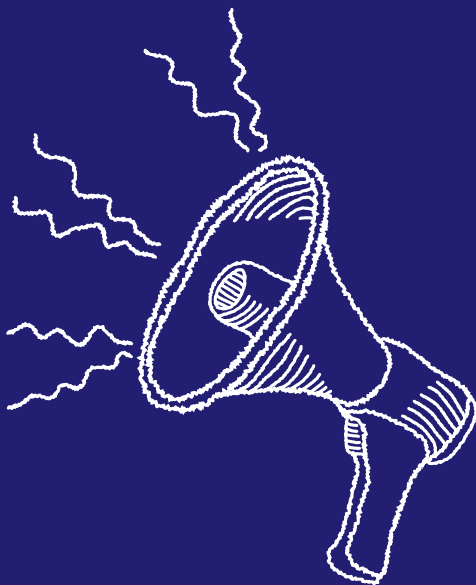


**Cracking the code:
A practical guide for university
free speech policies**

**Diana Beech
with a Foreword from Peter Tatchell**



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About the Author

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The information contained in this report does not constitute, nor is intended to constitute, legal or other professional advice. The practical guide presented in this report has been prepared merely as a point of reference for higher education institutions wishing to create, update or amend policies on freedom of speech.

Foreword

Peter Tatchell, Human rights campaigner and Director of the Peter Tatchell Foundation

Free speech is under attack by some students in some universities. But there is no general crisis of free speech, as is often alleged. A good example is the fact that I have not been 'no platformed' in the way many people believe. Indeed, the exclusion of speakers is, in fact, relatively rare.

Overall, I find most universities positive, conducive places for healthy debate. When you compare the lively conversations that take place on UK campuses to those that are openly or more subtly squeezed out, or plain banned, in other countries, our universities look like bastions of free speech.

And yet ... Not everything is perfect. A minority of students do seem remarkably intolerant and unwilling to hear others' views. It's not even a left / right split. Sometimes the fiercest disagreements come between people who all regard themselves as progressive.

Challenging student meetings can get bogged down in red tape about the rules of debate and their interpretation. It is also sometimes contested who can speak, what they can say and the degree of dissent that is permitted.

Freshers struggling to cope with living away from home and adjusting to university life are not always given the intellectual tools and practical advice to help them negotiate the thickets of open debate.

In my view, bad ideas are most soundly defeated by good ideas. Bigoted opinions should never be given a free pass. They should always be protested and countered. But the best way to do this is usually by subjecting them to open debate, to show why they are factually and morally wrong.

Bans do not make intolerance go away or dissuade its supporters. Strong counter-arguments backed with evidence and research are much more effective and reach a far wider audience.

So, I welcome this report, which offers institutions some practical guidance on what good codes of practice look like. We may or may not agree with all this guidance but the essence of what it proposes is surely sound and helpful.

The right to free speech is hard won and not always easy to protect. This report helps us to protect it.

As the UK faces the challenges of Brexit, right-wing populism, Islamist extremism and the demands of marginalised communities like trans people, free and open debate on all issues will become more important than ever. And universities and students have a vital, precious role to play in these debates.

Let's defend free speech, now and always. It is the linchpin of a democratic and free society.

Introduction

At the start of 2018, the Higher Education Policy Institute (HEPI) was approached by the parliamentary Joint Committee for Human Rights (JCHR) to conduct an independent piece of research into the efficacy of university codes of practice on freedom of speech.¹ The research formed part of the evidence base for the JCHR's 2017/18 inquiry into whether freedom of speech is being suppressed in UK universities.

HEPI's report for the JCHR made observations about the format, content and processes underpinning university free speech policies. Yet, it stopped short of making value judgements about which codes of practice proved the most practical and effective at securing free speech on campus. As a result, it also stopped short of providing practical policy recommendations for higher education institutions wishing to build on what works in the most effective policies analysed, and to avoid the mistakes of those deemed less effective. This report, therefore, leads on from where the HEPI report for the JCHR left off, by seeking to provide a practical guide for UK higher education institutions when preparing or updating institutional policies on freedom of speech.

