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| <b>Policy number:</b>                     | HE236  | <b>Originator:</b>   | Teaching and Quality Manager |
| <b>SharePoint:</b>                        | Policies and Procedures: HE Code of Practice   |                      |                              |
| <b>EIA Meeting Date:</b>                  | 24/06/19   | <b>EIA Required:</b> | YES                          |
| <b>Approved by:</b>                       | CLT / SLT / E&D  | <b>Date:</b>         | 24/06/19                     |
| <b>Review Frequency:</b>                  | Bi-Annually  |                      |                              |
| <b>Review Date:</b>                       | June 2023  |                      |                              |
| <b>External Web Site appropriate:</b>     | YES  |                      |                              |
| <b>Linked policies/College documents:</b> | Prevent, Safeguarding, Student Code of Conduct, Staff Disciplinary Procedure, Academic Freedom Policy. |                      |                              |
| <b>Summary available:</b>                 | NO   |                      |                              |

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## Code of Practice

# Freedom of Expression

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**This document can be made available in other formats,  
on request**

## **Purpose**

The European Convention on Human Rights (ECHR) sets out the rights that all public bodies must follow as described in the Human Rights Act of 1998. Article 10 of the ECHR protects the right to hold opinions and to express them freely without interference from public bodies. In the context of this policy Newbury College is considered to be a public body.

Newbury College supports the democratic right to be able to express views and opinions without fear or risk of reprisal. It is important that individuals can discuss and debate in a respectful manner in order to challenge discrimination, intolerance or other negative or harmful views.

Freedom of expression encourages critical thinking, challenge, discussion, debate, and learning the perspective of others. In this respect it supports learning and progress and encourages contribution to the College and the wider community.

This code of practice explains how the College supports freedom of expression which may include written word or visual expression as well as spoken word. The code of practice also clarifies how the policy is implemented and monitored to avoid censorship or other restrictive practice as Newbury College is bound by law to protect legal expression within the organisation.

## **The Core Principles:**

1. Within British Law everyone has the right to free speech.
2. Newbury College encourages the purposeful widening of debate.
3. Approval of any speakers or events held at the College should be made on the basis of protecting and promoting freedom of expression and expression.
4. Whilst upholding peaceful protest as a protected entitlement, the College will not support any protest that intends to prevent debate, freedom of expression or the entitlement of others.
5. Newbury College supports and encourages balanced and respectful debate.

## **The laws that underpin this Policy:**

- Education Act (No.2) 1986
- The Public Order Act 1986
- The Human Rights Act 1998
- The Protection from Harassment Act 1997
- The Crime and Disorder Act 1998
- The Racial and religious Hatred Act 2006
- The Terrorism Acts 2000 and 2006 (Includes Prevent)
- Equality Act 2010
- Counter-Terrorism and security Act 2015.

## **Permitted restriction to the rights to freedom of Expression (Article 10 of the ECHR).**

Should there be a need for Newbury College to restrict freedom of expression it will be applied in a lawful manner and only where the expression is:

- intended to abuse the rights of others,

- lead to or promote criminal activity, terrorism or break civil law including charity law.

Examples of these limiting factors may include:

- Expression intended to cause fear or provoke violence.
- Incitement of hatred on grounds such as race, religion or sexual orientation.
- Expression which incites a terrorism offence or may lead to a national security risk .
- Causing alarm, harassment or distress to an individual.

This code applies to visiting speakers or exhibitors as well as to members of the College community. The decision to restrict freedom of expression will only be made by the Principal, Vice Principal or Safeguarding lead.

Student complaints or protests should not lead to limits on curriculum content, speakers or events where a balance of views popular and unpopular are presented. Academic freedom is expected to be retained to challenge views and opinions and explore new concepts. The equality impact assessment of policies and procedures ensures that freedom of expression is not limited by their content.

### **Communication**

Students will be informed of the freedom of expression code of practice during their induction. The policy will be provided to students on the College website and will also be available through the student information page of the virtual learning environment. At review points, the code of practice will be referred to the Student Council to obtain their feedback.

