

## **CODE OF PRACTICE ON FREEDOM OF SPEECH**

This Code of Practice sets out the University of Worcester's approach to freedom of speech for the benefit of students and staff of the University. The legal framework within which the University operates is set out at Annex A.

### **1 INTRODUCTION**

- 1.1 The University is committed to doing all that it reasonably practicably can to ensure freedom of speech and expression within the law as it is one of the fundamental principles upon which the University is founded. The University is committed to ensuring that students and staff have freedom to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk.
- 1.2 Every person employed at the University and Students' Union and every student enrolling at the University should be aware that joining the University community involves obligations and responsibilities, which are consistent with the above principle and law.
- 1.3 This Code of Practice sets out the rights and obligations inherent in supporting the principle of freedom of speech within the law. The Code applies to:
  - a) all members, staff and students of the University;
  - b) visiting speakers and all other persons invited or otherwise lawfully on the premises; and
  - c) the Students' Union, including its constituent societies, clubs and associations.

### **2 GENERAL PRINCIPLES AND LEGAL DUTIES**

- 2.1 The University respects the rights and freedoms of individuals, and the principles of equality, diversity and inclusion. All members of our community share the responsibility for maintaining an environment of reasoned enquiry, mutual tolerance and civility. However, it is not the proper role of the University to attempt to restrict the discussion of ideas and opinions that are within the law, no matter how distasteful, unwelcome or offensive those ideas and opinions may seem to some. This is especially the case regarding matters of academic and public interest.
- 2.2 However, association with the University as an academic institution confers a degree of authority and legitimacy on views and provides privileged access to a scholarly audience for the speakers it hosts. In assessing what is reasonably practicable to do to ensure and promote freedom of speech and academic freedom in any case, the University does not regard itself as obliged to provide a platform to individuals who wish to promote views that are manifestly at odds with empirically verifiable objective facts or not susceptible to reasoned enquiry and debate. Staff and students making decisions about invitations to speakers should always carefully assess the contribution a

discussion or event will have to the advancement of education in a university setting, and what form the event should take to best deliver that outcome.

- 2.3 Nothing in this Code shall be taken to prohibit the lawful exercise of the right to peacefully protest. Protests against an event must however be conducted without infringing the rights of others, including others' rights to freedom of speech. No protest should prevent an event allowed under this Code from going ahead as scheduled.
- 2.4 It shall be the duty of all those subject to the Code to assist the University in upholding the rights of freedom of speech set out in this Code.

### **FREEDOM OF SPEECH**

- 2.5 The University is under a legal duty to take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for its members, students and employees, and for visiting speakers.
- 2.6 In compliance with its legal duties, the University will ensure, so far as is reasonably practicable, that the use of its premises is not denied to any individual or group on any ground connected with:
- a) the beliefs or views of that individual or any member of that body; or
  - b) the policy or objectives of that body.
- 2.7 However, the University has the right and power to regulate the use of its premises, and is under no legal obligation to hold meetings on campus which are open to the outside public.

### **ACADEMIC FREEDOM**

- 2.8 The University is committed to ensuring that academic staff have the freedom, within the law, to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions without placing them at risk of losing their jobs or privileges at the University, or reducing the likelihood of securing promotion or different jobs at the University. In exercising these rights, academic staff have the responsibility to comply with this Code, the University's [Standards of Conduct](#) and other relevant staff policies and procedures.
- 2.9 The principles of academic freedom shall extend to the performance by all staff of their duties and responsibilities and to any visiting or guest lecturer invited by the University. They shall also extend to students presenting or exhibiting work produced during the course of their studies with the University.
- 2.10 No person or group to whom this Code applies shall prevent or seek to prevent the holding or continuation of any lecture, tutorial, exhibition, or other academic activity (whether or not within the University) because of the views held or expressed, which are reasonably likely to be expressed or which it is believed may be expressed by the lecturer or tutor or student concerned, except as provided for in paragraph 4.2.

- 2.11 No person or body to whom this Code applies shall prevent or seek to prevent any student or group of students from attending any academic activity required by, or properly associated with, the course for which they are enrolled (whether or not within the University) because of the views or beliefs held or lawfully expressed by that student or group of students or because of the reasonable likelihood or the belief that such views will be expressed.