The need for such a contribution is clear. The question of whether UK higher education institutions are effectively promoting and facilitating free speech on campus is a political hot potato. In recent years, there have been several high-profile incidences reported in the press where prominent speakers have been prevented, or intentionally hindered, from speaking freely on campuses due to their unpopular political or social views. Some notable cases include:

- protestors intervening in a speech by Conservative MP Jacob Rees-Mogg at the University of the West of England;
- a petition to prevent author and public intellectual Germaine Greer from holding a lecture at Cardiff University over her views on transgender people; and
- an ultimatum sent to organisers of a talk at Canterbury Christ Church University from a speaker unwilling to appear alongside prominent human rights campaigner, Peter Tatchell, over his defence of free speech on campus.

Further to this, there have even been prominent protests against institutions which have sought to enhance the neutrality of events to allow them to proceed as inoffensively as possible. One example comes from the University of Cambridge, which in November 2017 was criticised by students and academics from across the country, after taking the decision to replace Palestinian academic Dr Ruba Salih as Chair of a Palestine society event with a more independent figurehead.² This measure was intended to give the event the best chance of going ahead as planned. Yet, it was misinterpreted by many as an attempt by the University to change the nature of the proceedings.

In many ways, the reaction to the Cambridge event is in line with findings from HEPI's 2016 report, *Keeping Schtum? What students think of free speech*, which reveals students are confused about what constitutes freedom of speech and measures to protect it.³ The report found that, on the one hand, students show strong support for the principle of free speech while, on the other, they also show strong support for mechanisms

that limit free speech. This begs the question whether the right balance is currently being struck on UK university campuses and whether the pendulum has swung too far in favour of limiting free speech.

In its report on its inquiry into the state of free speech on UK university campuses, released in March 2018, the JCHR did not find 'the wholesale censorship of debate in universities which media coverage has suggested'. However, it still acknowledged that there have been some 'incursions' into lawful free speech in UK higher education institutions, finding, in particular, that university policies and processes on freedom speech may be at fault. It surmised:

Codes of practice on freedom of speech should facilitate freedom of speech, as was their original purpose, and not unduly restrict it. Universities should not surround requests for external speaker meetings with undue bureaucracy. Nor should unreasonable conditions be imposed by universities or student unions on external speakers, such as a requirement to submit their speeches in advance, if they give an assurance these will be lawful.⁴

This view is broadly shared by the Government and the new sector regulator for higher education in England, the Office for Students (OfS). In May 2018, Universities Minister Sam Gyimah described the current policy landscape surrounding free speech as 'murky'. A press release issued by the Department for Education alludes to the 'numerous pieces of disjointed sector guidance out there' that have created 'a web of complexity which risks being exploited by those wishing to stifle free speech'.⁵

When giving evidence at a meeting of the JCHR on 24 January 2018, Sir Michael Barber, Chair of the OfS, equally admitted that some codes of practice currently being employed in the sector to preserve free speech are ‘too complicated and bureaucratic.’⁶ Yet, he also said that he does not feel it is the job of the OfS to come up with a model code of practice on freedom of speech for registered providers of higher education, explaining:

I do not think that the Office for Students should be in that game at all, because I do not think you want any government-related agency making single codes of practice on freedom of speech. It feels altogether wrong. However, if a group of university leaders and students’ unions got together and came up with a simplified code of practice, that might be a very good idea.

With these words, Sir Michael Barber extended the invitation to the wider higher education sector to pick up the baton and create a practical guide for composing and implementing ‘simplified’ university free speech policies. This report, therefore, aims to build on what works, as well as what does not, in existing free speech policies formulated and employed by higher education institutions across the UK. In doing so, it presents a practical guide to the sector, which could be consulted, not only by institutions in England under the new regulatory landscape of the OfS, but also by higher education institutions in other parts of the UK with a legal duty – or at least a moral desire – to have processes in place for external speakers and events.

