

Birmingham City University

Free Speech Policy Checklist

This checklist should be used when developing and updating policies, procedures, guidance and statements (together “policies”) within the University and when drafting marketing or communications (together “comms”) to ensure free speech is secured and upheld. The University has a duty to take reasonably practicable steps to secure freedom of speech and to promote the importance of freedom of speech within the law for staff, students, members, and visiting speakers, including academic freedom for academic staff.

The [University’s Code of Practice on Freedom of Speech](#) (the “Code”) is the key reference point for the University’s values, principles and approach in complying to complying with these duties. Staff should review the Code whenever drafting or reviewing policies or comms that may affect freedom of speech.

1. The first step is to consider whether the policy is needed.

Is the policy necessary to:

- a. discharge a legal or regulatory obligation;
- b. to ensure the effective delivery of teaching, research or University administration;
- c. necessary to secure physical safety.

If none of the above apply, please discuss with your relevant Director/UET lead whether the policy needs to be revoked or substantively amended.

2. If the policy is necessary, the following checklist should then be considered:

All policies should adopt a strong presumption in favour of free speech, including controversial and offensive speech, unless it is unlawful. This means that the starting point is that speech is lawful unless otherwise proven.

Where it is necessary to restrict speech in some way, for example to limit the time, manner or place of speech, the restriction should go no further than is necessary to achieving the goal of the restriction. The following will help demonstrate that an appropriate and proportionate balance is struck:

- What is the restriction trying to achieve and why is that objective so important that it warrants the restriction of a protected right to freedom of speech or academic freedom?
- How effectively does the restriction proposed help achieve the objective?
- Is there any lesser restriction that could help achieve the same result?

Policies that may affect free speech or academic freedom (see Appendix) must contain the following safeguarding statement:

This Policy will be interpreted and applied in a manner compatible with the [University’s Code of Practice on Freedom of Speech](#) (the “Code”). The University has a duty to take reasonably practicable steps to secure freedom of speech within the law for students, staff and visiting speakers. In particular, no member of academic staff will be subject to disciplinary action as a consequence of exercising their academic freedom within the law. For the avoidance of doubt, if there is a conflict between this Policy and the Code, the Code will prevail.

The Code sets out the University’s values relating to freedom of speech, the procedures to be followed by staff, students and members of the University when arranging events on

University-controlled premises, the University's expectations regarding conduct at such meetings and the criteria the University uses when considering event approval.

For policies which relate to the student experience (for example, harassment and bullying, EDI, curriculum), consider including the following statement:

The University has a duty to protect students from unlawful discrimination, harassment on the grounds of race, sex, age, religion or philosophical belief, sexual orientation, disability, gender reassignment, marriage and civil partnership, or pregnancy or maternity. However, this should not be interpreted to undermine freedom of speech and academic freedom. As a result, the student learning experience may include exposure to research, course material, discussion or speaker's views that some students find offensive, contentious or unacceptable, but are nonetheless within the law. The University applies a rebuttable presumption that such exposure is unlikely to amount to unlawful harassment, unless otherwise demonstrated that it does in fact amount to harassment.

Policies and comms must be viewpoint-neutral. They **must not**:

- require individuals to endorse or promote specific values issues or ideologies;
- require staff or students to align with an ideology for conditions of employment, study, promotion etc; and
- include blanket bans on issues that could be a lawful viewpoint (for example that mankind is under a moral duty to prevent climate change).

Use language that does not limit free speech and would not prevent someone from expressing a view. Consider whether the requirement or expectation under the policy could be capable of preventing someone from expressing a lawful view. Pay particular attention to any requirements to "be supportive" or to require evidence of "support for" a particular approach, value or belief. What does this require in context? Could it result in limitations on lawful speech? How might this be avoided?

