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## **FREEDOM OF SPEECH POLICY**

### **1. PURPOSE AND PRINCIPLES**

- 1.1. This document sets out the College's Policy on Freedom of Speech. It incorporates the College's policy on visiting speakers and forms the College's Code of Practice on Free Speech.
- 1.2. This Policy draws on [guidance](#) published by the Equality and Human Rights Commission which highlights the following key principles:
- Everyone has the right to free speech within the law.
  - Education providers should always 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 speech and academic freedom.
  - Peaceful protest is a protected form of expression; however, protest should not be allowed to shut down debate or infringe the rights of others.
- 1.3. This Policy applies to:
- (i) all staff and students of the College;
  - (ii) visiting speakers and all other persons invited or otherwise lawfully on College premises; and
  - (iii) the Students' Union, including its constituent societies, clubs and associations, and its elected officers.
- 1.4. Nothing in this Policy shall interfere with the right to assemble, demonstrate, protest, speak or otherwise express oneself within the law. However, illegal or unlawful acts will not be tolerated.
- 1.5. A summary of the relevant legal framework is provided at Appendix 1.

### **2. COLLEGE CURRICULUM, POLICIES AND PROCEDURES**

- 2.1. The College will ensure that its teaching, curriculum, policies and procedures reflect its duty to secure, so far as is reasonably practicable, freedom of speech

and academic freedom within the law. In particular, the College shall ensure that:

- (i) no individual will be subjected to disciplinary action or less favourable treatment by or on behalf of the College as a result of the lawful exercise of their freedom of speech or academic freedom; and
- (ii) its processes for programme development and approval, academic assessment and quality assurance will respect the rights of freedom of speech and academic freedom.

### **3. STEPS THE COLLEGE WILL TAKE TO ENSURE FREEDOM OF SPEECH**

3.1. The College will, as a minimum:

- (i) ensure that this Policy and the principles within it are brought to the attention of staff and students on their arrival at the College;
- (ii) draw this Policy to the attention of students annually;
- (iii) ensure that all curriculum staff receive training on their role in helping to discharge the College's obligations in relation to freedom of speech and academic freedom;
- (iv) where new policies and procedures are introduced, ensure that consideration is given to their impact on freedom of speech and academic freedom;
- (v) ensure adequate and effective mechanisms are in place for people to whom this Policy applies to raise concerns in relation to freedom of speech and academic freedom;
- (vi) survey staff, students and other stakeholders periodically to secure their views on whether freedom of speech and academic freedom at the College are being adequately protected, and take such findings in account;
- (vii) where concerns are raised regarding freedom of speech or academic freedom, ensure that, so far as is reasonably practicable, such concerns are addressed and any lessons to be learned are incorporated into a review of relevant policies, procedures and practices.

### **4. FREEDOM OF SPEECH**

4.1. Freedom of speech includes both the spoken and written word, as well as actions, gestures and the display of images intended to show meaning.

4.2. Everyone has the right to freedom of speech. This means everyone has the right to express lawful views and opinions freely without interference from the state or other bodies carrying out public functions, including the College. This is true even when these views or opinions may 'offend, shock or disturb' others. The European Court of Human Rights has described the right to freedom of speech as one of the 'essential foundations of a democratic society', because it gives everyone the right to exchange information, debate ideas and express opinions, including political views. Debate and conversation helps challenge discrimination, reduce intolerance and harmful attitudes, and build strong, positive communities. Freedom of speech also supports artistic, scientific and commercial development.

- 4.3. Freedom of speech is a key part of the education experience. Sharing ideas freely is crucial for learning, and allows students to think critically, challenge and engage with different perspectives. Therefore, education providers should encourage discussion and exchange of views on difficult and controversial issues.
- 4.4. However, freedom of speech can be limited by law in certain limited circumstances, for example, to prevent crime, for national security or public safety, or to prevent unlawful discrimination and harassment.

