UNIVERSITY OF BIRMINGHAM

CODE OF PRACTICE ON FREEDOM OF SPEECH ON CAMPUS

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Code of Practice on Freedom of Speech and External Speakers[1]

PART 1 – General principles

1. Background

1.1 Universities in England and Wales have a statutory duty under the Education (No. 2) Act 1986 Section 43 to secure freedom of speech within the law for staff, students and visiting speakers, reflecting their mission as places where new ideas can be advanced and where open and free debate can take place. In addition, freedom of thought, freedom of expression and freedom of assembly and association is enshrined within the law.[2]

1.2 However, free speech is not an unqualified privilege, and universities are subject to a range of legislation and obligations to ensure the safety and well-being of students, staff and the wider community. For example:

- The protection of freedom of speech does not extend to allowing a speaker to commit a criminal offence in the course of speaking;
- Universities are subject to the statutory duty "to have due regard to the need to prevent people from being drawn into terrorism";[3]
- Due regard of other legal responsibilities, such as those relating to preventing discrimination, harassment and victimisation and the health, safety and welfare of employees, students, external speakers and visitors.

1.3 The University of Birmingham is an academic community of staff and students. Central to this concept is the ability of all its members freely to challenge prevailing orthodoxies, query the positions and views of others and to put forward ideas that may sometimes be radical in their formulation.

1.4 Universities do not function in a vacuum, and wider conflicts and disputes, often involving ethnicity or religious faith, may sometimes find expression on campus amongst the student body or other constituencies. The challenge for universities is to identify when the pursuit of freedom of ideas and expression crosses a threshold and becomes unlawful or poses unacceptable risks to the health, safety or welfare of employees, students or visitors.

1.5 The University of Birmingham Charter states:

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[1] This Code uses 'Outside Speaker' and 'External Speaker' interchangeably. They have the same meaning.

[2] This Code of Practice has been reviewed in light of the Counter Terrorism and Security Act 2015 and the Prevent Duty Guidance For Higher Education Institutions in England and Wales issued by HM Government on 16th July 2015

[3] The Counter Terrorism and Security Act 2015 imposes the 'Prevent' duty on universities.

> "No discrimination on the grounds of political opinion, age, colour, disability, ethnic of national origin, gender, marital status, race, religion or sexual orientation shall be exercised by the University in the admission of students, or the appointment or promotion of staff or the awarding of any Degree Diploma or Certificate, or generally, in the execution of any of its Objects as laid down by the charter."

1.6 The University will ensure that the appropriate procedures are in place in order to allow all its stakeholders to report any instance (direct or indirect) of alleged hate crime, harassment, threat or intimidation and for their concerns to be investigated promptly and thoroughly, with the appropriate measures taken in response, including, where necessary, reference to the Police and other external bodies. The Good Campus Relations Group, chaired by the Director of Academic Services and College Administration, oversees campus cohesion issues.

1.7 The University Bullying & Harassment Policy underpins this approach. Concerns about compliance with this Policy or general procedures concerning freedom of speech will be addressed using the appropriate procedure; general student conduct on campus is regulated by the Student Conduct Regulations (Section 8) administered through Academic Services, and concerns relating to staff are addressed in accordance with Ordinances and the relevant Terms and Conditions of Employment.

1.8 The University will work with staff, the University of Birmingham Guild of Students, students and third party organisations, such as the Police, in order to meet its legal obligations, in order to ensure campus safety and security, and to ensure that staff and students are able to work unhindered by hostility, offensive conduct or intimidation. Where it is appropriate and legal to do so, the University may share data with third party organisations.

1.9 The principles set out in this Code of Practice will be particularly relevant to the following activities (although this list is not exhaustive):

- public meetings, arranged internally or externally;
- demonstrations or marches on campus;
- poster campaigns;
- infiltration of society meetings in order to cause disruption;
- outside groups targeting campus;
- the display of audio-visual material;
- reaction to specific events; and
- presence of any proscribed organisations or individuals on campus.

PART II – Application of this Code of Practice to meetings and events

2. General principles

2.1 The general principles set out above in this Code of Practice apply to all demonstrations, events and meetings held on campus whether including an Outside Speaker or not, together with all events held off University campus or premises which are University organised, funded or branded, including events organised by individuals, groups or societies using the University name or resources.

