

Northern School of Contemporary Dance

Academic Freedom and Freedom of Speech Policy and Procedure

Created By	Agreed:	Reviewed by	Date of Review
Darren Carr	By academic board July 2021	Audit committee October 2021	

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Academic Freedom & Freedom of Speech: Policy and Procedure

1. INTRODUCTION

1.1 This policy is underpinned by the following core principles and ideas which are based on the Equality and Human Rights Commission: Freedom of expression: a guide for higher education providers and students' unions in England and Wales:

<https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-england-and-wales.pdf>

1.2 Under the Education (No 2) Act (1986) the Board of Governors of Northern School of Contemporary Dance (NSCD) has a responsibility to 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 School and for visiting employees and guests.

1.3 According to the Equality and Human Rights Commission (2017);

“The right to express views and ideas freely, without fear of interference or persecution, is an essential part of democracy. Respectful debate and conversation helps us challenge discrimination, get rid of intolerance and harmful attitudes, and build strong, positive communities.”

1.4 In operating this policy, NSCD seeks to ensure that the principles of freedom of expression are upheld balanced with the need to protect the welfare of both staff and students and to protect the School's reputation both in the UK and abroad.

1.5 A summary of the legal framework underpinning this policy is provided at Appendix A.

1.6 Reference should also be made to the following:

- The School's Prevent policy <https://www.nscd.ac.uk/safeguarding/>
- Organised Events (health and safety policy)
- School IT Policy (usage restrictions)
- School Equality and Diversity Policy Statement and Code of Practice and Racial Equality Policy
- The student charter <https://www.nscd.ac.uk/higher-education/student-charter/>

2. SCOPE

2.1 This Policy applies to:

- All persons (whether academic staff or otherwise) whose normal place of work is on premises of the School
- All registered students at the School (whether full-time or part-time)
- The NSCD Students' Union (NSCDSU), and any of its constituent societies, clubs and associations
- The officers of the NSCDSU
- All bodies or persons not associated with the School who hire or otherwise use the School's facilities

2.2 This Policy applies for the following meetings and events:

- Meetings and events within the School which are arranged by staff or students but on a 'private' basis (where the member of staff is hiring School premises on the same basis as a member of the public)
- Meetings and events within the school which are arranged as part of the school's higher education provision
- Meetings and events within the School or other uses of School facilities which are arranged by persons not associated with the School, whether by hire or any other arrangement
- Meetings and events arranged by NSCDSU society, club or association which involve an external speaker not associated with the School or NSCDSU

2.3 The School will normally allow all meetings and activities to proceed unless it has reasonable grounds for believing that an event is likely to:

- Lead to incitement to commit a criminal act
- Lead to the expression of views in a manner which is contrary to civil or criminal law
- Lead knowingly to a breach of the peace
- Be in direct support of an organisation whose aims and objectives are illegal
- Lead to the expression of subjective and biased views incompatible with the Articles, Mission and Values of the School
- Be conducted in such a way as to infringe this policy or other relevant School regulation
- Adversely affect the reputation and interests of the School
- Endanger the security and/or safety of the School premises and people using the premises
- Contravene health and safety or other relevant regulations

Further **Laws that place limitations on freedom of expression in England and Wales are cited in Appendix B.**

2.4 The School may ask for some review of some events promotion or delivery in relation to the event being mindful and respectful of the school inclusive culture and values before signing off agreement to the holding of any event on School premises. The School must also reserve the right to cancel any event if it considers it reasonably necessary to secure fulfilment of the School's statutory responsibilities concerning the protection of freedom of speech within the law.

3 NSCD CORE IDEALS

3.1 NSCD engages in arts practice which has the ability to challenge perception, open up discourse and connect to the thoughts and feelings of all human beings. We recognise that on occasions this may cause offence and make us feel uncomfortable. We do wherever possible attempt to pre-empt this and find strategies to encourage an openness to the possibilities of working through this together.

- NSCD believes that everyone has the right to free speech within the law.

- As a Higher education provider we will work to widen debate and challenge, never to narrow it.
- Any decision about speakers and events should seek to promote and protect the right to freedom of expression.
- Peaceful protest is a protected form of expression; however, protest should not be allowed to shut down debate or infringe the rights of others.
- Freedom of expression should not be abused for the purpose of unchallenged hatred or bigotry.
- NSCD will always aim to encourage balanced and respectful debate

4 ACADEMIC FREEDOM AND FREEDOM OF SPEECH BY DEFINITION:

4.1 Academic freedom should be the freedom of teachers and students to pursue knowledge and research without unreasonable interference or restriction from political stances, institutional regulations, or public pressure. Its basic elements include the freedom to inquire into any subject that evokes their intellectual concern; to present their findings to others; to publish their data and conclusions with limited control or censorship; and to work/study in the manner they consider professionally appropriate. We would hope that for NSCD students they would have the freedom to study subjects that concern them and to form conclusions for themselves and express their opinions.

