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MONT ROSE®
COLLEGE

Freedom of Speech Code of Practice 2025 – 2027

Approved by: Senior Staff Committee

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1 Scope and purpose of the code of practice.

This policy aims to comply with the Higher Education (Freedom of Speech) Act 2023 as well as the newly published Office for Students (OfS) guidance in relation to the Freedom of Speech for students and staff members of Mont Rose College (MRC).

This policy sets out to define what is Freedom of Speech in academia, the duties on higher education providers, staff members, students, student unions and any visiting person, as well as a free speech complaints scheme.

2 Fundamental principles.

While this policy protects free speech within the law, **it does not protect unlawful speech**. The aim is to take reasonably practicable steps to secure free speech within the law for students, staff and any other visiting persons. Another aim is to promote the importance of Freedom of Speech within the law and academic freedom in the provision of higher education.

For MRC, these reasonably practicable steps to secure Freedom of Speech within the law includes but is not limited to a ban on the use of non-disclosure agreements to silence victims of bullying, harassment or sexual misconduct on campus and a duty to promote the importance of Freedom of Speech in higher education.

3 Freedom of Speech

The Higher Education (Freedom of Speech) Act 2023 defines Freedom of Speech as: 'the freedom to impart ideas, opinions or information as referred to in Article 10(1) of the European Convention on Human Rights ("the Convention") as it has effect for the purposes of the Human Rights Act 1998 by means of speech, writing or images (including in electronic form). This right includes freedom of artistic expression, such as a painting or the production of a play.

While Freedom of Speech means everyone has the right to express lawful views and opinions freely, in speech or writing, without interference people have a duty to behave responsibly and to respect other people's rights.

Freedom of Speech is a fundamental right under Article 10 of the Human Rights Act, but is not absolute and is subject to several limitations. These restrictions are in place to balance individual expression with the need to protect society, public safety, and other fundamental rights.

Examples of restrictions on Freedom of Speech:

Hate Speech and Incitement:

Laws prohibit speech that incites violence, hatred, or discrimination based on race, religion, sexual orientation, or other protected characteristics.

Defamation:

Individuals can be held liable for making false statements that harm another person's reputation.

Harassment and Threats:

Speech that harasses, alarms, or causes distress to others is restricted.

Obscenity and Indecency:

The law restricts the dissemination of indecent or grossly offensive material.

National Security and Public Order:

Speech that threatens national security, public order, or public safety can be restricted.

Protection of Confidential Information:

Restrictions exist to prevent the disclosure of information received in confidence.

Maintaining Judicial Authority:

Speech that undermines the authority and impartiality of the judiciary can be restricted.

Terrorism:

The Terrorism Act 2006 restricts the publication and dissemination of material that could be seen as encouraging acts of terrorism or supporting banned organisations under the same Act and/or by the government. Under the Terrorism Act 2000, the Home Secretary may proscribe an organisation if they believe it is concerned in terrorism, and it is proportionate to do.

Examples of situations where restrictions may be applied:

- Protesting in a way that disrupts public order or prevents others from expressing their views.
- Using social media to post messages that incite hatred or violence.
- Making defamatory statements about individuals online or offline.
- Disclosing confidential information obtained through employment or other relationships.

4 . Academic Freedom

The Higher Education (Freedom of Speech) Act 2023 is clear that the duty to secure Freedom of Speech includes a duty to secure Academic Freedom (as relating to academic staff). The Act defines academic freedom, in relation to academic staff, as their freedom within the law to question and test received wisdom and to put forward new ideas or controversial or unpopular opinions without placing themselves at risk of losing their jobs or forfeiting/reducing the likelihood of securing promotion or different jobs.

Academic Freedom is the right of educators and students to pursue knowledge and express ideas without censorship or interference, within the context of higher education. It encompasses freedom of opinion, freedom in teaching, research, and discussion, freedom of association and assembly, and is considered crucial for the advancement of knowledge and a healthy democracy.

At the same time, Academic Freedom is not absolute, it has to remain within the confinements of the law and the ideas will need to be relevant to the teaching, reflection, analysis/discussion of the subject matter, units, course studied, and

ongoing research. If the ideas expressed were not relevant to the course as explained above, they could still be protected under the Freedom of Speech code of conduct.

Then we recognise that there may be occasions when different opinions expressed lawfully by some members of our community (or visitors) conflict with those of others. As such we acknowledge that counter-speech and protest are also characteristics of Academic Freedom and Freedom of Speech. However, the right to protest against the expression of ideas and opinions should never prevent others from exercising their Freedom of Speech within the law.