Avoid vague language. Be precise and use legal definitions where possible. Examples of some common (legal) definitions are found in the Appendix which should be used where relevant in policies. The following should also be considered:

- do not use terms that are common but can be widely construed and do not have a strict legal definition, such as "transphobia" or "hate speech", as these can set unrealistic expectations. For example, some individuals may consider gender critical views to be transphobic or hate speech, but they are nonetheless lawful;
- ensure that the meaning of "zero tolerance" in disciplinary, complaints and bullying and harassment policies is sufficiently clear. What does "zero tolerance" mean? To some, this means one instance is a disciplinary offence (i.e. "one strike and you're out"), when in practice a "zero tolerance" approach must nonetheless be proportionate and so is likely to mean that any demonstrated incidents of harassment or bullying will be regarded seriously and responded to proportionately, which could include disciplinary action up to and including dismissal;
- avoid vague commitments to protect individuals from "harm" or "distress" as these can be very subjective experiences. Action will only be possible where these are objectively reasonable responses to speech or conduct where it is part of free speech. Instead consider offering individuals who experience harm or distress access to support;
- avoid requirements not to cause "offense" as the word offense is wide, not legally defined, and is likely to stop free speech;

- take care when establishing “inclusive environments” in a policy or procedure that this does not mean suppression of lawful speech that others find offensive. Any inclusivity should be about acceptance and inclusion of diversity including in views, not mandatory agreement/consensus.

□ If a policy or comm lists resources for support for students or staff, only those sources provided through the University should be listed. External resources should be avoided as it is not possible for the University to vet every page of an organisation’s website, for example. List resources applicable to everyone first, with resources targeted to certain groups after this.

□ Ensure (where relevant) that the policy recognises and protects academic freedom, including the right of academic staff to question and test received wisdom and to put forward controversial ideas without adverse consequences.

□ Do not include any sanctions for expressing free speech. For example, cancelling events or disciplinary/taking action based on reputational damage of lawful speech or for someone holding or expressing lawful views. In some circumstances, commencing disciplinary or similar investigations for expressing otherwise lawful views may be a breach of the University’s duty to secure freedom of speech.

Appendix

1. Policies that affect free speech are those that relate to:

- admissions, appointments, reappointments and promotions;
- disciplinary matters;
- employment contracts (that may include conditions on speech);
- equality, diversity and inclusion, including the Public Sector Equality Duty;
- fitness to practise;
- harassment and bullying;
- IT, including acceptable use and social media use;
- Prevent duty;
- principles of curricular design;
- research ethics;
- speaker events;
- staff and student codes of conduct.

2. Definitions

'Freedom of Speech' is the freedom to impart ideas, opinions or information by means of speech, writing or images (including in electronic form).

'Academic Freedom' means freedom within the law for academic staff to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions without being at risk of being adversely affected. An individual would be deemed to have been adversely affected if they had either lost their job or privileges at the University, or experienced a reduction in the likelihood that they would secure a promotion or different job at the University.

'Discrimination' means treating someone less favourably or unfavourable because of a protected characteristic (i.e. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation).

'Harassment' is unwanted conduct related to a protected characteristic that (i) violates someone's dignity; or (ii) creates an intimidating, hostile, degrading, humiliating or offensive environment for that person, where in the circumstances it is reasonable for the conduct to have that effect. In determining whether behaviour amounts to harassment, the University will take into account the need for the University to have particular regard to, and place significant weight on, the importance of freedom of speech within the law, academic freedom and tolerance for controversial views in an educational context or environment, including in premises and situations where educational services, events and debates take place, and will apply a rebuttable presumption that students being exposed to any of the following is unlikely to amount to harassment:

- the content of higher education course materials, including but not limited to books, videos, sound recordings, and pictures;
- statements made and views expressed by a person as part of teaching, research or discussions about any subject matter which is connected with the content of a higher education course.

'Bullying' is unwanted behaviour from a person or group that is either (i) offensive, intimidating, malicious or insulting; or (ii) abuse or misuse of power that undermines, humiliates or causes physical or emotional harm to someone. In determining whether behaviour amounts to bullying, the University will take into account its duties to secure freedom of speech and academic freedom.