2.2 It is the University's intention to take a balanced and proportionate approach to the application of this Code and, having regard to this, it is not envisaged that the procedure for meetings and events (Part II) of this Code apply to the majority of normal University-organised teaching (ie that is part of an existing University programme of study) or research seminars, where such events are authorised by the relevant academic budget centre (eg by the Head of School). However, in cases where such teaching or research events involve a potentially extremist speaker, or a VIP speaker (such as an ambassador), or where other risks are raised by the event (eg which might arise in light of the current political context nationally or internationally, or because of the timing or physical location of the event, or because of health and safety issues), Part II and Part III of this Code do apply. In such cases it is the responsibility of the Organiser of the teaching or research event to follow the Code's procedures and, if in doubt, to seek advice from the Authorising Officer or Director of Legal Services (see 10) and discuss with their Head of School before proceeding with the event.

2.3 The University has established the following policies and procedures for the management of debates, demonstrations, meetings and events ("event").

2.3.1 This Code of Practice sets out below the procedure for 'Outside Speakers' (as defined in paragraph 3.1 below).

2.3.2 Events to be held outdoors on University premises are subject to the procedure for holding an outdoor event on University premises (https://intranet.birmingham.ac.uk/has/Organising-events.aspx).

2.3.3 Events to be held in rooms in University-owned buildings are managed by way of the University's online room booking system (https://intranet.birmingham.ac.uk/as/cladls/timetabling/roominformation/index.aspx).

2.4 As a University, ensuring freedom of speech and academic challenge is a fundamental duty, and this includes ensuring that alternative views are provided as part of the debate. The University considers that a balanced debate enables open and transparent academic challenge, and, in light of this organisers should consider whether the programme for an event should include additional speakers who hold alternative views to those of the initial speakers listed. Consideration should therefore be given to whether the programme for an event is balanced and whether all the speakers or views and perspectives to be expressed are similar.

2.5 So far as is reasonably practicable, no access to, or use of land or buildings of the University shall be denied to any individual or body of persons on any grounds solely connected with: (i) the beliefs or views of that individual or of that body; or (ii) the policy or objectives of that body, always providing that the University takes account of the general law such as that relating to unlawful conduct motivated by hostility or hatred towards a person's race or religious beliefs, unlawful assemblies, the presence of proscribed organisations or individuals, the duty to have due regard to the need to prevent people from being drawn into terrorism and other similar matters which may require it to have regard to what is said on its premises.

2.6 When arranging or conducting any event, or when issuing an invitation to speak at an event, organisers must be mindful that equality law prohibits universities, students' unions and student societies from acts of direct or indirect discrimination against or harassment of student members or guests. Attendees must normally have the freedom to choose where they may sit (except where specific seating is designated for speakers, or space is designated for other legitimate reasons, (for example to meet disability access requirements) or where the activity is within the exemptions specified in the Equality Act 2010, such as a meeting held for the purposes of religious observance undertaken by the adherents of a particular faith). Organisers or Outside Speakers must not place pressure on any woman to sit separately from men or vice versa as involuntary segregation will constitute unlawful discrimination. Genuinely voluntary segregation is permissible, but the organiser and the University would need evidence to satisfy themselves that any gender segregation was wholly and demonstrably voluntary, both at the booking stage and during the event.[4]

2.7 In adopting this Code, the University Council has authorised the Vice-Chancellor to appoint an officer ("the Authorising Officer") who shall act on Council's behalf to ensure, as far as is reasonably practicable, that all students, employees and other Members of the University and visiting speakers comply with the requirements of this Code. The

[4] This advice is based on the 'Gender Segregation at Events and Meetings: Guidance for Universities and Students' Unions' issued by the Equality and Human Rights Commission (last updated 30th July 2014) pp 9-10.

Authorising Officer is currently the Director of Hospitality and Accommodation Services, or his/her nominee.