Academic Freedom is a fundamental right under The Higher Education (Freedom of Speech) Act 2023 but, is not absolute and is subject to several limitations. These restrictions are in place to balance individual expression with the need to protect society, public safety, and other fundamental rights.

Examples of restrictions on Academic Freedom:

Unlawful Speech:

Speech that breaks the law, such as inciting violence, harassment, or defamation, is not protected.

Harassment and Discrimination:

Speech that creates a hostile, intimidating, or offensive environment for others based on protected characteristics (like race, religion, etc.) is not protected.

Breach of Duty:

Universities and colleges have a duty to ensure Freedom of Speech within the law, but they can also restrict the time, place, or manner of speech if it interferes with their core functions.

Prevent Duty:

The Prevent duty, aimed at countering extremism, may require institutions to challenge views that could create an atmosphere conducive to terrorism or legitimize terrorism.

Terrorism Legislation:

Universities must ensure they are not promoting or facilitating support for terrorism or proscribed organizations.

Incitement to Hatred:

Expressing views that incite hatred, victimization, or discrimination is not protected.

Respect for Privacy and Confidentiality:

Academics are expected to respect the privacy of others and maintain confidentiality when required.

Not bringing the institution into disrepute:

Speech that would likely bring the institution into disrepute can be restricted unless it falls under the whistle-blower policy.

Not using abusive or threatening language:

Academics should not use language or behaviour that could be considered bullying or harassment.

5 Legal basis of the Act

The European Convention on Human Rights especially, the Article 10 of the Convention.

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, 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.

Education Act 1986

Section 43 of the Education (No 2) Act 1986 requires universities and colleges to 'take such steps as are reasonably practicable' to ensure that Freedom of Speech within the law is secured for their members, students, employees and visiting speakers.

Section 43 also requires universities and colleges to issue, enforce and keep up-to-date a free speech code of practice.

Equality law considerations

Universities and colleges must also comply with the requirements of equality law as set out in the Equality Act 2010.

Universities and colleges should recognise that in upholding lawful free speech and academic freedom, they may have to give some people whose views others find offensive a right to speech.

In doing so, universities and colleges must make sure that they operate with an accurate understanding of equality law matters and the extent of their duty to take 'reasonably practicable steps' to secure Freedom of Speech within the law.

Counterterrorism and Security Act 2015

Bodies listed in schedule 6 of the Act must have due regard to the need to prevent people from being drawn into terrorism.

However, in carrying out this duty, universities subject to the section 43 duty (see above) must have particular regard to the duty to ensure Freedom of Speech, and (where applicable) to the importance of academic freedom.

Public Order Act 1986

It is an offence under Section 4 of the Public Order Act 1986 if a person— uses towards another person threatening, abusive or insulting words or behaviour, or distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting, —with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to

provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

Harassment (Protection from Harassment Act 1997)

The concept of harassment in this Act is linked to a course of conduct which amounts to it. The course of conduct must comprise two or more occasions. Harassment includes alarming a person or causing them distress. The fewer the occasions and the wider they are spread, the less likely it is reasonable to find that a course of conduct amounts to harassment. Conduct must be oppressive and unacceptable rather than just unattractive or unreasonable and must be of sufficient seriousness to also amount to a criminal offence.

Section 1 of the Protection from Harassment Act states that the course of conduct is prohibited if the person whose course of conduct is in question knows or ought to know that it amounts to harassment of another; and that 'the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.' This introduces an element of objectivity into the test.

Terrorism Act 2000

The Terrorism Act 2000 prohibits (among other things) speech that invites support for a proscribed organisation, and the support is not, or is not restricted to, the provision of money or other property; or expresses an opinion or belief that is supportive of a proscribed organisation, and in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.

