



Our Commitment to Freedom of Expression

Freedom of expression is a vital component of an open and democratic society, and the individual freedoms of those who are part of it. It is also fundamental to the University's purpose: that our graduates, and the knowledge we discover with our partners, will make the world a better place.

The University is committed to upholding freedom of expression and academic freedom, and facilitating an environment where all are able to inquire, study, and debate.

It is inevitable – and often desirable – that in such an environment, different ideas within our community will contradict or conflict with others. However, a challenging environment need not be a hostile one. The most effective way to foster a free and frank exchange of views – thus ensuring that ideas and knowledge are not suppressed – is on the basis of mutual respect. This applies even where some may find those ideas offensive or immoral, and a commitment to freedom of expression includes facilitating debate that others wish to restrict or obstruct.

The rights that freedom of expression brings are not just embedded in our culture - they are underpinned by the law. In limited circumstances, they can also be restricted by it. Freedom of expression does not extend to freedom to break the law, harass or defame individuals, or breach others' rights to privacy. From time to time, and in exceptional circumstances, the University may need to apply these restrictions – but it will always do so in a manner consistent with, and mindful of, its commitment to freedom of expression.

The attached Statement of General Principles sets out in more detail how the University will promote and protect freedom of expression. It is only through a community that engages freely in study, debate and open inquiry, supported by a culture of mutual respect, that the University can achieve its vision of being a place of transformation and self-improvement, driven to achieve benefit for individuals, communities, societies and our world.



Freedom of Expression in the University

Following the Report of the Joint Committee on Human Rights on the state of free speech in UK universities, the Equalities and Human Rights Commission Scotland, after due consultation with relevant organisations from the higher education sector (including the National Union of Students Scotland and Universities Scotland), produced in 2019 a new 'Freedom of Expression' Guide for the sector as a whole. (see: <https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-scotland.pdf>)

We draw upon this broader document to provide a concise statement of the principles that inform and guide the University of Edinburgh's approach to the promotion and protection of the freedom of expression.

Part 1: General Principles

1. An open and democratic society requires of its laws, institutions and individual members an unwavering commitment to freedom of expression in all its forms. These include both the spoken and written word, as well as actions and gestures and the display of images intended to show meaning.
2. The right to exchange information, debate ideas and express opinions, including political views, is also a core aspect of our individual freedom and our collective good. Respectful debate and conversation can help us to achieve a consensus or accommodation of views, to understand and appreciate the beliefs of others, to challenge prejudice and discrimination, to get rid of intolerance and harmful attitudes, and to build strong, positive communities. Freedom of expression also fosters the vital knowledge base for artistic, scientific and commercial development.
3. **The institution of the University supplies a vital link in the chain connecting freedom of expression to our social and democratic well-being. The University is a crucial incubator of the freedom of expression as well as a forum in which the benefits of that freedom are vividly displayed.** It therefore has a unique and indispensable role to play both in cultivating and defending freedom of expression within a framework of mutual respect, and in generating the knowledge and new thinking for which a strong, legally-backed culture of freedom of expression is a prerequisite.
4. Freedom of expression is a key part of the University experience for all members of - and visitors to - the community. On the one hand, accessing and sharing ideas freely is crucial for learning. It allows students to think critically. It encourages them to engage with, challenge, and be challenged by different perspectives, and, through absorbing the value of that experience, to contribute to the perpetuation of a wider culture of freedom of expression in society. On the other hand, the intellectual independence or 'academic freedom' of university employees in respect of their work, including the freedom to undertake research, articulate their views, organise conferences



and decide on course content, both relies upon and reinforces the underlying law and culture of freedom of expression. **Without the guarantee of freedom of expression, and the broader freedom of inquiry this protects, the university's vital contribution to new forms of knowledge and understanding – academic freedom - would be compromised.**

5. For the commitment to freedom of expression to be effective in its core aim of embracing a wide diversity of perspective, creating a challenging environment of debate and opinion formation, and ensuring that the exploration and dissemination of new forms of knowledge and understanding is not inhibited, it must be wide-ranging enough to include protection of views or opinions that may 'offend, shock or disturb'¹ others. It is in most circumstances for individual members of the University community rather than the University itself to judge whether the ideas put forth are offensive, unwise, immoral or wrong-headed, 'and to act on these judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose'.²