## **5. ACADEMIC FREEDOM**

- 5.1. The College is committed to securing academic freedom. Academic freedom is the right for academic staff 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 privileges at the College, or reducing the likelihood of securing a promotion or different role at the College. Academic freedom must be exercised within the law and is subject to this Policy.
- 5.2. Any person or group to whom this Policy applies shall not prevent the holding of any lecture, tutorial or other academic activity because of the views held or lawfully expressed, or the views reasonably likely to be expressed, by the lecturer or student or tutor concerned, except as provided for in paragraph 7.3.
- 5.3. Any person or group to whom this Policy applies shall not prevent any student, or group of students, from attending any academic activity required or associated with their course because of the views or beliefs held or lawfully expressed by that student or group of students, or because of the reasonable likelihood that such views will be expressed.

## **6. LIMITATIONS ON FREEDOM OF SPEECH**

- 6.1. The College has a duty to protect its staff and students from unlawful discrimination, harassment, intimidation or threats of violence on the grounds of race, sex, age, religion or philosophical belief, sexual orientation, disability, gender reassignment, marriage and civil partnership, or pregnancy and maternity. However, the provisions of the Equality Act 2010 should not be interpreted to undermine freedom of speech and academic freedom. As a result, students' learning experience and the working environment of staff may include exposure to research, course material, discussion or speakers' views that they find offensive, contentious or unacceptable but are nonetheless lawful and unlikely to be considered unlawful harassment or discrimination under the Equality Act 2010.
- 6.2. The College is subject to the public sector equality duty and when it is exercising its functions it must have due regard to the following three aims:
  - (i) the need to eliminate unlawful discrimination, harassment and victimisation;
  - (ii) the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - (iii) the need to foster good relations between people who share a relevant protected characteristics and persons who do not share it.

In the context of its duties in relation to freedom of speech and academic freedom, the College will consider the potential impact on staff and students who may feel vilified or marginalised by views expressed, and how to ensure those students feel included and welcome within the College environment and able to fully participate in activities and discussions.

## **7. VISITING SPEAKERS - CODE OF PRACTICE**

- 7.1. Colleges have a legal obligation to take 'reasonably practicable' steps to ensure and promote freedom of speech within the law for their members, students, employees and visiting speakers. The College welcomes events and opportunities for individuals or organisations to speak to students and staff. This includes events on College premises organised by the College's Students' Union. This also covers any individual or group wishing to use the College for events and individuals or organisations wishing to hire or use any of the College's buildings.
- 7.2. Freedom of speech is a basic human right that is protected by law. However, the freedom to express views needs to be balanced with the need to secure freedom from harm for students and communities. The duty to promote and secure freedom of speech and academic freedom does not mean that any group or speaker has a right to be invited to speak to students on College premises. However it does mean that a speaker who has been invited to speak at a meeting or other event should not be stopped from doing so unless:
- they are likely to express unlawful speech, or
  - their attendance would lead the College to breach other legal obligations and no reasonably practicable steps can be taken to reduce these risks.
- 7.3. It shall be reasonable for the College to refuse a speaker or an event or to withhold facilities for any event to which this Policy applies where the College reasonably believes (from the nature of the speaker or from similar past events held at the College or elsewhere) that:
- (i) the views likely to be expressed by any speaker are contrary to the law;
  - (ii) the intention of any speaker is likely to be to incite breaches of the law or to intend for breaching of the peace to occur;
  - (iii) the event will include, or is likely to include, the denial of the right to hold or to express an opposing opinion;
  - (iv) the speaker and/or the organisation they represent advocates or engages in violent or non-violent extremism in the furtherance of their political, religious, philosophical or other beliefs;
  - (v) the views likely to be expressed by any speaker are for the promotion of any illegal organisation or purpose, including organisations listed on the government's list of proscribed terrorist groups or organisations; or

- (vi) it is in the interest of public safety, the prevention of disorder or crime or the protection of those persons lawfully on premises under the control of the College, that the event does not take place.