Other legislation

Other legislation may also be relevant to whether speech is 'within the law'. This includes:

Malicious Communications Act 1998

Communications Act 2003

Terrorism Act 2006

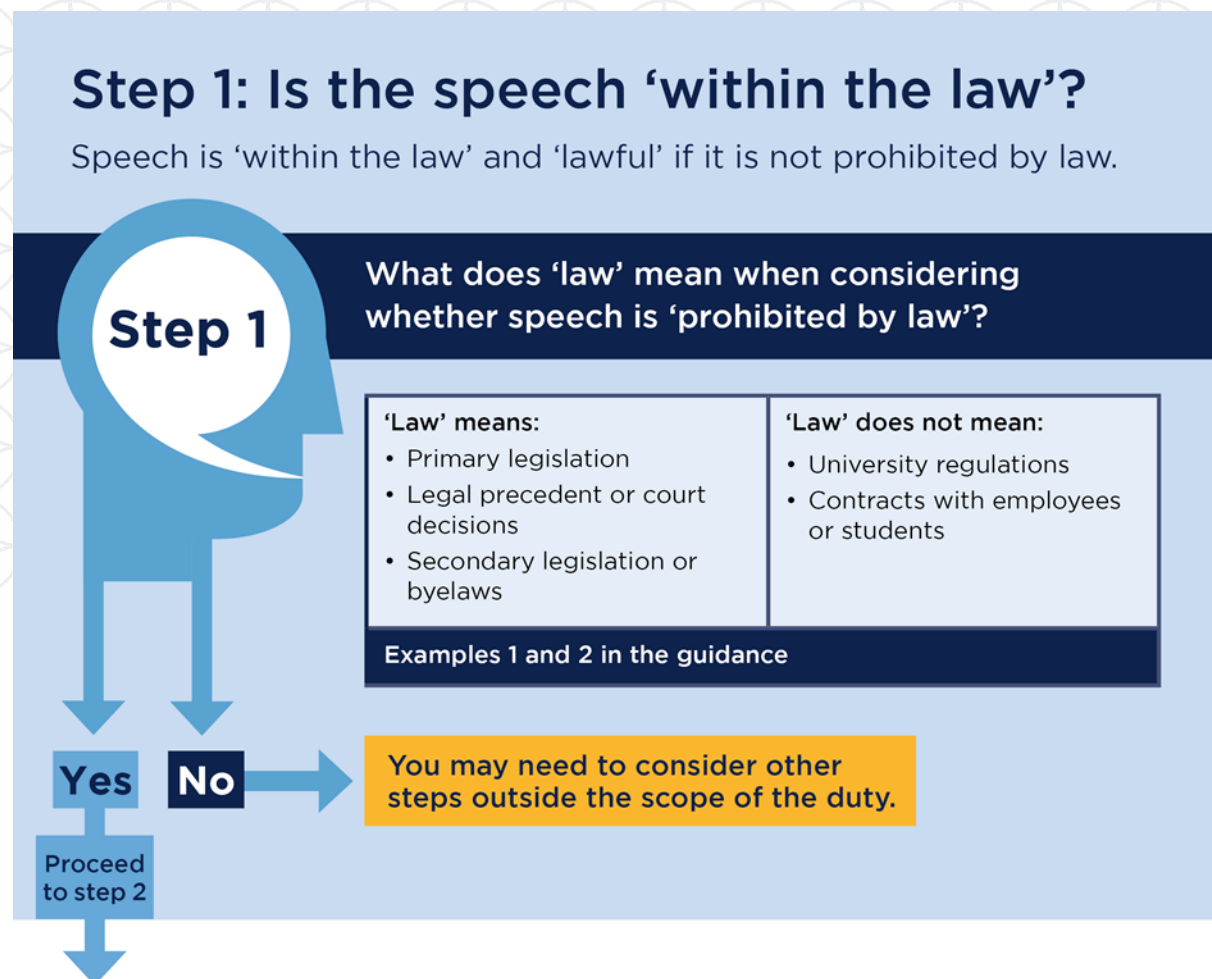
Equality Act 2010

Public Order Act 2023

6 Application of the policy to secure the Freedom of Speech

There is a three-step framework for assessing compliance with the 'secure' duty. These steps apply to any measure or decision that might affect speech or types of speech. The steps are:

Step 1: Is the speech 'within the law'?



(<https://www.officeforstudents.org.uk/publications/regulatory-advice-24-guidance-related-to-freedom-of-speech/>)

Step 2: Are there any 'reasonably practicable steps' to secure the speech? If yes, take those steps. Do not restrict the speech. The guidance illustrates factors that are likely or unlikely to affect what is 'reasonably practicable'.

Step 2: Are there any 'reasonably practicable steps' to secure the speech?

The particular circumstances will be important in considering whether a step is reasonably practicable. Reasonably practicable steps may include positive steps – doing something – and negative steps – refraining from doing something.

