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Freedom of Speech Code of Conduct

#### Introduction

##### The University of Chichester’s (“University”) Freedom of Speech Code of Conduct sets out the principles which underpin the procedures to be followed by University staff and students and by any other party using, or seeking to use, University premises for a meeting or activity[[1]](#footnote-1), and the conduct required in respect of any such meeting or activity. The Code also applies to off-campus activities held in the University’s name, and to the promotion on campus of off-campus activities.

##### The purpose of this Code of Conduct is to enable the University to meet its duties under Section 43 of the Education (No. 2) Act 1986 to take all reasonably practicable steps to ensure that freedom of speech within the law is secured for students and staff of the University and for visiting speakers regarding the organisation of meetings and other activities on University premises.

#### Principles as set out in:

##### **The Higher Education and Research Act 2017 and the Regulatory Framework**

###### Though there is no consequence provided for in section 43, the Office for Students (OfS) is able to use its powers under the Higher Education and Research Act 2017 (HERA) to take action where a Higher Education Provider (HEP) has breached, or there is a risk that they might breach, one of the registration conditions related to free speech.

###### All registered HEPs are required to comply with the ongoing conditions of registration set by the OfS in its Regulatory Framework that are applicable to them. Conditions E1 and E2 require the governing documents of HEPs to uphold the Public Interest Governance Principles that apply to them (Condition E1), and to have in place adequate and effective management and governance arrangements to operate in accordance with their governing documents and to deliver the Public Interest Governance Principles in practice.

###### Two Public Interest Governance Principles are relevant:

###### “I. Academic freedom: Academic staff at an English higher education provider 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 privileges they may have at the provider”.

###### There is no freestanding legal right to academic freedom set out in legislation but it is a principle recognised in HERA. This Public Interest Governance Principle is required to be included by virtue of section 14(7) of HERA. It is broadly worded so as to cover all activities which academics might engage in.

###### “VII. Freedom of speech: The governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider”.

###### This closely mirrors the section 43 duty.

###### The OfS monitors providers in relation to their conditions of registration and may intervene where it considers that a provider is at increased risk of breach, or has breached, one or more conditions. In the event of a breach of condition, the OfS can impose sanctions including monetary penalties and (ultimately) de-registration. To date, there has been little regulatory action taken by the OfS in relation to potential breaches of the Conditions concerning freedom of speech or academic freedom, despite a significant number of concerning incidents being reported since its full suite of powers came into force in August 2019.

##### **Employment law**

###### The majority of academic staff directly employed by universities have a term in their employment contracts protecting their right to academic freedom as described in the above registration Condition – though this is variable and this lack of consistency is an issue that is discussed below).Individual academics who feel their right to academic freedom has been improperly infringed may have recourse against their employer via grievance procedures and contractual / employment law remedies (where damages/compensation would be available).

##### **Human Rights Act 1998**

###### HEPs which are public authorities under the Human Rights Act 1998 (HRA) are required to act compatibly with the Convention rights, as set out in Schedule 1 to the HRA, including Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly and association). Any interference with these rights, such as stopping an event going ahead, must be prescribed by law and necessary in a democratic society, which means that it must be proportionate. Action is ‘proportionate’ when there is a sufficiently important objective and the action taken is rationally connected to that objective, the action is no more than necessary to address the problem concerned and a fair balance has been achieved. This offers protection to students, staff and visiting speakers alike. A person affected by a HEP’s failure to comply with this duty can challenge it by, for example, judicial review proceedings and may be entitled to damages under the HRA in an appropriate case (though this is rare in this context).

##### **Section 22 of the Education Act 1994 and charity law**

###### Although student unions (SUs) are generally independent of their HEP, section 22 of the Education Act 1994 explicitly makes HEPs responsible for taking reasonably practicable steps to secure that their SU operates in a “fair and democratic manner”.

###### Section 22 also specifically requires the governing body of the HEP to bring to the attention of all students, at least annually, the provisions of section 43 and of the HEP’s section 43 code of practice relevant to the activities or conduct of the SU.

###### This demonstrates that matters relating to SUs and freedom of speech are something which a HEP may be legally responsible for. As with section 43, this legislation does not provide a specific enforcement regime for breach.

###### Most SUs are registered charities and are therefore regulated by the Charity Commission as regards their compliance with charity law. This includes acting for the public benefit in a way that promotes their charitable purpose (e.g. “advancement of education”).

###### This means, in principle, that SUs must not carry out political activity where it does not support their charitable aim and it must not be their sole/continuing activity. They must also comply with their other legal obligations, and only use their funds in a way that is balanced and non-discriminatory. As educational charities, there are limits on SUs spending money on political campaigning outside their direct remit; but this does not prevent debate and lawful free speech by students or student societies.