PART III – Procedures for Meetings involving Outside Speakers

3. Procedures for inviting an Outside Speaker[5]

3.1 For the purposes of this Part of the Code of Practice:
'Outside Speakers' means persons who are not Registered Students, employees or other Members of the University, who are to be invited to speak on University premises or at events as set out in 3.2 on occasions other than as a normal part of a regular careers exhibition or similar event.
It is the University's intention to take a balanced and proportionate approach to the application of this Code and, having regard to this, it is not envisaged that the procedures for 'Outside Speakers' (Part III) of this Code apply to the majority of normal University-organised teaching (ie that is part of an existing University programme of study) or research seminars, where such events are authorised by the relevant academic budget centre (eg by the Head of School). However, in cases where such teaching or research events involve a potentially extremist speaker, or a VIP speaker (such as an ambassador), or where other risks are raised by the event (eg which might arise in light of the current political context nationally or internationally, or because of the timing or physical location of the event, or because of health and safety issues), Part III of this Code does apply. In such cases it is the responsibility of the Organiser of the teaching or research event to follow the Code's procedures and, if in doubt, to seek advice from the Authorising Officer or Director of Legal Services (see 10) and discuss with their Head of School before proceeding with the event.

3.2 The procedures in this Code must be observed by students, employees and other Members of the University in respect of:
- 3.2.1 any event to be held on University premises;
- 3.2.2 any event held away from the University campus or premises which is University organised, funded or branded, including events organised by individuals, groups or societies using the University name or resources;
- 3.2.3 the conduct required of all persons in connection with any such event; and
- 3.2.4 any other related or ancillary matters which the University Council from time to time may declare to fall within the remit of this Code.

3.3 Infringements of, or departures from, the procedures set out in this Code in whatever respect will render those responsible subject to disciplinary proceedings.

3.4 Additionally, if any such actions involve breaches of the law, the University will assist the relevant authorities to implement the processes of law.

[5] This Code uses 'Outside Speaker' and 'External Speaker' interchangeably. They have the same meaning.

4. Preparation for Events

4.1 The organisers ("the Organisers") of any event shall ensure that a single person from among their number is appointed as Principal Organiser. For student societies affiliated to the Guild of Students, this will be the Guild President or their nominee.

4.2 It is the responsibility of the Principal Organiser to ensure that the chair of an event is fully aware of the requirements of this Code of Practice.

4.3 Early on in the organisation of an event, the Principal Organiser will be expected to discuss any potentially controversial invitations to Outside Speakers with the Head of Budget Centre (for example the Head of School) or equivalent, or, where the invitation is to be issued by the Guild or its related bodies, with the President or Chief Executive of the Guild of Students and with any other relevant members of University staff as may be appropriate.

4.4 Organisers of events have a duty to ensure that the law is not infringed in the preparations for or conduct of an event, for example the commission or incitement of racist or religious crime, or in relation to the duty to have regard to prevent people being drawn into terrorism.

5. Application for permission to invite an Outside Speaker

5.1 The Principal Organiser of an event shall ensure that, at least 15 working days before the date proposed for the event, a pro forma Speaker Request Form ("the Form") (https://intranet.birmingham.ac.uk/has/Freedom-of-Speech/Inviting-an-outside-speaker-onto-University-premises.aspx) is completed and submitted to the Authorising Officer. The Form will require details of the name of the speaker, the proposed venue, and the time of arrival and departure of the speaker together with the proposed topic or title and a brief synopsis of the address. The Form will also require a counter signatory from the Principal Organiser's Head of Budget Centre (eg Head of School) in the instances where the Principal Organiser and the Head of Budget Centre are not the same person.

5.2 On receipt of the Form, the Authorising Officer (or nominee) will review the proposal. The Authorising Officer may require further information from the Principal Organiser which must be provided promptly. The University reserves the right to request a list of intended attendees for the Meeting, and a copy of any publicity material for distribution prior to the event. All publicity material must comply with the Policy on Advertising and Displays on University Property (https://intranet.birmingham.ac.uk/estates/index.aspx).

5.3 The Authorising Officer will consider the application, taking into account the University's statutory and other legal obligations, and in particular will consider whether the event poses any risks to staff, students, visitors or the University.

5.4 Where risks are identified, the Authorising Officer will assess those risks and consider whether the Principal Organiser has proposed measures which would adequately address those risks.

5.5 The Authorising Officer may consult others as they consider appropriate, including with the Police or any other third parties or organisations as is appropriate in the circumstances. If the Authorising Officer considers that the risks associated with the application are high or the views being expressed or likely to be expressed might constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups, they should consult with other University officers as appropriate to determine whether the University is convinced that such risk can be mitigated and the event appropriately managed without the cancellation of the event.