Policy context

The legislative landscape governing freedom of speech in UK universities and colleges is complicated. Higher education institutions in different parts of the country have varying obligations to secure free speech. At the broadest level, all higher education institutions in the UK are subject to the Human Rights Act 1998, which seeks to protect freedom of speech and expression.⁷ However, only universities and colleges in England and Wales have a specific legal duty to secure freedom of speech on their premises under the 1986 Education Act. This requires them to devise and adhere to a code of practice in this area.⁸

The Counter Terrorism and Security Act 2015 adds a further layer of complexity. Applicable in England, Wales and Scotland but not in Northern Ireland, the Act places an additional duty on higher education institutions – more commonly known as the Prevent duty – to ‘have due regard to the need to prevent people from being drawn into terrorism’. This means that higher education institutions in England, Wales and Scotland are required to have systems in place for assessing and mitigating risks around external speakers and events on campuses.⁹

The net effect of this patchwork of legislation is that universities and colleges in different parts of the UK end up taking different approaches to free speech policies depending largely on what is legally required of them. In short:

- **higher education institutions in England and Wales** have a duty to have a code of practice to secure freedom of speech on campuses, as well as a duty to intervene in cases where it is believed people are being drawn into terrorism;

- **higher education institutions in Scotland** are not obligated to have a code of practice to secure free speech on campuses, yet they are still bound to intervene in suspected cases of the promotion of terrorism, which has resulted in some Scottish universities devising policies on external speakers and events to cover their obligations under the Prevent duty; and finally
- **higher education institutions in Northern Ireland** are neither obligated to have a code of practice to secure freedom of speech on campus, nor are they bound to implement the Prevent duty.

Owing to these different legal requirements, any analysis of codes of practice on freedom of speech employed by higher education institutions is always going to focus predominantly on those from institutions in England and Wales. As confirmed by the JCHR in the conclusion to its report on its inquiry, it is in these parts of the country, in particular, that higher education institutions 'must strike a balance to ensure they respect both their legal duty to protect free speech and their other legal duties to ensure that speech is lawful, to comply with equalities legislation and to safeguard students'.¹⁰

Despite every higher education institution in England and Wales being required by law to have a code of practice to secure free speech on campus, information about what such a code ought to look like remains vague. No template currently exists for higher education institutions to follow when creating or updating a code of practice. This explains why Sir Michael Barber suggested that creating one 'might be a very good idea'.

Some mission groups and representative bodies in the sector have attempted to assist their members by producing guidance on the formulation of codes of practice on freedom of speech.¹¹ However, most universities and colleges are not aligned to a mission group, so may not receive this assistance, while those that do so are in no way bound to follow it. This means that, even among codes of practice protecting free speech produced by higher education institutions in England and Wales, vast discrepancies can occur, with each institution being free to adopt different formats for their policies, not to mention different protocols and procedures to underpin them.

Students' unions responsibilities

Further complicating the legislation surrounding free speech on campuses across the UK is the fact that students' unions are subject to different rules and regulations from their host institutions, as set out by the Charity Commission. In its inquiry into free speech in UK universities, the JCHR found the Charity Commission's guidance to be 'unduly complicated and cautious', 'not easy to use', 'in places unduly restrictive' and failing to 'take adequate account of the importance of debate in a university setting'. The Chair of the JCHR, Labour MP Harriet Harman, has called on the Charity Commission to review its approach to free speech to ensure its regulations are 'proportionate' and do not 'unnecessarily limit free speech'.¹²

At the time of writing this report, the Charity Commission has committed to reviewing its guidance to students' unions to ensure 'a clearer distinction is made between the responsibilities of the trustees, students' union bodies, student societies and the broader membership'.¹³ While that review is ongoing, this report

will focus solely on the main institutional codes of practice that are required under the law in England and Wales.

