

Code of Practice concerning Freedom of Speech, External Speakers and Events

1. Preamble

- 1.1 This Code of Practice has been issued by the University Council to set out the University's commitment to freedom of speech within the law and to Article 10 of the European Convention on Human Rights. The University of Kent is committed under its Charter to freedom of speech within the law and the protection of the rights of members of the University to put forward ideas and controversial or unpopular opinions. The University is committed to providing an environment where ideas and opinions are open to discussion and challenge and where the highest standards of academic rigour are applied.
- 1.2 The Education Act [No.2] 1986 provides that "*persons concerned in the government of any establishment [of higher education]... 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 establishment and for visiting speakers.*" The Act requires universities to maintain and update a code of practice covering the organisation of events where free speech is likely to be an issue, and requires them to ensure university premises are not denied to anyone on the grounds of their beliefs or views.
- 1.3 The University recognises that academic discourse properly includes the expression of ideas that may offend shock or disturb.
- 1.4 This Code of Practice is primarily about the facilitation of free speech while ensuring compliance with the law and ensuring due regard to health and safety and the maintenance of good order. In a few cases the University may limit free speech. The European Convention recognises that there may be limits to freedom of speech '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 the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary,' while case law has established that any such restrictions must 'be construed strictly, and the need... must be established convincingly.'
- 1.5 There is no legal obligation to hold events on University premises that are open to the outside public.

2. Legal Constraints on Freedom of Speech

The University is not required to provide a platform for a speech which goes beyond the law. A speaker, for example, who incites an audience to violence or to breach of the peace or to racial hatred, transgresses the bounds of lawful speech. Equally, assemblies of persons, even if directed to lawful purposes, cease to be lawful if they cause serious public disorder or breaches of the peace. Acts of Parliament that constrain free speech include the following.

Public Order Act 1986: A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if-

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

Racial and Religious Hatred Act 2006: introduces Part 3A into the Public Order Act 1986 which provides that a person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred.

Criminal Justice and Immigration Act 2008: amends Part 3A of the Public Order Act 1986 (hatred against persons on religious grounds) to include hatred against a group of persons defined by reference to sexual orientation.

Counter Terrorism and Security Act 2015: states that a specified body, including a university, 'must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism,' and gives powers to the Secretary of State to issue guidance about the exercise of such responsibilities. The Act also requires universities to 'have particular regard to the duty to ensure freedom of speech...[and] to the importance of academic freedom...'

The Terrorism Acts 2000 and 2006 define criminal activities relating to terrorism in terms of inciting acts of terrorism, including its glorification, the dissemination of terrorist publications or belonging to or supporting proscribed organisations. Terrorism is defined as including the use of or threat of serious violence against a person or serious damage to property for the purpose of advancing a political, religious or ideological objective. A list of proscribed organisations is published on the government website at <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>

3. Applicability

- 3.1 This Code of Practice is binding on all members, students and employees of the University, including any member or society of the Students' Union in relation to the use of University's buildings, estates or facilities to organise or sponsor an event, and to any events held elsewhere that are described or branded as University of Kent or Kent Union events. The Code also applies to bookings taken from sources external to the University for events taking place on University or Kent Union premises.
- 3.2 All events in the University are governed by such University rules, regulations and booking procedures as may be in force, including the Terms and Conditions for Student Society Bookings. The provisions of this Code of Practice shall, where applicable, prevail over such rules, regulations or procedures in the event of conflict.
- 3.3 The Senate, the Faculties and the Academic Schools are responsible for ensuring that teaching and research adhere to this Code of Practice. The University's Code of Ethical Practice for Research sets out an expectation 'that all research carried out at or on behalf of the University...is conducted to the highest level of ethical standards and in accordance with current legislation and policy requirements.'
- 3.4 Freedom of speech includes symbolic speech. Some acts of symbolic speech are illegal under UK law, see 2 above.

4. Provision to Restrict Freedom of Speech

- 4.1 The University reserves the right to decline a request to book an event or a speaker where there is a real risk of a contravention of the law. If there are concerns that event may be in this category the *Secretary to Council (or nominee)* must be informed.
- 4.2 Any decision to decline a request to book an event or speaker will be based on documented evidence.
- 4.3 Such a decision will be taken jointly by the Secretary to Council and the Executive Group and will be given in writing with a rationale.

5. Segregation of an Audience by Gender

The University will follow the guidance provided by the Equality and Human Rights Commission concerning the segregation of an audience by gender, <https://www.equalityhumanrights.com/en/publication-download/gender-segregation-events-and-meetings-guidance-universities-and-students>

The guidance states that 'Segregation by gender will constitute unlawful discrimination except for in a few specifically defined purposes falling within one of the exceptions under the [Equality] Act.' The Commission states: 'Although the law in this area has yet to be clarified, we recommend universities and students' unions protect themselves from liability for discrimination by prohibiting gender segregation at all meetings which go beyond acts of religious worship or practice, including meetings which follow on from acts of religious observance...'