4.2 NSCD encourages staff, students and other parties to do this within the context of the School's values and within the legal objects of the School which includes the advancement of education in such manner as befits an inclusive and diverse arts higher education institution and cultural space.

4.3 Academic freedom and freedom of speech offer opportunities for freedom of expression where artistic development is supported. When we talk about freedom of expression, we mean both the spoken and written word, as well as actions, gestures and the display of images intended to show meaning. In this guide, 'freedom of expression' also includes 'freedom of speech'.

4.4 The School seeks to conduct its affairs in an open and responsible manner and believes that everyone should have the right to speak freely:

- Without fear of disciplinary action or any other sanction, provided they do so within the law
- Within the broad scope of the School's Articles, Mission and Values
- And in accordance with this Policy and any other relevant School regulation

4.5 The right to freedom of expression is a qualified rather than an absolute right which means that the rights of the individual must be balanced against the interests of society. Staff, students and the external organisers of events have a responsibility to be sensitive to the School's values, to the diversity of its community and to show respect to all

sections of that community. The right operates in the context of the law and the values of a democratic society. It is limited, for example, by laws to protect others from violence, hatred and discrimination, to protect national security and public safety, for the prevention of disorder or crime, to protect health or morals, for the protection of the reputation or rights of others, and to prevent the disclosure of information received in confidence. In particular, freedom of expression does not protect statements that constitute unlawful harassment, or incite violence or hatred against, other persons and groups, particularly by reference to their race (including language, national origin or immigration status), religion or belief, sex or sexual orientation, age, disability or gender reassignment ('hate speech').

4.6 This policy does not remove the obligation on employees to act at all relevant times in accordance with the School's employer policies.

4.7 Students are reminded of the relevant clauses in "student terms and conditions" and other policies affecting students

4.8 Nothing in this policy shall be deemed to affect the rights of any person taking any steps pursuant to lawful industrial action or peaceful protest.

5 LEGAL BACKGROUND: FREEDOMS AND LIMITATIONS

5.1 The School is committed to the principles of academic freedom as set out in the Education Reform Act (1988) and stated in the School's Articles:

9 (2) Academic Freedom: In making rules under Article 9 (1), the Board of Governors shall have regard to the need to 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 or losing their jobs or any privileges they may have at the School.

5.3 The Human Rights Act (1998) also embodies certain freedoms including freedom of thought, belief and religion, freedom of expression, and freedom of association. However that Act also recognises limits to freedom 'as are prescribed by law and are necessary in a democratic society'.

5.4 Freedom of speech cannot include:

- Threatening, abusive or insulting words or behaviour intending or likely to cause harassment, alarm or distress, or cause a breach of the peace
- Incitement to racial hatred
- religious hatred
- incitement to terrorism

6 RESPONSIBILITIES

6.1 The Board of Governors and the Chief Executive have a responsibility, whether the School's premises are being used in the normal course of School business or by the external organisers of an event, to ensure that:

- The law is upheld
- The Articles (including the Objects of the School as a charity) and any supporting regulations of the School are upheld
- School property is not damaged or people (whether staff, students or visitors) put at any risk

6.2 Applying academic freedom and freedom of speech within the NSCD environment:

6.2.1 NSCD prides itself on its aspirations to be inclusive, equal and diverse. The culture of its staff, student body and all other stake holders buy readily into its culture and values. As a result the institution would encourage complete freedom of expression, encouraging individuals to be mindful and respectful of this inclusive culture. What we mean by this is that individuals should consider who would take offence, and offer all points of view in the discourse including any counter arguments, without intended bias.

6.2.2 It shall be contrary to the policy to seek, by systematic or organised heckling, disruption or like activity, to prevent the lawful expression of views in accordance with this policy.

6.2.3 Subject to the definitions in the application of the policy, it shall be contrary to this policy for any person or body to which this policy applies to take any action other than by reasonable and peaceful persuasion or peaceful protest, to prevent the holding of, or continuance of, any lecture, tutorial or other academic activity because of the lawful views held or expressed or which are reasonably likely to be expressed, whether or not within the School, by the academic concerned.

