

"This means HEPs have a legal responsibility to think about how they can promote equality and minimise tension and prejudice between different groups on campus. This is something that HEPs must consider when they are promoting freedom of expression. For example, when a HEP takes steps to ensure a debate on a divisive topic can go ahead – to protect free speech – it must consider the potential impact on students who may feel vilified or marginalised by the views expressed. They should think about how to ensure those students feel included and welcome within the HEP environment. HEPs who are subject to the s.43 duty should therefore use the PSED to encourage good relations, but without restricting lawful free speech."

Other types of discrimination

It is possible that other types of discrimination may be engaged when considering freedom of speech and these are summarised briefly below.

Direct discrimination occurs where the University treats a person less favourably because of a protected characteristic.

Indirect discrimination occurs where a person is subject to a provision, criterion or practice ("PCP") which is applied to people generally but which puts or would put people with the protected characteristic at a particular disadvantage by comparison to others. If the PCP is a proportionate means of achieving a legitimate aim there is no discrimination.

The University must not directly or indirectly discriminate when acting as a service provider, employer or education provider.

6. Charity law

The University is also subject to relevant charity law, and its trustees are responsible for ensuring that the institution complies with charity law and any other laws that apply to it.

7. Constitutional considerations

The University must comply with any relevant provisions relating to freedom of speech and academic freedom in its constitutional documents.

The University's Articles of Government state that the Board of Governors shall have regard to the need to ensure that academic staff of the University shall have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or any privileges they may have at the University.

8. Regulatory considerations

It is a condition of the University's registration with the OfS that it delivers, in practice, the OfS' "public interest governance principles". These include a commitment to academic freedom and freedom of speech. In its guidance on freedom of speech, the OfS states, "we stand for the widest possible definition of freedom of speech: anything within the law".