5.6 If the Authorising Officer is satisfied that:

- there are no risks associated with the event; or
- risks associated with the Outside Speaker can be adequately or fully mitigated (as appropriate)

the Authorising Officer shall, normally within 5 working days of receipt of the completed Form, provide the Principal Organiser with a written statement granting permission for the event.

5.7 Permission to invite the Outside Speaker may be granted subject to such conditions as the Authorising Officer considers reasonably necessary to secure fulfilment of the University's statutory responsibilities, and to ensure as far as possible that the identified Outside Speaker or speakers may enter and leave University premises and have the confidence of a safe environment. These may include conditions:

- concerning the admission or exclusion of external media and communications personnel;
- that tickets be issued for events which are open to the public;
- that an adequate number of stewards is made available. The suitability of the nominated stewards must be to the satisfaction of the Authorising Officer, who may decide that University security staff should be additionally present at the event; or
- concerning the relocation of the meeting to a specified venue;
- that the event be declared a public meeting;

- that provisions be made for checking the identity of persons attending the event;
- that University security staff be responsible for all security arrangements connected with the event;
- that a member of security staff be appointed as "Controlling Officer" for the event, to whose authority and jurisdiction the chairperson or leader of the event shall defer;
- relating to the use of public address systems during an event including constraints to be placed on their use;
- relating to the number of speakers, so as to ensure a balanced debate.

This is not an exhaustive list, and the Authorising Officer may impose such conditions as are considered reasonable and appropriate.

5.8 Where any event includes speakers with extremist views that, in the opinion of the Authorising Officer, raise issues in relation to the University's legal responsibilities, a specific condition can be imposed that those speakers are challenged with opposing views as part of that same event, rather than in a separate forum.

5.9 The Authorising Officer may consider and review any associated application relating to the event, for example, an application to hold it outdoors on University property or as part of the University online room booking system, and the Authorising Officer may decide that the associated application should be refused, withdrawn or be subject to such conditions as are considered reasonable and appropriate.

5.10 If the Authorising Officer is not satisfied that adequate arrangements can be or are being made to manage any risks associated with the Outside Speaker, or the event, permission will be refused or withdrawn.

5.11 All Organisers concerned with the organisation of an event for which written permission has been given shall be required to comply with any and every condition laid down by the Authorising Officer under the provisions of this Code. In addition, all Organisers must ensure that any the terms and conditions applicable as part of the room booking are complied with.

6. Appeals

6.1 Appeals against decisions of the Authorising Officer should be made within seven working days and in writing to the Vice-Chancellor or authorised nominee, whose decision shall be final.

7. Conduct of the Meeting

7.1 The chair and Principal Organiser of an event have a duty to ensure as far as possible that both the audience and the speaker act in accordance with the law during the course of the event.

7.2 In case of unlawful or unreasonably disruptive conduct by members of the audience, the chair or Principal Organiser is required to give appropriate warnings and, in case of continuing unlawfulness or disruption, to require the withdrawal or removal of persons concerned by stewards or security staff. Such persons, if students, employees or other Members of the University, may be liable to disciplinary proceedings under University regulations.

7.3 If the speaker infringes the law (such as, for example, sexually harasses an attendee, or uses racial abuse, or does not have due regard to the need to prevent people being drawn into terrorism, or threatens physical violence) the chair or Principal Organiser shall be at liberty to curtail or end the event.

7.4 The chair or Principal Organiser is also responsible for calling for Police assistance to prevent serious disorder.

8. External Bodies or Organisations

8.1 Any licences or permissions granted to bodies outside the University to hold events on University premises shall be subject to the same full disclosure of information as set out above. A guarantee may be required by the Authorising Officer from the Licensee that satisfactory arrangements will be put in place by the Licensee in relation to matters such as security and indemnity for recovery of costs and/or damages, and such other matters as may be required by the Authorising Officer.

9 Reporting

9.1 The University may report matters under this Code to the University Council, and to HEFCE as the University's regulatory authority, as required.

10 Advice

10.1 If in doubt about whether this Code applies to an event or speaker, University staff, students and other Members of the University should seek advice. Advice on the Code can be sought from the Authorising Officer (Stuart Richards on s.richards.2@bham.ac.uk or 0121 414 6228) and their nominee (Julie Zacaroli on j.d.zacaroli@bham.ac.uk or 0121 415 8403) and the Director of Legal Services (Carolyn Pike on c.m.pike@bham.ac.uk or 0121 414 3916).