Part 2 – Facilitating Freedom of Expression at the University

1. **While law and University policy rightly operate in robust protection and promotion of the freedom of expression, they also recognise that the very concerns that support freedom of expression also call for certain limited restrictions.** In the words of the University's Dignity and Respect Policy, we must 'foster a positive culture for working and studying which supports freedom of thought and expression within the law, and within a framework of respect for the rights of other people.'³ The right to freedom of expression, therefore, does not mean that individuals can say or otherwise express whatever they wish, wherever and whenever they wish: exceptionally there will be circumstances where the University may need to consider imposing certain limited restrictions on freedom of expression.
2. These restrictions are all linked to the defence of the core collective or individual principles and values that we associate with an open and democratic society. National security, public safety, the prevention of crime or disorder and the protection of public health are the key collective grounds that allow for the restriction of freedom of expression.⁴ It is well settled in the law, however, that expression alone, without some associated activity, will only rarely breach these principles.
3. The more common cases of potential conflict in the everyday life of the University tend to concern situations where expression might abuse or otherwise harm or interfere with the rights or reputation of others.⁵ These include forms of speech that incite violence, hatred or discrimination against

¹ *Delfi As v Estonia* (2014) European Court of Human Rights

² Report of the Committee on Freedom of Expression' University of Chicago, July 2014.

³ University of Edinburgh Dignity and Respect Policy (2016)

⁴ Article 10, European Convention on Human Rights

⁵ Article 10, European Convention on Human Rights



other people and groups (some of which may also constitute criminal offences and would, on that ground alone, be unprotected). Furthermore, whereas basic human rights protection as set out in the Human Rights Act 1998 (which gives effect to the European Convention on Human Rights) only applies to the University itself, additional responsibilities apply both to the University and, independently, to the Students' Union. These include duties to have due regard to the need to eliminate discrimination or harassment towards, or victimisation of people with 'protected characteristics' under the Equality Act 2010; namely age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity. The Equality Act additionally imposes positive duties to advance equal opportunities and encourage good relations between those who do and those who do not possess a relevant protected characteristic.

4. The University and the Students' Union both have charitable status, and in this area of the law too, they must be mindful of the conditions this imposes on freedom of expression. In particular, they must act according to their charitable purpose of furthering students' education for the public benefit, and they must be politically neutral in their starting point, and refrain from actively promoting a particular point of view that is not tied to that general charitable purpose.
5. **Such is the strength of the general commitment to freedom of expression in the legal and cultural environment of the University, that all restrictions must be viewed as exceptional.** They are restricted to the specific grounds set out (in paragraphs 7 and 8 below), and they must be both necessary and proportionate. This 'restriction on the restrictions' has two significant consequences.
6. First, even within the narrow set of permissible grounds, the benefit of any restriction must be balanced carefully against the potential loss to the freedom of expression, and in order to be justified in the particular case any restriction must meet a high standard of appropriateness and necessity.
7. For example, in the area of public safety and national security, the University has a statutory duty under the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism.⁶ In implementing the Prevent strategy, however, they should also 'have particular regard to the need to ensure freedom of speech, and to the importance of academic freedom'.⁷ In particular, when considering whether to invite a speaker who has expressed extremist ideas, the provider should be mindful that exposure to these views will not necessarily draw people into terrorism, and steps that would mitigate the risk should be explored. To take another example, this from the area of competing rights, a protestor's right of freedom of expression and assembly might clash with another speaker's right of freedom of expression. However, while protestors may criticise and contest

⁶ Counter-Terrorism and Security Act 2015, s.26.

⁷ Counter-Terrorism and Security Act 2015 S31(2)



speakers who are invited to express their views on campus, or challenge the decision to invite such speakers in the first place, their protest should not be such as to obstruct the freedom of others to express the views that they reject.

8. Secondly, in assessing the proportionality of any potential interference in freedom of expression in various circumstances, including those considered in the above examples, consideration should be given as to whether the relevant competing aim could be achieved in a less restrictive manner. Promoting debate and facilitating challenge at events can reduce risks to freedom of expression while ensuring that other rights are respected and legitimate concerns recognised. Specific measures conducive to this include inviting opposing voices to counter high-risk speakers; having a strong independent chairperson to co-ordinate an event and ensure a range of views can be heard; filming an event to deter unlawful speech; putting additional security in place and ticketing events to avoid non-student/staff violent protest; requesting to see promotional materials before the event; warning event attendees about the nature of the views that may be expressed; setting our principles of respectful discourse for speakers to follow; training staff on how to facilitate well-ordered debate; and postponing an event to enable one or more of these steps to be taken.
9. This Statement does not claim to provide answers to all the difficult questions concerning freedom of expression that arise in the University environment. **The University is a factory of ideas and opinions. It is unavoidable – indeed a healthy vindication of the University’s commitment to freedom of expression – that many of these ideas and opinion will be the subject of strong contestation within the community.** In the context of that contestation, sometimes the issue of the appropriate boundaries of freedom of expression requires to be addressed. More specific guidelines can help,⁸ but hard cases will remain. These should be judged on their individual merits, but, for the reasons set out in the body of this document, always underscored by a strong presumption in favour of the freedom of expression.

⁸ See in particular, Equalities and Human Rights Commission Scotland, (2019):<https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-scotland.pdf>