### **UNIVERSITY PROGRAMMES, POLICIES AND PROCEDURES**

- 2.12 The University will ensure that its teaching, curriculum, policies and procedures reflect its duties to ensure, so far as is reasonably practicable, freedom of speech and academic freedom within the law. In particular:
- a) Its processes for programme development and approval, quality assurance and academic assessment will respect the rights of freedom of speech and academic freedom;
  - b) Its processes for facilitating research will respect the rights of freedom of speech and academic freedom;
  - c) No individual will be subjected to disciplinary action or other less favourable treatment by or on behalf of the University because of the lawful exercise of freedom of speech or academic freedom.

### **STEPS THE UNIVERSITY WILL TAKE TO ENSURE FREEDOM OF SPEECH**

- 2.13 As a minimum, the University will:
- a) Ensure this Code of Practice and the principles set out within it are drawn to the attention of staff and students on arrival at the University;
  - b) Draw the Code of Practice to the attention of students annually;
  - c) Ensure that staff are appropriately trained, in particular those who are making decisions that may affect free speech and academic freedom matters;
  - d) Ensure that whenever relevant policies and procedures are introduced, consideration is given to their impact on freedom of speech and academic freedom;
  - e) Periodically survey staff, students and other stakeholders to secure their views on whether freedom of speech and academic freedom at the University are being adequately protected and take the findings into account;
  - f) Ensure that there are adequate and effective mechanisms to raise concerns about freedom of speech and academic freedom;
  - g) When concerns are raised about freedom of speech and academic freedom, ensure that, so far as is reasonably practicable, they are addressed and any lessons to be learned are incorporated into a review of relevant policies, practices and procedures.

## **3 LIMITATIONS ON FREEDOM OF SPEECH**

- 3.1 The University 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 speaker's 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.

3.2 The University 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.

3.3 In the context of its duties in relation to freedom of speech and academic freedom, the University 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 University environment and able to participate fully in activities and discussions.

## 4 EVENTS

4.1 Where any person or body subject to the obligations of this Code wishes to hold any event for the expression of any views or beliefs held or lawfully expressed on premises controlled by the University or which are funded or endorsed by the University, consent shall not be unreasonably refused. Any conditions imposed on the holding of the event shall be kept to the minimum necessary in light of any risks identified in holding the event.

4.2 It shall be accepted as reasonable to refuse consent, or withhold facilities, or impose conditions on any event to which this Code applies where the University reasonably believes (from the nature of the speakers or from similar events in the past whether held at the University or otherwise) that:

- a) the views likely to be expressed by any speaker are contrary to the law;
- b) the intention of any speaker is likely to be to incite breaches of the law or to intend breaches of the peace to occur;
- c) the event will include or is likely to include the denial of the right to hold or to express an opposing opinion;
- d) the speaker and/or the organisation they represent advocates or engages in violence or non-violent extremism in the furtherance of their political, religious, philosophical or other beliefs;
- e) 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](#);

- f) 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 University, that the event does not take place.

By 'speaker', this Code means any organiser or other person invited to address the meeting other than members of any audience at that meeting.

4.3 Subject to paragraphs 4.2 and 4.4, where the University is reasonably satisfied that the otherwise lawful expression of views at any event is likely to give rise to disorder or threats to the safety of participants or the wider University community, the University shall consider what steps it is necessary to take to ensure:

- a) the safety of all persons,
- b) the maintenance of order, and
- c) the security of the premises controlled by the University.

4.4 The University may impose such conditions and requirements upon the organisers as are reasonably necessary in all the circumstances, ensuring that the conditions and requirements go no further than is necessary to address the risks it has identified. These may include, but are not limited to, requirements as to provision of stewards, variation of location and time, and whether the event shall be open to the public at large.

4.5 Where the University concludes that imposing conditions would not be sufficient to prevent serious disorder within premises subject to their control, it may decline to permit such events to be held. Before doing so, however, the University will generally consult the police with a view to establishing whether serious disorder can be prevented or otherwise dealt with appropriately by attendance of police officers or alternative conditions.

4.6 Where any person or body to whom this Code applies is engaged in the organisation of any event on premises controlled by the University at which it is reasonably suspected that any of the criteria in 4.2 may apply, the organiser must comply with the procedures set out as Annex B to this Code.

4.7 Except as set out above, it shall be contrary to this Code for any person or body subject to the Code to prevent or seek to prevent any event subject to this Code from being held or from continuing.

## 5 **BREACHES OF THIS CODE**

5.1 Where a breach of the provisions of this code is committed by a member of staff, the Staff Disciplinary Policy will apply.

5.2 Where a breach of the provisions of this code is committed by a student, the Student Disciplinary Procedures will apply.

5.3 Where a breach of this Code occurs, it shall be a duty of all to whom this Code applies to take all reasonable steps to provide reasonable assistance in the identification of persons involved in that breach.