7.4. The expression of views that may be controversial, but do not breach the law, will not constitute reasonable grounds for a refusal.

7.5. If the College becomes aware of any proposed event or activity that it has reason to believe falls within the above provisions, and having gone through the procedure set out below no reasonably practical steps or risk mitigations can be put in place, then the College shall be entitled to prohibit such meeting or activity.

7.6. Where the College is reasonably satisfied that the otherwise lawful expression of views at an event is likely to give rise to disorder or threats to the safety of participants or the wider College community, the College shall consider what steps are necessary to take to ensure:

- (i) the safety of all persons;
- (ii) the maintenance of order; and
- (iii) the security of premises controlled by the College.

### **Assessing and Managing Risk**

7.7. Risks involved in inviting visiting speakers and staging events will be considered on a case by case basis. These include but are not limited to: security of premises, the safety of persons attending or in the vicinity, the welfare of students and staff, and the ability to ensure good conduct of speakers and participants.

7.8. There may be occasions where conditions are attached to the approval of visiting speakers in order to manage and mitigate risks to protect College staff and students. The College shall ensure that such conditions go no further than is necessary to address the risks identified. These conditions may include:

- Requesting submission of speeches, presentations, discussion topics or questions in advance of the meeting;
- Limitation on attendees, either by number or student status;
- Limitations on promotion and advertising of the event by approval of any advertising material, restriction of where material can be placed, or limitation of what types of material can be used;
- Declaration of attendees in advance of the meeting;
- Supervisors to be provided by the organisation;
- Presence of College staff to ensure good order;
- Limitation on what attendees may bring to the event;
- Not allowing banners, flags or place cards or similar items into the building or onto relevant parts of the site;
- Closing down the event if there is a breach of the law or threat to the safety of attendees or event speakers, even if the event is already underway;
- Limiting the presence of press/media or media production equipment.

- 7.9. Permission for an event may be refused if there are concerns that the event may risk student safety, violate health and safety requirements or if the event risks violating legislation as regards hatred, discrimination or incitement.
- 7.10. Event organisers are not permitted to raise or gather funds on College premises without express permission in advance from the College's Director of Student Services and Marketing.

### **Our Procedure**

- 7.11. The College's Students' Union, staff members or external event organisers must notify the College's Director of Student Services and Marketing, or in the case of curriculum staff, their Director of Curriculum, of any events that involve visiting speakers. No event involving any visiting speakers may be publicised or considered confirmed until the speaker has been cleared through the procedure detailed below. The College reserves the right to refuse or delay any event with a visiting speaker if this Policy has not been followed.
- 7.12. Any room booking with a visiting speaker involved must be made no later than 14 days before the date of the event. Any request made outside this timeframe may be rejected. When making an external booking for a room the appropriate booking form needs to be completed in addition to any forms required by this Policy.
- 7.13. Where an external booking involving a visiting speaker is made the following information must be obtained using the SharePoint list at <https://myleicestercollegeac.sharepoint.com/sites/teams/principals/secretaryandclerks/Lists/Request%20for%20External%20Speaker/AllItems.aspx>:
- a brief description of the session including title and content;
  - name and contact details of the speaker and organisation hosting the event;
  - date and time of the session; and
  - brief biography/reference of the speaker.
- 7.14. The information should then be passed to the relevant College Director, who must check the details, group links and other connections. If there is cause for a referral then the details will be shared with the Deputy Principal/CEO and the Director of Student Services and Marketing for further investigation and guidance. Reasons for a referral could include:
- any person or group on / or linked to the UK Government list of [proscribed terrorist organisations](#);
  - talks or representatives from organisations considered to be extremist;
  - a speaker who is known to have spoken previously at another institution on a topic that has caused fear or intimidation of students or staff;
  - a speaker known to/or likely to incite harm to specific individuals.
  - a link/or links to any person or group that may result in reputational damage to the College;
  - a speaker who has significant profile and attracts a following that could create crowd control and/or health and safety issues;
  - a speaker from a political party during an election period.