Regulatory developments in England

Moreover, with the advent of a new regulatory era under the OfS, the time is now ripe for providers of higher education in England, in particular, to start thinking about ‘sharpening’ their codes of practice on freedom of speech. In October 2017, the Department for Education (DfE) launched a consultation on the OfS’s *Regulatory Framework* entitled *Securing student success: risk-based regulation for teaching excellence, social mobility and informed choice in higher education*. It suggested that non-compliance with the public interest principle of securing freedom of speech could result in ‘formal sanctions against the provider including monetary penalties, suspension from the register or deregistration’. The consultation also stipulated that the OfS will be able to ‘publicly call out providers who fail to comply with this principle and protect freedom of speech’.¹⁴

Responding to the consultation, Universities Minister Sam Gyimah issued the first annual statement of Government priorities for the OfS on 20 February 2018. In his guidance letter, he explicitly asked the OfS ‘to champion and promote freedom of speech, including calling out and challenging attempts to shut down debate such as “no platforming”’.¹⁵

The duty to preserve freedom of speech has since been included among the list of registration conditions for higher education institutions in the OfS’s *Regulatory Framework*, issued on 28 February 2018 (but not set to become fully operational until 1 August 2019). The framework states that the OfS expects

providers of higher education and their governing bodies to take 'such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider'. A failure by an institution 'to abide by its own freedom of speech code' will henceforth constitute non-compliance with the OfS's registration conditions.¹⁶

Moreover, the *Regulatory Framework* gives the OfS general powers to suspend any provider of higher education deemed non-compliant with its conditions of registration and to 'take remedial action ... with the OfS lifting the suspension once it is satisfied that the breach has been remedied'.¹⁷ In theory, this gives the OfS the power to evaluate the efficacy of institutional codes of practice and processes to secure freedom of speech in a way never seen in English higher education before. Although Sir Michael Barber had previously said he believes 'it would be very unlikely' that the OfS would use those powers, he still acknowledged 'it is good to have them and there will perhaps be moments when we do need to use them'.¹⁸

It cannot, therefore, be taken as a given that the OfS will refrain from intervening in issues concerning free speech involving registered providers. According to Sir Michael Barber, intervention may well be necessary if there is a 'flagrant breach of the idea of freedom of speech on campuses'. This might be, in his own words:

*... where there is no code of practice, or where there is a code of practice that is really clear and made public but which is not adhered to at all. It might be where some particular view that is within the law is hounded off a university.*¹⁹

Even though Sir Michael Barber believes the OfS ‘would want to try to resolve [these issues] without using the powers’, the fact they are there will inevitably put university policies and processes protecting freedom of speech under the spotlight in England over coming months. As such, higher education institutions registering under the OfS should be prepared to produce more governance documents in this area in due course. This is something which may well have UK-wide ramifications, as other institutions come to follow the practice that is expected of providers in England.

What is more, the JCHR concluded its inquiry into the state of free speech in UK universities by saying it ‘would expect the OfS to intervene if problems emerged at particular institutions’. The JCHR’s report clearly shows it advocates a hands-on approach for the new risk-based regulator, suggesting the OfS ‘should visit universities that have faced issues regarding freedom of speech, and ensure universities and student unions are respecting this right’. It also recommends that the OfS ‘report annually on free speech in universities, including naming when universities have been non-compliant with their responsibility to secure free speech.’²⁰

With increasing government calls on universities to clarify the rules and regulations around speakers and events – and the OfS observing progress in this area – higher education institutions in England should therefore prepare for a new reality, in which they will undoubtedly be expected to protect freedom of speech in a more systematic and effective way than before.