6. Special Arrangements for Health, Safety and Order

- 6.1 Special arrangements may be required to facilitate freedom of speech for events where there are reasonable concerns regarding health and safety or orderly conduct. A high profile speaker, for instance, may be so popular that there will be a requirement to ensure the safety of large crowds. Some speakers may provoke a strong reaction from some members of the University community and it will be necessary to adopt measures to ensure that everyone involved behaves in an orderly and tolerant manner and that an atmosphere of free and open discussion is maintained.
- 6.2 The University of Kent is committed to the creation and support of a balanced, inclusive and diverse community and has an Equality Diversity and Inclusivity Policy, Dignity at Work (http://www.kent.ac.uk/hr-staffinformation/policies/a_to_z.html) and Respect at Kent (<http://www.kent.ac.uk/regulations/general.html>). The Equality Act 2010 requires universities to have regard to the need to eliminate unlawful discrimination and harassment, advance equality of opportunity and foster good relations between different groups. Where there are concerns that a speaker may have views that are not consistent with these policies but falls short of breaking the law, an event will normally be permitted to proceed. In such cases there are likely to be concerns about order and the event may consequently be subject to the imposition of Special Arrangements to facilitate freedom of speech.
- 6.3 A Controlling Officer will be appointed for events that are deemed to require Special Arrangements. Guidance for events approved under Health Safety and Order Provisions are set out in Annex B.

7. Provisions to Manage Events and Speakers

- 7.1 Organisers of events are required to designate an individual as the Responsible Organiser.
- 7.2 The University reserves the right:
- 7.2.1 to control the frequency and timing of events organised by an individual person or group if, in its opinion, their frequency or timing would put an unreasonable burden on the resources of the University;
- 7.2.2 to decide which room(s) shall be used for a particular event and to take any other decision which may be necessary to protect the safety of people, property or premises;
- 7.2.3 to postpone or cancel a booking for an event or speaker if further information is received that there is a real risk of a contravention of the law or that the conditions for an event will not be met, for instance, the audience is to be segregated by gender or there is a failure to comply with conditions set out by a Controlling Officer;
- 7.2.4 to cancel a booking for an event or a speaker if the organisers, the speaker(s) or external groups or individuals have misled the University about the nature of the event by falsifying or concealing information;
- 7.2.5 to require that the proposed text of any speech to be delivered by an external speaker is provided in good time to determine whether it is likely that Special Arrangements are required to facilitate free speech or there is a real risk of an infringement of the law.

8. Appeals

8.1. Appeals against a decision to decline a booking, whether arising from the academic work of the University, a student or Kent Union student group, or other member or department of the University, may be made in writing by a member of the University through the Secretary of the Council within seven days of the decision. Appeals must be in writing. The Secretary will ask either the Chair or the Deputy Chair of Council to nominate two lay members of Council to review the decision on the papers provided by the appellant and the Secretary to Council (or nominee). If they do not agree the matter will be decided by the Chair of Council. The decision shall be final.

8.2. Organisers should be aware that it will not generally be possible to resolve an appeal quickly and it is likely that a proposed event will need to be postponed.

9. Disciplinary Procedures

Any contravention of or departure from the provisions of this Code may render the registered student or employee responsible liable to disciplinary procedures. In the case of Kent Union student groups, any contravention or departure from the Provisions of this Code will be investigated under Kent Union Student Disciplinary Procedure in the first instance. The University may also investigate such instances under its own disciplinary procedures. Possible sanctions include dismissal, in the case of staff, or fines or terminations of registration, in the case of students, depending on the facts of the case.

10. Annual Report

An annual report should be made to Council on all decisions made under this Code of Practice, to comment on the implementation of its provisions and to recommend any amendments or additions thereto for consideration by Council.

References

Equality and Human Rights Commission, Gender Segregation at Events and Meetings
<https://www.equalityhumanrights.com/en/publication-download/gender-segregation-events-and-meetings-guidance-universities-and-students>

European Convention on Human Rights,
http://www.echr.coe.int/Documents/Convention_ENG.pdf

External speakers in higher education institutions – Universities UK
<http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/external-speakers-in-higher-education-institutions.aspx>

Handyside v United Kingdom [http://hudoc.echr.coe.int/eng?i=001-57499#{"itemid":\["001-57499"\]}](http://hudoc.echr.coe.int/eng?i=001-57499#{)

Universities UK, Freedom of speech on campus: rights and responsibilities in UK universities,
<http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/freedom-of-speech-on-campus.aspx>

Further Reading

Joint Select Committee on Human Rights, Free speech: guidance for universities and students organising events
<https://publications.parliament.uk/pa/it201719/jtselect/jtrights/589/58910.htm> (27 March 2018)

Equality and Human Rights Commission, Freedom of expression: a guide for higher education providers and students' unions in England and Wales,
<https://www.equalityhumanrights.com/en/publication-download/freedom-expression-guide-higher-education-providers-and-students-unions-england> (2 February 2019)

Higher Education Policy Institute, Free Speech and Censorship on Campus,
<https://www.hepi.ac.uk/2019/06/27/why-it-is-so-important-to-protect-free-speech-in-universities/> (27 June 2019)

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