6.2.4 Subject to the definitions in the application of the policy, it shall be contrary to the policy for any person or body to whom this policy applies to take any action other than by reasonable and peaceful persuasion or peaceful protest, to prevent any student or group of students from attending any lecture, tutorial or other academic activity required by, or properly associated with, the course for which they are duly enrolled because of the lawful views held or expressed or which are reasonably likely to be expressed as part of that academic activity, whether or not it takes place within the School

6.2.5 Everyone connected to the school and its business have a responsibility not to abuse this right so as to bring the name of the School into disrepute, nor as an alternative to agreed complaints and grievance channels.

7 ORGANISED EVENTS

7.1 Introduction

7.1 Where any person or organisation subject to this policy (or, in the case of the students' union, any constituent society, club or association) wishes to hold a meeting or like event for the expression of views as set out in this policy on premises which NSCD control, the NSCD shall not unreasonably refuse consent. The School reserves the right to refuse consent to any meeting or like event which involves or is reasonably expected to involve the expression of views that are in breach of this policy or there are other reasonable grounds for refusal.

7.2 Reference should also be made to Organised Events Guidance Notes. The Health and Safety Policy identifies an Event Organiser who may be a member of staff or a student, or a person hiring School premises.

7.2 Procedure

7.2.1 It is the organiser's responsibility to give NSCD a full description of the event and to identify any elements which may need consideration around the protection of freedom of speech.

7.2.2 Where the event is considered to be part of the Higher education provision it is the responsibility of the module leaders, Curriculum leaders and Heads of Faculty to identify any elements which may need consideration around the protection of freedom of speech.

7.2.2 NSCD's will issue all external event organisers terms and conditions of bookings that will make it clear that:

- Any failure to disclose full event and/or speaker details may result in an event/booking being cancelled
- The School reserves the right to cancel any event for which permission may have been given if the potential risk increases and this causes a threat to the schools values or integrity
- The School must be informed of any changes to an event for which permission has been given, and that these will need to be considered by the process outlined above

7.2.3 In consultation between the person taking the booking, the vice principal¹senior management team, will decide whether permission to hold the event should be withheld with reference to the principles set out in this Policy and to relevant legislation. Legal or other advice may be sought if necessary.

7.2.4 Permission for an event will be considered around its merit of inclusion and may be:

- Granted or
- Granted subject to certain measures being put into place to support inclusivity and NSCD's values around inclusion (see 7.3) or
- Withheld

7.2.5 Event Organisers are required to adhere to any terms and conditions of booking an event on School premises.

¹ Please note that for this policy, the chief executive is not part of the decision making aspect of this in order to avoid any conflict of interest with our safeguarding or prevent policies and procedures.

7.2.6 In considering whether an event may proceed, the School will take into account any risk that may be generated by the broadcast or report of the event to the wider community. Broadcast includes broadcast by social media or similar means.

7.2.7 Granting permission to an individual or body to hold an event on School premises does not imply that the School endorses any policy, views or objectives of the individual or body.

7.3 Supporting an event to be inclusive

7.3.1 It may be deemed important to NSCD to provide an event organiser, member of staff or student with additional support in the realm to considerations or in extreme circumstances a set of conditions. An Event Organiser may be required, after due consultation, to apply a number of measures if it is considered that difficulties may be encountered or where its inability to be inclusive is questioned.

7.3.2 Those support measures may demonstrate but are not limited to the following:

- Approved arrangements for the chairing or other general management of the event are in place
- The event is ticketed and/or that attendance is monitored
- That an event promoting a particular view includes an opportunity to debate or challenge that view i.e that the view is considered from an inclusive perspective
- A copy of any speeches to be delivered be submitted for approval
- Approved stewards or security arrangements are in place
- Alcohol is not permitted at the event
- Special conditions for the admission of representatives of the press, radio or television are in place, or for the 'broadcast' of the event for example through social media
- Clearly stating in any publicity that the School does not endorse any policy, views or objectives of the individual or body

7.3.4 The terms and conditions of bookings must make it clear that:

- Any failure to disclose full event and/or speaker details may result in an event/booking being cancelled
- The School reserves the right to cancel any event for which permission may have been given if the potential risk increases and this causes a threat to the schools values or integrity
- The School must be informed of any changes to an event for which permission has been given, and that these will need to be considered by the process outlined above

7.3.5 An Event Organiser may be required to pay any costs necessarily incurred by the School to ensure compliance with this Policy or to make good any loss or damage caused as the direct result of the event being held.

7.3.6 If permission is granted subject to certain measures being in place, the Event Organiser is responsible for ensuring that all of these are implemented.