Methodology and approach

The recommendations in this report are based on findings from a sample of 20 different codes of practice on freedom of speech. Only codes that are freely available online were selected. This decision was made on the assumption that a member of a university wishing to organise an event or book an external speaker would most likely rely on material which is easily accessible online – possibly housed on university websites or via links provided by students' unions.²¹

The policies selected for the research come from a wide range of universities to reflect the diversity of the UK higher education sector. As such, they take into account geographical differences, the size of institutions and mission group affiliations (if applicable). The institutions include:

1. Aberystwyth University
2. University of Bolton
3. University of Cambridge
4. Canterbury Christ Church University
5. Cardiff University
6. University of East Anglia
7. University of Edinburgh
8. University of Hull
9. University of Leicester

10. University of Liverpool
11. London South Bank University
12. Nottingham Trent University
13. Queen Mary University of London
14. University of Reading
15. St Mary's University Twickenham London
16. University of Sussex
17. University College London
18. University of Winchester
19. University of Wolverhampton
20. York St John University

The majority of these institutions are located in England, with two Welsh universities included. This is precisely because an initial, yet comprehensive, internet search returned no results for policies on freedom of speech from any institutions in Northern Ireland and very few results from universities in Scotland. This is due to differences in the law in these jurisdictions, since neither Scots law nor Northern Ireland law require higher education institutions to formulate codes of practice on freedom of speech.²²

In selecting the final list of institutions for this research, efforts were taken to ensure that the sample included a fair number of universities:

- in ethnically diverse areas of the UK;
- with previous high-profile cases of controversy caused by the supposed suppression of free speech (as outlined in the Introduction to this report); and
- with religious underpinnings.²³

Approach

To determine the key features of universities' codes of practice on freedom of speech, the report asks questions about the policies, including:

- How easy are the policies to follow?
- How much detail do they offer?
- Do they include clear processes and procedures?
- Are there any unreasonable requests for information?
- Is it evident who is responsible for the final decision?
- Are the timescales involved clear and realistic?

This approach has been used as a basis to create a practical guide for universities seeking to secure free speech on campus, with all recommendations highlighted in bold throughout the next section of the report.

Practical guidance

During the analysis, it was found that the free speech policies employed by UK higher education institutions are varied and diverse. Differences were observed in terms of:

- the format of these policies;
- the content of the codes of practice; and
- the processes and procedures that surround them, including the review process, the accountability process and dissemination options.

Since no two codes of practice promoting free speech are the same, the section that follows highlights what I felt worked best in creating simple yet effective policies. It seeks to build from these findings recommendations for higher education institutions seeking to prepare or update policies to protect free speech on campus.

Accessibility

All the codes of practice on freedom of speech in this analysis were used principally because they could be accessed openly online. That does not mean, however, that all the codes of practice were easy to locate; neither does it mean that all the supplementary documentation was sufficiently signposted or housed in the same location.

In the case of the University of Cambridge, for example, it was relatively easy to locate its supplementary 'Statement of Freedom of Speech' from its Registry's Office, which exists to support the good governance of the University. Yet, it was not

as straightforward to retrieve its code of practice required by law, for which a separate internet search had to be employed.

York St John University's code of practice on freedom of speech was the only code in the sample to be hosted completely online in HTML format – not as a downloadable Word or PDF document. In this instance, this was found to be extremely user-friendly, largely thanks to the inclusion of hyperlinks throughout the text to direct readers to additional material such as legal documents, room booking forms and supplementary guidance. Hyperlinks like these can be easily incorporated into Word and PDF documents and are a good way of signposting users of the codes to the additional information they may need.

Similarly, the University of Leicester includes web addresses in its code of practice on freedom of speech – typed out in full – to supplement online room booking forms. This might be particularly helpful to users of the code who may be reading it in hard copy on which hyperlinks would not show. This highlighted the need for universities to be mindful of the fact that, when printing out the codes, key information may be lost.