- 7.15. In circumstances where curriculum staff invite a speaker to address their students then they should familiarise themselves with the information in this Policy and, in addition, they **must** stay with the students whilst the speaker addresses them. If at any point the member of College staff becomes concerned about the lawfulness of the speaker's presentation, they should stop the session immediately and provide a counter point of view to the students. The incident should then be reported to their Curriculum Director. It is important that the counter narrative is provided at the same time to the same group of students so that undue influence from the speaker is minimised.
- 7.16. Except for in exceptional circumstances, the use of College premises by any individual or organisation shall not be on terms that require the individual or organisation to bear some or all of the costs of security relating to their use of College premises.

### **Speaker Validation**

- 7.17. In most cases the College will give permission for an event involving a visiting speaker but in cases where a referral is made this paragraph will apply. The relevant Director will conduct a short investigation into the speaker and the event. They may take one of the following decisions:
- to not permit the event with the visiting speaker to go ahead;
  - to permit the event with the visiting speaker to go ahead unrestricted; or
  - to permit the event with the visiting speaker to go ahead with mitigations in place to reduce any risks.

This decision will be communicated in writing to the event organiser within 10 working days.

## **8. SANCTIONS**

- 8.1. Failure to observe the requirements of this Policy or of any conditions implemented under it makes any student or member of staff concerned liable to disciplinary action by the College and, at the discretion of the College, any booking of a room may be regarded as void.
- 8.2. If any actions involve breaches of the law, the College will assist the prosecuting authorities as appropriate.

## **9. APPEALS**

- 9.1. Anyone wishing to appeal a decision concerning approval of a visiting speaker or to raise any other concerns around the College's application of this Policy may do so using the College's Complaints Policy.

## **10. COMMUNICATION AND REVIEW OF POLICY**

- 10.1. This Policy will be published on the College's website and will be reviewed every three years or more frequently if required.
- 10.2. When significant amendments are required, the revised Policy will be submitted to the Governing Body for approval.

**LEGAL FRAMEWORK****1. Education (No. 2) Act 1986**

- 1.1. Section 43 of the Education (No. 2) Act 1986 states that every individual and body of persons concerned in the government of universities and colleges 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 and for visiting speakers. "Within the law" means that where speech breaches some other area of law, there is no obligation on the College to ensure it can be expressed.
- 1.2. This includes particularly the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with:
  - a) The beliefs or views of that individual or of any member of that body; or
  - b) The policy or objectives of that body.
- 1.3. The Act requires that the College's governing body shall, with a view to facilitating the discharge of this duty, issue and keep up to date a code of practice setting out:
  - a. The procedures to be followed by members, students and employees of the establishment in connection with the organisation:
    - i) of meetings which are to be held on premises of the establishment and which fall within any class of meeting specified in the code; and
    - ii) of other activities which are to take place on those premises and which fall within any class of activity so specified; and
  - b. the conduct required of such persons in connection with any such meeting or activity.
- 1.4. Additionally, the Act states that every individual and body of persons concerned in the government of the College shall take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to secure that the requirements of the Code of Practice for the College are complied with.

**2. Human Rights Act 1998**

- 2.1. The College, as a public authority, is obliged under the Human Rights Act to act in a manner compatible with the European Convention on Human Rights ("the Convention"). If it acts in a manner incompatible with Convention rights it could face claims for damages and/or judicial review.

## Freedom of Expression

Article 10.1 of the Convention states that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The exercise of these freedoms, since it carried with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of judiciary.

## Freedom of thought, conscience and religion

Article 9 of the Convention provides that everybody has the right to freedom of thought, conscience and religion. The freedom to hold a particular belief is absolute, but the right to manifest religion or belief (i.e through worship, observance, and teaching) is a qualified right.

