

Freedom of speech on campus

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Summary

Universities are mindful of the particular role they play in society, as places of debate, discussion and the exchange of views – including of controversial and sometimes extreme views. This is reflected in a general legal duty to secure freedom of speech within the law on university campuses.

Universities UK remains concerned at some aspects of the government's guidance relating to the 'Prevent duty' in the Counter-Terrorism and Security Act 2015, which go beyond existing legal requirements and potentially restrict freedom of speech.

In recent months there has been increased media attention on the actions of students to protest against particular speakers or entertainers appearing on campus. Universities UK opposes no-platform policies, and universities are required to take action to prevent an invited speaker from being denied access to university premises.

However, student unions are communities of adults that are independent of university authorities and have a democratic mandate from their members. They must themselves consider how freedom of speech is best promoted on campus, within the constraints of the law.

Duty to secure freedom of speech

1. Universities are required to promote freedom of speech on campus, and in particular have a legal duty to take reasonable steps to ensure that academics, students and visiting speakers are not denied use of the university's premises on the basis of their beliefs or views.
2. Section 43 of the Education (No 2) Act 1986 states:
 - 1) *Every individual and body of persons concerned in the government of any establishment to which this section applies [which includes 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 establishment and for visiting speakers.*
 - 2) *The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with—*
 - (a) *the beliefs or views of that individual or of any member of that body; or*
 - (b) *the policy or objectives of that body.'*
3. Universities UK understands this duty to reflect the particular role that universities play in society, as places for debate, discussion and consideration of ideas – and this includes allowing discussion of ideas that are controversial, offensive and strongly opposed by many in society. We understand it as indicative of a belief of parliament that a particularly high standard of freedom of speech should be observed within universities.
4. This duty, clearly, does not extend to a requirement to issue invitations to particular speakers. Rather, it is concerned with ensuring that invited speakers are able to attend and address the intended audience.
5. The duty applies only to free speech within the law. It does not in any way require universities to allow or facilitate speakers to break the law through inciting violence, inciting racial hatred, or glorifying acts of terrorism.
6. Universities are required to have a code of practice associated with their discharge of the above duty, and are bound by law to take steps to ensure that the procedures set out in the code of practice are adhered to. The precise practices in relation to controversial speakers,

and protests against them, will therefore be subject to some variation across institutions, within the framework granted by legislation and statutory guidance. This is appropriate and necessary given the diversity of the university sector and the status of universities as autonomously governed bodies, independent of government.

Security and safety

7. In addition to the legal boundaries to free speech which may limit both those things that can be said on university campuses, and in some cases the speakers which universities are permitted to host, universities must also consider the safety of those involved in events.
8. Controversial speakers may attract protest from students, academics and the wider public. The right for such protests to take place is, in itself, an essential part of freedom of speech on campus. However, universities are also required to consider the safety of those who are participating in the event (and indeed who are protesting it). Where there is significant risk of violence and/or disorder, events will sometimes have to be cancelled.
9. When events are cancelled, universities will often try and secure other opportunities for the speakers' views to be expressed at a subsequent event in a safer environment, to ensure that free speech is not compromised.

Violent extremism, terrorism and universities

10. There has been considerable attention paid in recent months to the fact that some of those who have been involved in terrorist activities are university graduates. Research quoted by the Home Office's Prevent strategy states that a third of those convicted of Islamism-related terrorist offences in the past 10 years had attended a higher education institution.

This is in line with the proportion of the general population who has attended a higher education institution

11. Nonetheless, there may be reasons for thinking that university students are more vulnerable than the general population – principally that the student body is predominantly young, and the majority of those convicted of terrorism-related offences are men under the age of 30. Furthermore, attending university (particularly when the student leaves the family home for the first time) involves significant upheaval from existing social and support networks which may make a person more vulnerable to being drawn into terrorism.
12. For this reason, universities are mindful of their responsibilities to society to play a role in combating terrorism, and in particular to prevent students from being drawn into terrorism. Universities have been engaging with the Prevent strategy on a voluntary basis for a

number of years, and have a new legal responsibility to engage with the Prevent strategy as a consequence of the Counter-Terrorism and Security Act 2015.

13. The actions undertaken by institutions will vary, but will normally include: participation in multi-agency work; training student-facing staff to improve awareness of the signs of violent extremism; developing policies relating to external speaker requests; supporting inter-faith activities; and so on.
14. At a sector-wide level, Universities UK has published a number of pieces of voluntary guidance and advice to its members, many of which are gathered together on the 'Safer Campus Communities' website at www.safecampuscommunities.ac.uk.