###### There are likely to be steps that could be taken by the Charity Commission in cases where an SU is, for example, blocking free speech for reasons which conflict with these principles. Although there are concerns that these duties are not always being fully complied, there has, however, been little regulatory intervention in this area.

##### **Limitations upon speech in higher education**

###### Whilst freedom of speech is a human right, it is not absolute and is subject to restrictions in certain circumstances. Significantly, the right to free speech in higher education under section 43 applies only to “free speech within the law” – that is, to speech that is lawful.

###### When considering their duties regarding freedom of speech and academic freedom, HEPs must also consider their other legal duties, in particular their duties under the Equality Act 2010, which includes the Public Sector Equality Duty. However, HEPs should be clear that lawful speech can only be limited in certain circumstances. These duties are detailed further at Annex A.

###### The legal duties on HEPs in relation to freedom of speech and academic freedom do not cover unlawful speech. There are a range of circumstances in which speech may be in breach of criminal law, including:

###### speech causing fear or provocation of violence[[2]](#footnote-2);

###### acts intended or likely to stir up hatred on grounds of race, religion or sexual orientation[[3]](#footnote-3);

###### speech amounting to a terrorism related offence[[4]](#footnote-4); and

###### causing a person harassment, alarm, or distress[[5]](#footnote-5), where this would constitute an offence under the Public Order Act 1986[[6]](#footnote-6).

###### There are also circumstances in which speech may be found to be unlawful in respect of civil law, including defamatory speech. This can include defamatory material on social media.

##### **Prevent Duty**

###### “In their 2018 report, the JCHR found that the fear of being reported for organising or attending an event, combined with the increased levels of bureaucracy following the introduction of the Prevent Duty, was reported to be having a chilling effect on freedom of speech.”

###### Government is clear that the Prevent Duty should not be used to suppress lawful free speech, rather it requires HEPs, when exercising their functions, to have due regard to the need to prevent people from being drawn into terrorism. There is no prescription from government (or the OfS) in regard to what action HEPs should take once they have had due regard. The legislation imposing the Prevent Duty in relation to higher education specifically requires that HEPs must have particular regard to the duty to ensure freedom of speech and to the importance of academic freedom. The Prevent Duty should not be used to shut down or discourage lawful speech, either directly or by the creation of unnecessarily bureaucratic processes that go beyond what is required by the Duty which may be co-opted by those who wish to suppress lawful free speech.

###### In balancing its responsibilities in terms of both ensuring freedom of speech and academic freedom, and also protecting student and staff welfare, the University will act reasonably and proportionately and in accordance with its values, policies and the law.

###### The University’s [Equality and Diversity Policy](https://www.chi.ac.uk/about-us/policies-and-statements/inclusivity-equality-and-diversity/inclusivity-documentation) sets out the University’s commitment to promoting equality, diversity and human rights, and to sustaining an environment which is free from all forms of unfair treatment, discrimination and harassment for all those who study, work and engage with the institution.

###### Staff and students are expected to adhere to the University’s rules on the use of information communication technology set out in the [Electronic Information Security Policy](https://www.chi.ac.uk/about-us/policies-and-statements/it-information-and-web). These prohibit the creation, display, production or circulation of material which is illegal or likely to cause offence. Additional guidance on the use of social media is provided in the University’s [Social Media Policy](https://www.chi.ac.uk/about-us/policies-and-statements/it-information-and-web). Students are also bound by the University Disciplinary Procedures and staff by the Staff Disciplinary Policy.

#### Associated documents

##### The following three documents work together as a set:

###### Academic Freedom and Freedom of Speech Statement

###### Freedom of Speech Code of Conduct

###### External Events Procedure: to cover external guests, speakers, performances and events

#### Questions

##### If you have any questions or concerns please discuss with your line manager (staff members) or lecturer or academic advisor (students) in the first instance. You may also contact the Director of Students, Support and Information Services who will direct you towards the most appropriate route.

1. University of Chichester [External Events Procedure](https://www.chi.ac.uk/about-us/policies-and-statements/freedom-speech) [↑](#footnote-ref-1)
2. Public Order Act, section 4 [↑](#footnote-ref-2)
3. Public Order Act 1986, sections 18 and 29B [↑](#footnote-ref-3)
4. Under the Terrorism Act 2006 or Terrorism Act 2000 [↑](#footnote-ref-4)
5. Public Order Act 1986, intentionally (section 4A) or unintentionally (section 5) [↑](#footnote-ref-5)
6. There is an extensive case law as to what constitutes harassment, alarm and distress, and the majority of speech that expresses political or other opinions, even if controversial or offensive, will not constitute such an offence [↑](#footnote-ref-6)