Article 9 protects non-religious beliefs provided the following criteria are met:

- The belief must be genuinely held;
- It must be a belief and not an opinion or viewpoint based on the present state of information available;
- It must be a belief as to a weighty and substantial aspect of human life and behaviour;
- It must attain a certain level of cogency, seriousness, cohesion and importance; and
- It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.

## **2.2. Counter Terrorism and Security Act 2015 (Prevent Duty)**

The Counter Terrorism and Security Act 2015 means the College must “have due regard to the need to prevent people from being drawn into terrorism” (Section 26(1)). The College must also “have particular regard to the duty to ensure freedom of speech” and “to the importance of academic freedom” (Section 31). Under Section 29, the College must “have regard to any such guidance in carrying out that duty”.

The College is complying with this duty in all its aspects, which in practice means striking a fine balance between concerns around extremism and concerns around censorship. This duty must be interpreted in a manner compatible with the legal duties on providers to secure freedom of expression, speech and academic freedom.

## 2.3. Equality Act 2010

### Harassment

The Equality Act 2010 prohibits harassment related to a protected characteristic, such as gender reassignment, sex or religion and belief. Harassment consists of engaging in unwanted conduct related to the protected characteristic which has the purpose or effect of violating a person's dignity or subjecting them to an intimidating, hostile, degrading, humiliating or offensive environment.

If the conduct has the effect (rather than the purpose) of violating dignity etc, it must be reasonable in the circumstances for the conduct to have had that effect, taking into account the perception of the individual. This is an objective test.

In the college context, guidance issued by the Equality and Human Rights Commission states as follows:

*“The 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.*

*Views expressed in teaching, debate or discussion on matters of public interest, including political or academic communication, are therefore unlikely to be seen as harassment, even if they are deeply offensive to some of the people who are listening, as Article 10 will protect them.”*

It is therefore extremely unlikely that academic discussions, or discussions about matters of public interest will constitute harassment, even though some may find them deeply offensive or upsetting.

### Public sector equality duty

The Equality Act 2010 imposes a general equality duty on public authorities (“PSED”). This means that the College must, when it is exercising its functions, have due regard to the following three aims:

- a. The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- b. The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- c. The need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In the EHRC guidance referred to above, the discharge of the PSED in the context of freedom of expression is addressed as follows:

*“This means HEPs have a legal responsibility to think about how they can promote equality and minimise tension and prejudice between different groups on campus. This is something that HEPs must consider when they are promoting freedom of expression. For example, when a HEP takes steps to ensure a debate on a divisive topic can go ahead – to protect free speech – it must consider the potential impact on students who may feel vilified or marginalised by the views expressed. They should think about how to ensure those students feel included and welcome within the HEP environment. HEPs who are subject to the s.43 duty should therefore use the PSED to encourage good relations, but without restricting lawful free speech.”*

#### Other types of discrimination

It is possible that other types of discrimination may be engaged when considering freedom of speech and these are summarised briefly below.

Direct discrimination occurs where the College treats a person less favourably because of a protected characteristic.

Indirect discrimination occurs where a person is subject to a provision, criterion or practice (“PCP”) which is applied to people generally but which puts or would put people with the protected characteristic at a particular disadvantage by comparison to others. If the PCP is a proportionate means of achieving a legitimate aim there is no discrimination.

The College must not directly or indirectly discriminate when acting as a service provider, employer or education provider.

#### **2.4. Charity law**

The College is also subject to relevant charity law, and its trustees are responsible for ensuring that the institution complies with charity law and any other laws that apply to it.

#### **2.5. Constitutional considerations**

The College must comply with any relevant provisions relating to freedom of speech and academic freedom in its constitutional documents.

#### **2.6. Regulatory considerations**

It is a condition of the College’s registration with the OfS that it delivers, in practice, the OfS’ “public interest governance principles”. These include a commitment to academic freedom and freedom of speech. In its guidance on freedom of speech, the OfS states, “we stand for the widest possible definition of freedom of speech: anything within the law”.