Counter-Terrorism and Security Act 2015

15. The Counter-Terrorism and Security Act 2015 created a legal duty on universities to take steps to prevent people from being drawn into terrorism. The particulars of the duty were set out in guidance published by the Home Secretary, and passed by Parliament this autumn, copies of which are available at <https://www.gov.uk/government/publications/prevent-duty-guidance>. Universities are covered by the general guidance documents, as well as those specifically concerned with higher education institutions.
16. Much of the guidance (particularly that in the general document) is not controversial, and would be considered part of university's general duty of care towards students and staff.
17. However, the guidance also covers events taking place on campus and those who may speak at them. It covers speakers and the expression of views considerably wider than those covered by legislation which create boundaries to free speech in general, such as the Terrorism Act 2006. It therefore creates a duty on universities in relation to speakers and speeches which are not in themselves illegal, and would be permissible in many other contexts.
18. The term most frequently used by the guidance in delineating the speakers covered by the guidance is that of 'extremism', which the Prevent strategy defines as 'vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.' These are values and concepts which are rightly the subject of debate and consideration in universities.
19. Universities are required to consider as part of the risk assessment process of speaker events both violent and non-violent extremism, and to take action when the views expressed 'constitute extremist views that risk drawing people into terrorism or are shared

by terrorist groups'. This action may include cancelling the event, but could also involve ensuring that there is suitable challenge to these views provided by qualified speakers.

20. Universities UK continues to consider that the statement in the guidance that events should be cancelled unless the university authorities are 'entirely convinced that such risk [*that the views could draw people into terrorism*] can be fully mitigated' is an impossibly high bar if strictly interpreted. There will always be some level of doubt, and indeed risk, given that we are considering human responses to controversial issues.

Academic boycotts

21. Universities UK is committed to the free exchange of ideas between universities and between academics, regardless of nationality or location, and is opposed to academic boycotts, including that of academics based in Israeli universities. This does not preclude individual academics' fundamental right to question national and international policies, and to decide with whom they wish to collaborate.

Student protest and the role of student unions

22. Student unions are, for most purposes, bodies which are legally separate from, and independent of, a university. While universities work closely with student unions and will often have considerable influence on them, they do not (and should not) control their decisions or actions. The actions of universities and of their student unions are frequently conflated in media coverage, which is unhelpful in understanding what are often complex situations where the views of the student union and of the university differ.
23. Student unions are not directly subject to the legal duty relating to free speech explained above, in the sense of student unions themselves having a legal duty to secure freedom of speech. However, the duty on universities will often require a university to take actions which will affect the student union, or encourage a particular course of action on its part. In addition, the duty on universities to prevent the denial of use of premises extends to their own premises and student union premises where these are not owned by the university.
24. Much of the debate around freedom of speech on campus takes place with little attention being paid to the fact that students are adults, and in particular that student unions are communities of adults led by an executive that is democratically elected by its members.
25. Student unions have the right to make decisions that affect their members, and this will include policies relating to meetings of student clubs and societies (which are often legally subsidiaries of the student union).

26. Universities UK is opposed to 'no platform' policies where these seek to bar lawful free speech. At the same time, it should remain open to a student union (as it is any other corporate body of people) to decline to invite a person to address that body of people or a subsidiary part of it; and to rescind invitations that have been given. We do not think that it is the intention of the 1986 Act that a right to free speech on campus should extend to a right to being granted an invitation to speak on campus.
27. There have been a number of occasions in recent months where particular speakers have attracted protest among the student body, aimed at persuading the university or a student society to revoke an invitation to speak on campus or at a university-organised event. If students and members of the public disagree with an invited speaker, they are of course well within their rights to express that through petitions and peaceful protest.
28. Where the actions of protestors move beyond this to (for instance) systematic attempts to prevent a speaker being able to access a venue, or to shout down or entirely disrupt an event, or to intimidate speakers and event attendees, universities are able to use disciplinary measures against those involved if they are students or staff in order to secure freedom of speech – the current law means they are legally obliged to do so, if their code of practice (see paragraph 6) requires it.
29. It is an inherently complex task deciding when the freedom of speech involved in a protest against a speaker has escalated to the extent that it itself contravenes the freedom of speech of the speaker (and the freedoms of potential attendees to hear from and meaningfully debate with the speaker). Ensuring the greatest possible freedom of speech on campus or in any other context is not simply a matter of allowing a free-for-all, and there are substantive decisions required on the part of universities in order to secure conditions of freedom of speech.

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