To ensure users of codes of practice on freedom of speech have all the additional documentation they may need to seek permission to host an external speaker or event, it is recommended that higher education institutions ensure all materials are clearly signposted in two ways:

- a) first, by employing hyperlinks throughout their code of practice to ensure it is optimised for those reading the code online; and**

- b) second, by also including full web addresses in either an appendix to the code or in footnotes or endnotes to ensure that those using printed versions of the codes can still access all the required information.**

Dissemination

Accessibility is not just about ensuring codes of practice are easily retrievable and comprehensible, but also about ensuring they reach the widest range of users possible. Cardiff University's code of practice on freedom of speech was the only policy in the sample to include on its cover page contact details for anybody requiring the document in an alternative format. This is particularly useful for those requiring the document in either another language or an alternative format such as braille (although this was not explicitly mentioned by the institution). This offer suggests that the University has thought about users with particular requirements – presumably, in the case of Cardiff, inspired by its legal obligation to treat the Welsh and English languages 'on the basis of equality' under the Welsh Language Act 1993 and have a Welsh version of the code as well.²⁴

St Mary's University Twickenham also includes in its 'document record' on the final page of its code of practice a table to show where the code has been posted, including on the University's website, its 'StaffNet' portal and other institutional online spaces. This record of publication helps users to see where the policy has been disseminated and to enable institutional boards and committees to make a judgement as to whether other outlets may be more appropriate in the future.

To ensure codes of practice on freedom of speech can be read and understood by the widest range of users possible, higher education institutions ought to think about preparing materials in a range of formats, including braille or in audio format for the visually impaired. Providers of higher education should also alert users in their codes to the fact these alternative formats exist.

It is equally recommended that higher education institutions keep a record of where their code of practice has been posted to allow university boards and committees to decide whether additional outlets should be used during the internal review process.

Definitions

The codes of practice on freedom of speech analysed in this sample differ widely in their definitions of what constitutes a public meeting or gathering to be covered by the policies. It was found that definitions of a meeting range from 'any gathering or assembly of more than three persons' (according to London South Bank University) to larger events such as 'lectures, seminars, committee meetings, and musical and theatrical performances' (used by Aberystwyth University).

Canterbury Christ Church University also acknowledges in its code the different types of meetings which may occur outside the traditional conception of face-to-face gatherings. It thereby states that its code of practice on freedom of speech 'also extends to those events where one or more external speakers ... are participating in the event by any means of remote access, such as Skype, teleconferencing and audio conferencing'. The

code of St Mary's University Twickenham also recognises that an event 'includes broadcast by social media or similar means'. Acknowledging these alternative meeting or dissemination formats ensures users of the policies know that web-based gatherings cannot be used as a loophole to circumvent the code of practice.

To avoid confusion over the types of meetings to which a code of practice on freedom of speech applies, higher education institutions are advised to clearly define in their policies what constitutes a public meeting. They should take efforts to define the size and the nature of events which the code covers. They should also be mindful of new opportunities for meetings and events enabled by digital technologies to ensure that these do not become a loophole to circumvent the code.

Clarity

Several of the institutional codes of practice on freedom of speech analysed in the sample included attempts to visualise the processes required when hosting an event or an external speaker. These usually take the form of process flowcharts. In its report on its inquiry into free speech in universities, the JCHR highlights a particularly complicated process flowchart used by the University of Southampton, to illustrate how some universities' policies and processes can be difficult to follow and overly bureaucratic.²⁵ From the codes of practice on freedom of speech analysed for this report, however, it was generally felt that those which included process flowcharts were more straightforward and easier for users of the codes to understand the procedure required of them. Some good examples in the sample came from St Mary's University Twickenham, which

concludes its policy with a process flowchart comprising no more than five individual steps, and the University of Wolverhampton, which ends its code of practice with a process flowchart with a maximum of eight steps.

Some codes of practice were also found to include checklists for users of the policies to follow. The University of Liverpool, for example, includes in its appendices:

- a checklist for accepting a booking;
- a due diligence checklist for external speakers; and
- a risk assessment for a speaker event.

Adding material like this in an annex or appendix could help to enhance the transparency of the process.

