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

Speech is 'within the law' and 'lawful' if it is not prohibited by law.



What does 'law' mean when considering whether speech is 'prohibited by law'?

'Law' means:

- Primary legislation
- Legal precedent or court decisions
- Secondary legislation or byelaws

'Law' does not mean:

- University regulations
- Contracts with employees or students

Examples 1 and 2 in the guidance

Yes **Proceed**

to step 2

You may need to consider other steps outside the scope of the duty.

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 No Yes

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
- expresses The reputational impact of the speech on the provider or constituent institution

viewpoint that the speech

See examples 3 to 23 in the guidance



Take these steps. Do not restrict the speech.

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

Step 3: Are any restrictions 'prescribed

Convention on Human Rights (ECHR). Are any restrictions 'prescribed by law'



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).

and proportionate under the European

Is the interference Is the interference prescribed by law? proportionate? To assess the proportionality of a An interference is prescribed

there is a specific domestic English legal rule or regime which authorises

the interference;

by law if:

 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.

whether the objective of the measure is sufficiently important

to justify the limitation of a protected right, whether the measure is rationally

measure to interfere in lawful speech, you must consider:

- 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

the objective, to the extent that

applies against the importance of

the measure will contribute to its achievement, the former outweighs the latter. 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. Your restrictions are not consistent with your free speech obligations.

Regulations or restrictions should:

Yes No

You will need to revise your approach.

- Your regulations or restrictions are likely to be consistent with your free speech obligations.
- use legal definitions where these are available • incorporate objective tests where appropriate, for instance in relation to harassment

conflicts with academic freedom, the latter prevails).

 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