Step 2

Factors to consider:

Factors likely to be relevant:

- Legal / regulatory requirements e.g. duties in relation to harassment
- Maintaining essential functions of the institution (= learning, teaching, research, and administration and institutional resources necessary for essential functions)
- Physical safety

Factors likely to be irrelevant:

- The viewpoint that the speech expresses, including:
 - whether it aligns with the provider's aims or values
 - whether it is controversial or offensive
 - whether external or internal groups approve of the viewpoint that the speech expresses
- The reputational impact of the speech on the provider or constituent institution

See examples 3 to 23 in the guidance

No

Yes

Take these steps. Do not restrict the speech.

Proceed to step 3

(<https://www.officeforstudents.org.uk/publications/regulatory-advice-24-guidance-related-to-freedom-of-speech/>)

Step 3: Are any restrictions 'prescribed by law' and proportionate under the European Convention on Human Rights? The guidance sets out that any restrictions on speech must be compatible with these requirements, if indeed there are no reasonably practicable steps to secure it.

Step 3: Are any restrictions 'prescribed by law' and proportionate under the European Convention on Human Rights?

This step involves considering whether restriction or regulation of the speech ('interference') is compatible with the European Convention on Human Rights (ECHR).

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This step involves considering whether restriction or regulation of the speech ('interference') is compatible with the European Convention on Human Rights (ECHR).

<p>Is the interference prescribed by law?</p> <p>An interference is prescribed by law if:</p> <ul style="list-style-type: none"> • there is a specific domestic English legal rule or regime which authorises the interference; • the person affected by the interference must have adequate access to the rule in question; and • The rule is formulated with sufficient precision to enable the affected person to foresee the circumstances in which the law would or might be applied, and the likely consequences that might follow. 	<p>Is the interference proportionate?</p> <p>To assess the proportionality of a measure to interfere in lawful speech, you must consider:</p> <ul style="list-style-type: none"> • whether the objective of the measure is sufficiently important to justify the limitation of a protected right, • whether the measure is rationally connected to the objective, • whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and • whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.
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See example 24 in the guidance

The proportionality test in Article 10(2) means that, in practice, it is difficult to restrict or regulate speech in a higher education context. This is because there is a high bar for limitation of a protected ECHR right in general terms, and the particular purpose of higher education is such that limitation of Article 10 rights would undermine that purpose.

Yes

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No

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Your restrictions are not consistent with your free speech obligations. You will need to revise your approach.

Your regulations or restrictions are likely to be consistent with your free speech obligations. Regulations or restrictions should:

- use legal definitions where these are available
- incorporate objective tests where appropriate, for instance in relation to harassment
- avoid vague language or undefined terms
- include clear, adequate and effective 'safeguard' statements protecting academic freedom and freedom of speech within the law (for instance, to the effect that where a policy conflicts with academic freedom, the latter prevails).

(<https://www.officeforstudents.org.uk/publications/regulatory-advice-24-guidance-related-to-freedom-of-speech/>)

7 .Complaints scheme

Individual academics who feel their right to academic freedom and/or freedom of speech has been improperly infringed may seek recourse against their employer via their institution's grievance procedures and ultimately via contractual/employment law remedies. It is therefore important to ensure that the staff are able to rely on clear contractual terms in relation to academic freedom.

The employment statute will cover staff engaged in teaching and research and may also cover staff engaged in research, teaching and scholarship, and academic-related staff.

Anybody else who is not employed but related to MRC, such as students, guest speakers, visitors, etc., have a right to complain if they feel their Freedom of Speech has been unlawfully restricted.

In many cases, informal discussion at an early stage of a problem having been identified will resolve it, and formal action may not be necessary.

In the case of employed staff, the best way is to contact either the Programme leader or the HR department to discuss the matter and try to find a resolution.

In the case of students, the best way is to contact the Student services or the Welfare department to discuss the matter and try to find a resolution.

For anybody else, the Principal should be contacted.

The expectation will be that the report should be accurate, factual, dated and whenever possible, include evidence.

If the informal stage does not provide a satisfactory resolution for both parties, then the complaint will move to the formal stage.

The investigation can span up to three different stages:

- Stage One: Initial Investigation Stage.
- Stage Two: Appeal
- Stage Three: Further Appeal

Stage One: Investigation procedure of a potential breach of Freedom of Speech/Academic Freedom.

Upon receiving the complaint, the first action will be to alert the Principal who then will form an investigation panel composed of at least one senior management staff, one senior academic staff and one student representative (student union or class rep.). Please note that no member of the panel can be the origin of the breach and/or involved in the breach.

