

*This document is a digest of the 'Freedom of Expression: A guide for higher education providers and students' unions in England and Wales' published by the Equality and Human Rights Commission<sup>1</sup>, 2<sup>nd</sup> February 2019*

## **Freedom of Expression: A guide for higher education providers and students' unions in England and Wales, Equality and Human Rights Commission**

### **Summary**

- Everyone has the right to free speech under law
- HEP should always work to widen debate and challenge, rather than narrow it
- Any decision about speakers/ events should seek to promote and protect free speech
- Peaceful protest is a protected form of expression – however, the protest should not shut down debate or infringe rights of others
- Free speech should not be abused for the purpose of unchallenged (and illegal) hatred

### **A HEP's legal duty to ensure freedom of speech**

Freedom of expression is a core part of a student's experience; HEPs should encourage discussion and exchange of views on difficult and controversial issues. Free expression should not be restricted just because others may find it offensive or insulting.

HEPs have legal duty to preserve free speech (under Art. 10 European Convention on Human Rights, s.6 Human Rights Act 1998), but it can be limited in law where necessary, for example to prevent crime, for national security or to prevent unlawful discrimination.

An intolerant point of view (which may offend) is likely to be protected by Art. 10 if it is expressed in a political speech, or open debate where the idea can be challenged.

However, speech may not be afforded protection under Art. 10 if used to incite hatred on grounds of religion, race or sexual orientation.

S. 43 Education (no.2) Act 1986 – places a legal duty on universities to take '**reasonably practical steps**' to ensure freedom of speech for their members – making sure, as far as possible, that no individual is stopped from speaking. This may include extra security, ticketing an event, copies of the speech being submitted in advance, and an opposing speaker.

### **Limitations**

This does not cover speech that would be a criminal offence or break civil law. Some criminal offences that may restrict free speech include:

- A speech causing fear or violence (s.4 Public Order Act)
- Acts intended to or likely to stir up hatred on grounds of race, religion or sexual orientation (s.18 and 29B Public Order Act)
- Speech amounting to terrorism (Terrorism Act 2006)

Causing a person harassment, alarm or distress (s.4 / s.5 Public Order Act)

### **'Hate speech'**

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<sup>1</sup> EHRC, 2019. Freedom of Expression: a guide for higher education providers and students' unions in England and Wales. Available from <https://www.equalityhumanrights.com/en/publication-download/freedom-expression-guide-higher-education-providers-and-students-unions-england> [last accessed 11<sup>th</sup> April 2019]

The term 'hate speech' doesn't have any legal meaning. Whether hate speech falls outside of Art. 10 depends on the context of what is said and when.

Criminal law protects individuals from threats, abuse and targeted harassment, whether online or in person.

Creating a ban on certain groups or named individuals could breach s.43 code of practice and undermine free expression.

### **Case examples**

#### **Transphobia and Hate Speech**

SU considers inviting a speaker to debate gender equality. During planning, they find out that the speaker has discussed their belief that trans women are still men. The organising officials deem this transphobic hate speech and decide not to invite the speaker.

As the speaker *has not yet been invited* there is no legal duty to invite them, and there is no infringement on their freedom of speech.

However, if a society or other students had invited the speaker to talk, the SU could not prevent them from doing so, as the speaker's views are lawful. This would engage the HEP's s.43 duty to protect free speech.

#### **Religion and Free Speech**

An event is organised by an atheist society to debate whether God exists. People complain the event should not go ahead because the views and campaign materials are offensive to people of faith. The event happens, but it is interrupted with chanting and shouting by protestors.

Both the views of speaker and protestors are protected by the s.43 duty. However, as the HEP knew of the event, they should have taken 'reasonably practicable' steps to ensure it went ahead smoothly. This could have included providing additional security to ensure disruptive protestors were removed or including an opposition speaker on the panel.

#### **Prevent duty**

An invited speaker has displayed a history of associating with violent extremists and making statements that could risk drawing people into terrorism.

In this case, the HEP needs to consider the interaction between free speech and the Prevent duty, alongside their Safeguarding or Prevent Coordinator. Proposed measures could include seeing any promotional materials in advance, or making the event have a strong chairperson.

If the organisers do not agree to this, the HEP may decide that the event is too high risk and cancel.