5.4 Where breaches of the criminal law occur, the University shall, where appropriate, assist the police. In respect of any criminal charges, the University shall not proceed with any disciplinary proceedings in respect of the same matters until the conclusion of any ongoing criminal proceedings.

## 6 **MONITORING AND REVIEW OF THIS CODE**

6.1 The operation of the Code shall be monitored by the University Secretary.

6.2 Any concerns regarding the implementation of the Code or the actions of the University in respect of it should be raised in the first instance with:

- where concerns are raised by a student: PVC Students email: [pvcstudents@worc.ac.uk](mailto:pvcstudents@worc.ac.uk)
- where concerns are raised by a member of staff: Director of HR email: [HRDirector@worc.ac.uk](mailto:HRDirector@worc.ac.uk)
- where concerns are raised by visiting speakers: University Secretary email: [unisec@worc.ac.uk](mailto:unisec@worc.ac.uk)

6.3 The Board of Governors will review formally the operation of the Code on an annual basis.

## **Annex A – LEGAL FRAMEWORK**

### **1.1 Education (No. 2) Act 1986**

Section 43 of the Education (No. 2) Act 1986 states that every individual and body of persons concerned in the government of universities 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 University to ensure it can be expressed.

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.

The Act requires that the University’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.

Additionally, the Act states that every individual and body of persons concerned in the government of the University 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 University are complied with.

### **1.2 Human Rights Act 1998**

The University, 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.

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

The Counter Terrorism and Security Act 2015 means the University must “have due regard to the need to prevent people from being drawn into terrorism” (Section 26(1)). The University 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 University must “have regard to any such guidance in carrying out that duty”.

The University 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 universities to secure freedom of expression, speech and academic freedom.

## 1.4 **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 university 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 University 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 University 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 University must not directly or indirectly discriminate when acting as a service provider, employer or education provider.

#### 1.5 **Charity law**

The University 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.

#### 1.6 **Constitutional considerations**

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

#### 1.7 **Regulatory considerations**

It is a condition of the University’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”.

## **Annex B - EVENTS**

1. Any person or body wishing to hold an event on premises controlled by the University must complete the relevant room booking form and provide further details of the event if required. This requirement applies to both internal and external bookings for any venue controlled by the University. It is a mandatory requirement that the organisers of any event indicate they accept the terms of this Code when making a venue booking.
2. Any person or body to whom this Code applies who is engaged in the organisation of any event on premises controlled by the University at which it is reasonably suspected that any of the criteria in section 4.2 of the Code may apply shall normally give the designated officer (see footnote) not less than 28 days' notice in writing of such a proposed event. The designated officer shall inform the person or body organising the event in writing within 7 days of the day of the notice whether the meeting may go ahead and of any conditions with which the organiser must comply.
3. If any person or organisation believes that the actions of the designated officer in refusing permission or facilities for the holding of any event, or the actions of the University in imposing conditions are unreasonable, it shall have the right to make representations. Any representation shall be made to the Pro Vice Chancellor (Students) or nominee within 7 days of the date of the letter confirming the original decision. The Pro Vice Chancellor (Students) or nominee shall consider such representations and within 7 days shall confirm in writing to the relevant person or organisation whether the original decision is to be upheld or varied.
4. If the event organiser has been unable, for legitimate reasons, to comply with the normal requirements to provide 28 days' notice to the designated officer, the Pro Vice Chancellor (Students) or nominee shall, at their absolute discretion, have the right to vary this procedure in order to ensure that a final decision is provided to the organiser prior to the date of the meeting.
5. In addition to any specific conditions imposed under this procedure, the organisers of the event must ensure so far as is reasonably practicable that:
  - a. there is proper security and organisation (including stewarding and chairing) of the event for the purpose of protecting the right of freedom of speech. Whilst the heckling of speakers is a right not to be disturbed, it is contrary to the Code to seek, by systematic or organised heckling or disruption of such activity, to prevent the lawful expression of views.
  - b. both the audience and the speaker act in accordance with the law during the event. In the case of unlawful conduct, the event organiser must give appropriate warnings and, in the case of continued misconduct, the event organiser must require the withdrawal or removal by the stewards or if necessary by the police of the person(s) concerned.
  - c. no articles or objects which are likely to lead to injury, damage or breach of the law are taken inside the venue where the event is being held.

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The Designated Officer is reviewed on an annual basis. For 2023/24 the designated officer is the University Secretary (unisec@worc.ac.uk)