



# **Code of Practice – Freedom of Speech & Expression**

**Policy Area:** Governance

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**Policy Lead:** Director of Governance

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**Approval By:** Governing Board

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## 1. Introduction

- 1.1. East Sussex College Group (ESCG) recognises and endorses that freedom of speech and expression, within the law, has fundamental importance for institutions as places of education, learning and the disinterested pursuit of truth. In particular, higher education providers are obliged under Part A1 of the Higher Education and Research Act 2017 to take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to achieve the objective of securing freedom of speech within the law for staff of the provider, members of the provider, students of the provider, and visiting speakers.
- 1.2. In addition, a principle of freedom of lawful expression is enshrined in Article 10 of the European Convention on Human Rights.
- 1.3. ESCG is also required under Part A1 of the Higher Education and Research Act 2017 and under clause 15 of the Instrument & Articles to 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 at risk of losing their jobs or any privileges they may have at ESCG or the likelihood of their securing promotion or different jobs at ESCG being reduced. In addition, persons applying to become a member of academic staff of ESCG must not be adversely affected in relation to the application because they have exercised their freedom within the law to academic freedom. Institutions have a duty to promote the importance of freedom of speech within the law and academic freedom.
- 1.4. This Code of Practice sets out the rights and obligations inherent within the principles of freedom of speech and expression and academic freedom, ESCG's values relating to freedom of speech and how those values uphold freedom of speech, and the Code shall be construed and applied in the spirit of upholding those principles wherever reasonably practicable within the law.
- 1.5. The Code of Practice covers freedom of speech and expression in whatever form that may take including (but not limited to) speeches, debates, meetings, demonstrations, written publications and through the use of social media.
- 1.6. The Code's rights and obligations shall apply to:
  - 1.6.1. ESCG, including members of the Governing Board and any Co-opted Members to its committees.
  - 1.6.2. All persons (whether academic staff or otherwise) working for ESCG, whether for payment or otherwise.
  - 1.6.3. All duly enrolled students of ESCG (whether full or part-time);
  - 1.6.4. The Students' Union and any societies, clubs or associations which normally operate on ESCG's premises.
  - 1.6.5. All persons invited to speak and/or express views (whether in person or otherwise including through the use of social media) and/or otherwise take part in activities which take place on or are planned or proposed or due to take place on ESCG's premises or through its ICT systems in accordance with the provisions of section 3 of this Code.
- 1.7. References in the Code to "ESCG's premises" and/or "ESCG's facilities" include premises and/or facilities which are owned by ESCG, premises and/or facilities which ESCG does not own but over which it exercises some degree of control, and premises and/or facilities occupied or controlled by ESCG's students' union whether or not ESCG owns or has control of such premises and/or facilities.

## 2. Freedom of speech & expression

- 2.1. ESCG shall take such steps as are reasonably practicable to ensure that freedom of speech and expression within the law is secured for every person to whom this Code's rights apply.
- 2.2. Every person to whom this Code's obligations apply shall assist ESCG in upholding this Code of Practice.
- 2.3. ESCG will not suppress freedom of speech and expression, however abhorrent certain expressions may be to the majority of the members of ESCG, provided that:
  - 2.3.1. Such speech and expressions do not go beyond the articulation of points of view, are within the law and do not constitute incitement to riot, insurrection, racial hatred, religious hatred, sexual harassment or other activities which are likely to cause a breach of the peace or public disorder, significantly increase the risk of an individual being drawn into terrorism or otherwise be unlawful.
  - 2.3.2. By allowing such views to be expressed, and by allowing the activity to take place in the format proposed, ESCG would not be failing in its wider legal duties, in particular to have due regard in carrying out its functions to the need to:
    - 2.3.2.1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
    - 2.3.2.2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
    - 2.3.2.3. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it; and
    - 2.3.2.4. Prevent people being drawn into terrorism.
- 2.4. ESCG shall ensure, so far as is reasonably practicable, that the use of its premises and facilities is not denied to any individual or body of persons on any ground connected with:
  - 2.4.1. The ideas or opinions of such individual.
  - 2.4.2. The policy or objectives of such body or the ideas or opinions of any of its members.
- 2.5. Every person to whom this Code's obligations apply shall refrain from organising or engaging in or otherwise being associated with any conduct (other than by lawful, reasonable and peaceful persuasion) intended to prevent the enjoyment of rights under this Code of Practice.
- 2.5. ESCG shall take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to secure that the obligations under this Code of Practice are complied with.