### **Code of Practice Review**

This code of practice will be reviewed every two years or more frequently if there is a relevant law change that affects freedom of expression.

### ***Students, staff and visitors:***

When expressing views should ensure:

- They are informing and encouraging open debate.
- A balanced view or range of views are shared e.g. in political debate a range of political views or parties are represented.
- The rights or respect of others are not infringed in any way.
- The views expressed fall within the law.
- There is no incitement to criminal activity, terrorism or violence.

### ***Organisers of visiting speakers or academic discussions:***

- Have a clear brief of the subject and expected audience at least two weeks ahead of the talk or discussion.
- Carry out a risk assessment related to any planned talk, debate or discussion where unlawful or unprotected views might be expressed and that might seek to engage others in that unlawful activity.
- The risk assessment should be used to ensure the rights and entitlements of students and others in the College community and their safety is maintained.
- If there is sufficient concern identified by the risk assessment that a decision is required on whether the talk, discussion or debate should proceed the matter should be referred to the Safeguarding lead, the Vice Principal or the Principal.

### ***The Safeguarding Lead, Vice-Principal or Principal***

Make any decision to restrict the freedom of expression:

- Where the safety of others in the College or wider community will be compromised.
- Where the law, civil law or charity law may be broken.
- Where hatred, intolerance or terrorism may be promoted.
- Where a balance of views through respectful discussion or debate is not facilitated.

**Sanctions for misuse of freedom of expression.**

Sanctions will be applied if the entitlement of Freedom of Expression:

- abuses the rights of others,
- leads to or promotes criminal activity, terrorism or breaks civil law including charity law.

Any parties promoting criminal activity, terrorism or breaking any law including the entitlements of those with protected characteristics under the Equality act can expect to be reported to the police.

A full investigation will be undertaken where staff or students are considered to have infringed the entitlement of freedom of expression.

**Students:** the student code of conduct will be applied which can lead to disciplinary action which includes the possibility of exclusion from the College.

**Staff:** The staff disciplinary procedure will be applied which may require suspension from duties pending investigation and has the possibility of leading to the termination of the contract of employment at the College. .

**Visiting speaker:** may be asked to conclude their speech and be required to leave College premises immediately pending investigation. They will be informed if their action of infringement is being reported to the police.

**Guidance on how to make decisions to protect freedom of expression.**

The Equality and Human Rights Commission's "Freedom of expression: a guide for higher education providers and student unions in England and Wales" provides guidance on the stages to follow to make "decisions on how to protect freedom of speech".<sup>1</sup> The next page shows a copy of the table with questions to manage and make decisions on the risks involved in protecting freedom of expression.

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<sup>1</sup> Equality and Human Rights Commission (2019). *Freedom of expression: a guide for higher education providers and student unions in England and Wales*. London.

1. Does the event meet my duties under charity law?

Does it further my charitable purposes? (Usually, these will include furthering education and promoting academic enquiry).

2. Is the speech likely to be unlawful (e.g. a criminal offence or harassment?)

Has the individual/group spoken unlawfully in the past, or indicated a likelihood of doing so? Does the topic or purpose of the event imply it will be unlawful, carefully considering the requirements of Article 10?

**If yes** - you determine it is likely the speech will be unlawful and the risk cannot be reduced - there is no obligation to let the event proceed.

If you **do not have enough evidence that unlawful speech will take place**, but still consider it a risk, you will want to consider steps to reduce the risk. The event should proceed.

3. Have I considered my other legal duties, including the PSED and Prevent duty?

For example, is the speech likely to risk drawing people into terrorism? Is it likely to affect good relations between groups?

**If yes**, you will need to consider how you can reduce these risks or impacts while allowing the event to go ahead, and record your decision.

**If no**, you should record how you reached the decision and why you considered there would be no risks or negative impacts.

4. Are there any other potential barriers to speech going ahead, such as security concerns about planned protests?

If so, can I take **reasonably practicable steps** to remove these barriers?

**If yes**, you can put in place reasonably practicable steps to reduce risks and address barriers – then you must take those steps and the event should go ahead..

**If no**, the steps are not reasonably practicable –then the obligation to secure free speech and let the event proceed falls away.