7.3.7 Should permission be withheld the Event Organiser will be informed of the reasons for the decision with reference to the principles set out in this policy and to relevant legislation if necessary.

7.3.8 On the very rare occasions where permission to hold an event is refused, the Event Organiser may make an appeal to the Chief Executive within 14 days of permission being refused. Any appeal will be considered by the Chief Executive (or her nominee) as soon as reasonably practicable. The Chief Executive's ruling will be final.

8. SOCIAL & ELECTRONIC MEDIA

The principles of freedom of expression and academic freedom apply to the use of electronic and social media; however, NSCD requires responsible and legal use of the technologies and facilities available to staff and students of the School, including the use of the internet, email and social media.

9. BREACH OF THE POLICY

Any breach of the provisions of this policy may render those responsible liable to disciplinary action under the relevant School disciplinary procedure or other appropriate sanction.

Where breaches of the criminal law occur, the School shall, where appropriate, assist prosecution authorities to implement the processes of the criminal law.

10. POLICY REVIEW

In order to comply with Section 43(3) of the Education (No.2) Act 1986 (see Appendix A) the Board of Governors shall review, formally, the operation of the policy not less than once every three years.

Appendix A: legal framework

A summary of the legal framework underpinning this policy

The Education (No. 2) Act 1986 (section 43(1)) requires the School to take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for its employees, students and visiting speakers. This also includes the duty to ensure, as is reasonably practicable, that the use of any of the School's premises is not denied to any individual or body of persons on the grounds of their beliefs, views, policies or objectives. Under section 43(3), the School is also required to issue, and keep up-to-date, a policy of practice on freedom of speech, setting out the procedures to be followed by students and staff in connection with the organisation of meetings and activities which fall within any class specified within this policy, together with the conduct required of staff and students in connection with such meetings and activities.

The Higher Education and Research Act 2017 (HERA) makes it clear that all universities and colleges which register with the Office for Students (OfS) must uphold the existing laws around freedom of speech and follow the OfS's regulatory framework. Under the framework the governing bodies of registered universities and colleges should take 'such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider.'⁴ HERA also includes a general duty for the OfS to protect institutional autonomy including academic freedom.

The Education Reform Act 1988 (section 202) (reinforced by the Higher Education and Research Act 2017) makes clear 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 or privileges they may have at their institutions.

The Public Order Act 1986 creates criminal offences relating to public order; to control public processions and assemblies; to control the inciting of racial hatred or on the grounds of religion or of sexual orientation.

The Protection from Harassment Act 1997 creates both civil and criminal offences for harassment and makes provision for protecting persons from harassment and similar conduct.

The Human Rights Act 1998 in particular Article 9 (freedom of thought, conscience and religion); Article 10 (freedom of expression); and Article 11 (freedom of assembly and association).

The Equality Act 2010 requires the School, in the exercise of its functions, to have due regard to the need to eliminate discrimination, harassment and victimisation; advance equality of opportunity; and foster good relations between different groups.

The Terrorism Act 2006 creates offences relating to the encouragement of terrorism and dissemination of terrorist publications, including publishing, or causing another to publish, a statement likely to be understood as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism with the intent that members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism, or being reckless as to whether that effect will be caused.

The Counter-Terrorism and Security Act 2015 creates a general duty on the School when exercising its functions to have due regard to the need to prevent people from being drawn into terrorism having particular regard to the duty to secure freedom of speech imposed by section 43(1) of the Education (No. 2) Act 1986 when carrying out that duty.

APPENDIX B: Laws that place limitations on freedom of expression in England and Wales include:

Crime and Disorder Act 1998

- racially or religiously aggravated offences (sections 29-32) Offences Against the

Person Act 1861:

- threat to kill (section 16)

Public Meeting Act 1908:

- endeavour to break up a public meeting (section 1)

Public Order Act 1986:

- fear or provocation of violence (section 4)
- intentional harassment, alarm or distress (section 4A)
- harassment, alarm or distress (without intent) (section 5)
- acts intended or likely to stir up hatred on the grounds of race (sections 18-23); religion (sections 29B-29F); or sexual orientation (sections 29B-29F)

Serious Crime Act 2007:

- encouraging or assisting the commission of an offence (sections 44-46)

Terrorism Act 2000:

- incitement to commit acts of terrorism overseas (section 59)
- inviting or encouraging support for a proscribed organisation (section 12)

Terrorism Act 2006:

- encouragement of terrorism (section 1) including the glorification of the commission or preparation of terrorism (sub-section 1(3))
- dissemination of terrorist publications (section 2)
- encouragement of terrorism and dissemination of terrorist publications via the internet (section 3)