## 3. The holding of activities

- 3.1. References in the Code to “activities” include (but are not limited to) meetings, demonstrations, events and publications through whatever media (including social media) which take place or are proposed or planned or due to take place on ESCG's premises or through its ICT systems.
- 3.2. ESCG has the responsibility to take reasonable steps to maintain good order on its premises. It has the right and the power to regulate and, if necessary, to impose conditions or restrictions upon activities which take place or are planned or proposed or due to take place on its premises or through its ICT systems. The organisation and holding of any such activities, and the arrangements therefor, must comply with this Code of Practice.
- 3.3. Any person to whom this Code's rights apply must submit a request, in writing, to the CEO & Principal of ESCG for permission for an activity to take place where it is reasonably foreseeable (in the reasonable opinion of the CEO & Principal) that the activity may be attended by 10 or more people and/or will raise issues which may be controversial in some

way. Any such request should be submitted to CEO & Principal not less than 21 working days before the proposed date of the activity and must contain details of the proposed subject matter and the purpose and format of the activity, including seating arrangements, the name and identity of any speakers or authors and the proposed timing and location of the activity.

- 3.4. Any organisers of any activity shall, if there is any doubt as to whether the activity may, in the reasonable opinion of the Deputy (CEO & Principal), be controversial, consult the Deputy (CEO & Principal) at the very earliest opportunity so that the correct procedures may be followed.
- 3.5. Within 8 working days of receiving a written request pursuant to paragraph 3.3 above the Deputy (CEO & Principal) shall issue a written decision in reply which shall either grant or withhold permission for the activity to take place on ESCG's premises or through its ICT systems. Permission granted under this Code may be subject to such conditions or restrictions (for example, as to security precautions, limits on numbers of people to be admitted, seating arrangements or form of publication) as the Deputy (CEO & Principal) reasonably sees fit.
- 3.6. Apart from in exceptional circumstances, ESCG will not require the individual or body to bear some or all of the costs of security relating to their use of the premises.
- 3.7. ESCG will not unreasonably refuse to allow activities to take place on its premises or through its ICT systems. The expression of controversial views which do not breach the law or risk a breach of the law will not of itself constitute reasonable grounds for withholding permission for an activity. Reasonable grounds for refusal would include (but are not limited to) the fact that, if the activity were to take place, a risk would arise that, within the premises of ESCG and/or the scope of its ICT systems there would be:
  - 3.7.1. Incitement to commit a criminal act.
  - 3.7.2. The unlawful expression of views.
  - 3.7.3. Support of an organisation whose aims and objectives are illegal.
  - 3.7.4. The foreseeability that an individual might be drawn into terrorism.
  - 3.7.5. A breach of the peace.
- 3.8. In determining whether permission for an activity to take place on ESCG's premises and/or through its ICT system might reasonably be refused, consideration may be given by Deputy (CEO & Principal), as is appropriate in the circumstances to:
  - 3.8.1. The safety of persons attending the activity or otherwise foreseeably affected by the activity and/or on ESCG premises who might foreseeably be put at risk.
  - 3.8.2. The security of ESCG's premises.
  - 3.8.3. The good name and reputation of ESCG.
- 3.9. An appeal against a decision of the Deputy (CEO & Principal) may be made, in writing, to the CEO & Principal within 3 days of the issue of the Deputy (CEO & Principal) decision. The decision of the CEO & Principal shall be final and binding. The CEO & Principal may also impose such conditions or restrictions on the activity taking place as it reasonably sees fit.

## 4. Practical measures

- 4.1. ESCG shall permit the use of its premises and ICT systems only by organisers or other individuals otherwise involved in an activity or proposed activity who undertake in writing to comply with all lawful instructions and conditions issued by ESCG in relation to (but not limited to) the location, arrangements, form and conduct of such activities, including adequate stewarding, chairing and provision of adequate control over entry.
- 4.2. In cases in which it is reasonable to assume that there is a possibility of disruption arising

from the taking place of an activity, ESCG may consult with the police. If the activity is a public one the police may be prepared to be present throughout the event to minimise any disruption.

- 4.3. Any organisers or other individuals otherwise involved with an activity to take place on ESCG's premises or through its ICT systems shall be responsible for any costs involved in organising and holding such activities. Save that they will only be required to bear some or all of the costs of security relating to their use of the premises in exceptional circumstances.

## 5. Sanctions & penalties

- 5.1. Breach of this code by a Governor or Co-opted Member of the Board may be removed from office under clause 9 of the Board's Instrument of Government.
- 5.2. Where those responsible for the breach are students or staff of ESCG action may be taken against them under the relevant disciplinary procedure.
- 5.3. Where those responsible for the breach are students or staff of a partner organisation of ESCG the Deputy (CEO & Principal) shall consider whether to inform the partner organisation with a view to that partner organisation taking action (whether as well as or instead of) under its relevant disciplinary procedure.
- 5.4. Where a breach of this Code of Practice takes place at an activity or as a result of an activity taking place, ESCG may take steps to assist the police to secure identification of the persons suspected of committing offences with a view to appropriate action being taken against them.

## 6. Review & amendment of the Code

- 6.1. ESCG acknowledges its duty under Part A2 of the of the Higher Education and Research Act 2017 to maintain a Code of Practice. With this end in view the Governing Body will receive a report on the operation of the Code by the Deputy (CEO & Principal), together with any recommendations for revision of it, at intervals not exceeding three years. It will also, in accordance with Part A2 of the of the Higher Education and Research Act 2017, at least once a year, bring this Code of Practice to the attention of all of its students.