The panel will meet within 5 working days of the evidence being produced to assess its legitimacy. The panel will then invite the plaintiff to testify and explain the claim to them during a meeting that will be organised within 5 working days after the initial assessment of the complaint.

The panel might choose to call for witnesses and/or, individuals identified by the complainant as having relevant evidence to explore parts of the claim. If the witness choose to decline the invitation, an explanation will be requested to justify this.

The panel will then invite the person/persons accused of breaching the Freedom of Speech/Academic Freedom within 5 working days of the initial meeting to testify in order to have a chance to defend themselves and refute the accusation. This meeting is mandatory and refusal to attend will be considered as an admission of liability. The panel could invite to testify individuals identified by the person complained against as having relevant evidence.

The panel reserves the right to speak to other relevant people on a confidential basis; and/or obtain further relevant information from them.

The panel will come to a decision and write the final report including a decision on the outcome of the investigation within 5 working days of the second meeting. All the parties involved will receive the same communication at all time.

The timing of the meeting might be influenced by seasonal holidays and Bank Holidays

Outcomes

Mediation or conciliation

In some situations, it may be appropriate to ask the parties to consider entering into a mediation or conciliation process. Although mediation or conciliation may be attempted at any time before or after a formal investigation, it may be particularly helpful if it is considered at an early stage before the formal procedure is invoked.

If agreed by both parties, an experienced senior management staff or conciliator acceptable to both parties will be nominated by the Principal. The mediator or conciliator will meet with the parties separately and as soon as practicable to begin to seek a resolution.

The normal expectation is that resolution would be agreed within 10 working days of the initial meetings with the parties (although this time limit may be extended by agreement). Any agreed outcome will normally be recorded in writing.

All those involved in the mediation or conciliation process must maintain appropriate confidentiality.

If a successful resolution is achieved the case will be closed, but the situation will be monitored for an appropriate period.

The claim is rejected.

No further actions will be taken, other than, where appropriate, implementing or suggesting steps that would help to restore reasonable professional relationships between the parties.

These steps could require that the concerned individuals undergo specific training or include some practical arrangements to improve professional relationships.

The claim is upheld

In this case the Freedom of Speech / Academic Freedom will be restored to the level expected by the plaintiff who will then be allowed to proceed as they planned to express their views/speech.

Support to do so will be offered and an official written apology from the person(s) who infringed the freedom of speech/academic freedom provided within 5 working days.

In this event, the panel together with the Human Resource Manager will determine what measures are necessary (if any) against the person(s) who infringed the Freedom of Speech/Academic Freedom, including a warning, suspension, any re-allocation of duties, or any other measures.

Stage Two: The appeal

A) Any decision made under this policy may be appealed by the plaintiff and/or the accused person(s). However, the investigating panel must receive the appeal within 10 working days of the outcome notification being communicated.

B) The appeal must be made in writing to the person who received the complaint originally or directly to the investigating panel and state the reasons for it.

C) An appeal can be made due to the following reasons:

- I. new evidence has become available that was not available at the time of the original meeting
- II. the application of this policy had a procedural irregularity;
- III. the verdict reached was of such a nature that no reasonable person could have arrived at it based on the evidence available.

D) When the panel receives the appeal, it will consider whether the requested appeal falls within the scope of the reasons mentioned above. Within five working days, the panel will respond to the learner to confirm receipt and also inform her/her whether the College will conduct a review of the new evidence. The evidence previously submitted will not be reviewed again.

The Review stage

If either of the parties involved is not satisfied with the appeal decision, then that party can trigger a final case review in writing to the MRC CEO, Mr Bilal Sheikh.

The Review stage's outcome is the final stage in the College's internal procedures. Mr Bilal Sheikh will review all the evidence submitted, the panel's meeting minutes and the rationale for the decisions taken before coming to a conclusion which will be final.

Mr Bilal Sheikh might decide to re-interview some of the parties involved or call for new ones.

A completion of procedures letter to the person calling for the review will be issued within 7 days of the Review's conclusion.

Stage Three: Further Appeal

If any party is still unhappy, he or she will be directed to pursue the matter through the OIA procedures.

For detailed information, Learner will be advised to refer to the OIA website (<http://www.oiahe.org.uk>) or write to the following address:

OIA Second Floor,

Abbey Wharf

57-75 Kings Road

Reading

RG1 3AB

Tel: 0118 959 9813

Email: enquiries@oiahe.org.uk