

Academic Freedom – what is it?

The right to academic freedom is frequently asserted and viewed as a fundamental basis for guaranteeing the pursuit of knowledge. UNESCO defines academic freedom as:

the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies.¹

In other words, it protects academic staff from being punished for the content of their research, teaching and/or opinions.

According to Statute 11(7)(a) of the University of Warwick's Charter, the University will *'ensure that Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs and privileges.'*

The Statute mirrors Section 2(8)(c) of the Higher Education and Research Act 2017, which states that the *'institutional autonomy of English higher education providers'*² means *'the freedom within the law of academic staff at English higher education providers (i) to question and test received wisdom, and (ii) to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at the providers.'*

An important aspect of academic freedom is that it protects 'controversial or unpopular opinions'. This is important because at some point in history, ideas and opinions that we now consider to be commonplace and moderate, were once regarded as 'controversial or unpopular'. One only has to think about the past reactions of politicians, religious figures and/or major sections of society to claims that the earth rotates around the sun or to calls for women's right to vote, women's right to abortion, the end of racial segregation and the decriminalisation of homosexuality.

Does academic freedom allow academics to say whatever they want? The short answer is 'no'. A key phrase is that 'academic staff have freedom within the law'. This means that their

¹ 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, no. 27: http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html

This recommendation also informs UCU's Statement on Academic Freedom: <https://www.ucu.org.uk/academicfreedom>

² Education is matter devolved to the four nations of the United Kingdom. Therefore, universities are governed by laws that are specific to the nation in which they are located.

ideas and opinions must not break any criminal laws, such as, the Public Order Act or the Terrorism Act. Hence, ideas and opinions that may provoke violence, stir up hatred on the grounds of race, religion or sexual orientation or glorify terrorism are not protected by academic freedom.³

Another important piece of legislation is the 2010 Equality Act, which is a civil law that safeguards individuals from harassment and discrimination on the basis of any protected characteristics. Universities, as education providers and employers are prohibited from harassment related to age, disability, gender reassignment, race, religion or belief, sex or sexual orientation. Harassment under the Equality Act 2010 is unwanted behaviour related to the above-mentioned protected characteristics, which has the purpose or effect of:

- violating a person's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Importantly, whether or not behaviour is considered harassment is not just based on the view of the person making the complaint. The courts would consider whether it is reasonable for the behaviour to have that effect and seek to balance competing rights, including the right to freedom of expression of the person responsible.

According to the Equality and Human Rights Commission's (EHRC's) guidance for higher education providers:

harassment provisions cannot be used to undermine academic freedom.

Students' learning experience may include exposure to course material, discussions or speaker's views that they find offensive or unacceptable, and this is unlikely to be considered harassment under the Equality Act 2010. Also, if the subject matter of a talk is clear from material promoting an event, then people who attend are unlikely to succeed in a claim for harassment arising from views expressed by the speaker.⁴

The Commission also makes clear that, 'Views expressed in teaching, debate or discussion on matters of public interest, including political or academic communication, are ... unlikely to be seen as harassment, even if they are deeply offensive to some of the people who are

³ For further details, see Equality and Human Rights Commission, Freedom of Expression: A Guide for Higher Education Providers and Students' Unions, <https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-england-and-wales.pdf>, p. 17 + Annex B.

⁴ Equality and Human Rights Commission, Freedom of Expression: A Guide for Higher Education Providers and Students' Unions, <https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-england-and-wales.pdf>, p. 19.

listening, as Article 10 will protect them'.⁵ Here, Article 10 refers to the right to freedom of expression guaranteed by the European Convention on Human Rights (ECHR), which is incorporated into UK law via the Human Rights Act of 1998. This right is not unlimited, but the European Court of Human Rights' caselaw makes it clear that Article 10 serves the purpose only of excluding the most extreme cases which are antithetical to the fundamental values of democracy and anti-totalitarianism on which the Convention is based.⁶

In addition, this caselaw makes it clear that Article 10(2) has limited application to speech that can be categorised as political and/or pertaining to matters of public interest.⁷ Expression may be restricted where it '*incite[s], promote[s] or justify[ies] hatred based on intolerance*',⁸ but only where it creates a real possibility of violence or hatred as a direct result.⁹

To summarize: Academic freedom is considered to be fundamental to the pursuit of knowledge and is protected by UK law. Whilst ideas and opinions expressed by academics must not violate criminal laws nor amount to harassment, as defined in the 2010 Equality Act, nonetheless, academic freedom gives academics the right to express unpopular and controversial ideas and opinions, without their jobs or privileges being threatened.

Does the right to academic freedom apply in all contexts?

There have been some differences of opinion over whether academics enjoy academic freedom in all contexts. Some have argued that academic freedom only applies to those ideas and opinions that relate to the academic expertise of an individual and/or that are uttered in an academic setting; e.g. the classroom, an academic publication or an academic conference.

However, the UN Special Rapporteur on Freedom of Expression has stated that academic freedom must be interpreted in its broadest '**extra-mural**' meaning, to mean that:

*[i]ndividuals enjoy academic freedom not only within their institutions, in the internal aspects of research, scholarship, teaching, convenings and other on-campus activities, but also "extramurally", in their role as educators and commentators outside the institution.*¹⁰

⁵ Ibid

⁶ See *Glimmerveen and Hagenbeck v Netherlands* (1982) 4 EHRR 260 *Norwood v UK* (2005) 40 EHRR SE1, *Lilliendahl v Iceland* (case 29297/18, judgment of 12 May 2020)

⁷ *Vajnai v Hungary* (2010) 50 EHRR 44, §47; *Ceylan v. Turkey*, application no. 23556/94, para. 34; see also *Wingrove v. the United Kingdom*, application no. 17419/90, §58

⁸ *Erbakan v. Turkey*, no. 59405/00, §56, 6 July 2006

⁹ *Sürek v. Turkey* (no. 3) [GC], no. 24735/94, §40, ECHR 8 July 1999

¹⁰ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *supra* Note 1, para. 20

He goes on to clarify that ‘an academic bringing her or his expertise to bear in a hearing before a legislature, a lecture to a community, a conversation on broadcast media or a post on social media should be understood as, *inter alia*, an exercise of academic freedom. In other words, that framework is not limited to the institutional environment.’¹¹ Moreover:

*[w]hen an academic engages in expression outside of her or his academic topic – that is, not only outside the substantive area but also methodologically – she or he retains the right to freedom of expression guaranteed by human rights law, even if that engagement is not considered a part of her or his academic freedom. It should also be emphasized that academics should not be punished by their institutions for exercising their rights to freedom of expression, association and assembly and religious belief, among others.*¹²

Other members of the university (students, professional services and other staff) also have a right to freedom of expression; universities have an obligation under the 1998 Human Rights Act and the Education Act to ensure freedom of expression and freedom of speech within the law.

Section 43 of the Education (No. 2) Act 1986 requires that ‘Every individual and body of persons concerned in the government of [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’, as well as for visiting speakers.

Whilst this document has concentrated on those aspects of academic freedom related to freedom of expression, it is also important to reiterate that, in line with the UNESCO statement, academic freedom also includes the freedom to choose our topics of research, sources of funding and modes of dissemination without restrictions, beyond those stipulated in law.

To summarize, international bodies interpret academic freedom to apply not only when academics are in academic contexts but also when they participate in extra-mural activities, such as commenting to the media/on social media. Moreover, academics as well as all other members of the university have more general rights to freedom of expression and freedom of speech, which universities are obliged by law to ensure.

¹¹Ibid

¹² Ibid