It is recommended that universities visualise their codes of practice in a simple, supplementary process flowchart to help both:

- a) institutional policymakers to see whether their chosen processes are as logical and straightforward as they can be; and**
- b) users of the codes to understand what is required of them.**

Length

Our analysis shows that codes of practice on freedom of speech employed by universities and colleges vary significantly in length, with the policies in our study ranging from just three pages to 47

pages. Differences in font sizes, margin sizes and layout means it is, however, difficult to directly compare code lengths.

Contrary to expectations, longer policy documents were not found to contain more complex policy content or added layers of bureaucracy. Instead, the longer policy documents in the analysis tended to contain additional material such as process flowcharts, template forms, risk registers, other relevant policies and explanatory notes or guidance from other sector bodies. The most comprehensive codes of conduct in the analysis are from:

- the University of Liverpool: at 47 pages long, the policy itself only covered pages 3 to 13; the rest of the document is made up of appendices showing processes for booking rooms, relevant application forms and supplementary guidance from Universities UK; and
- Cardiff University: at 28 pages long, the policy on free speech is only printed on pages 2 to 9, with the rest of the document comprising process flowcharts, a summary of relevant legislation and a template of an 'events and speaker' booking form.

Analysis of other material published by universities to supplement their codes of conduct showed many institutions publish supporting documentation, including:

- separate policies and codes of practice on the conduct of events (if not already included in the code of practice on freedom of speech);
- risk assessment protocols and procedures; and
- room booking guidance and application forms.

However, in the majority of cases, this material is contained in separate documents, housed elsewhere on university websites and often without sufficient signposting either via hyperlinks or supplementary web addresses (see the section on *Accessibility*). It was therefore felt that adding this material to university codes of practice holds more advantages than disadvantages for users of the policies, as it allows them to access all the necessary information and forms in one place. Although extended documents can make institutional free speech policies seem long and burdensome for potential event organisers, in practice, it was felt to be more impractical for policy users to be expected to retrieve all the information they may need from different sources or locations.

To make codes of practice on freedom of speech more user-friendly, it is recommended that universities and colleges find ways to put all the necessary information and supporting documents together in one document by using appendices or annexes to the main policies.

Proportionality

The lengths of codes of practice on freedom of speech were found to bear no relation to the size of higher education institutions. Both the codes of practice from the University of Cambridge and the University of East Anglia, for example, only comprise three pages of text.

To ensure codes of practice on freedom of speech contain only the top-line information and instructions to users of the codes, it is recommended the policies are kept to an average length of four to five pages. Additional information

can then be hosted in appendices or annexes to the codes, clearly marked using separate headings.

Format

By and large, universities tend to present their codes of practice on freedom of speech in a legalistic, contractual format, which is appropriate for the processes they seek to outline. However, the University of Cambridge has chosen to supplement its code of practice with a short 'statement on freedom of speech' from the University's Registry, reaffirming its commitment to the promotion of free speech on campus. This statement has the effect of setting its code of practice in the context of an institution which seeks to promote free speech, not unduly restrict it. This is a clever strategy in terms of preventing the institution from appearing overly bureaucratic and also for meeting the expectation that universities will produce additional documents to protect freedom of speech on campuses. However, the statement was found to fall short by not directly linking to the University's code of practice on freedom of speech, thereby reducing the practical application of the document for anyone seeking to organise an event or host an external speaker.

To reinforce institutional commitment to freedom of speech, it is recommended that higher education institutions produce additional governance documents, such as statements recognising the importance of free speech and its fundamental role in a higher education setting. These should, however, always be clearly linked to an institution's main code of practice on freedom of speech.

Administration

The longest documents analysed in the sample were found to include a cover page to introduce the policies. The Welsh higher education institutions in this analysis – particularly Aberystwyth University – were found to use these cover pages effectively to outline key administrative information including:

- the policy owner;
- the policy contact;
- the date of approval;
- the approving body;
- the policy status; and
- the review date.

As previously mentioned, Cardiff University similarly uses its code's cover page to outline information about the policy owner and their contact details, alongside information for users about how to obtain the code of practice in an alternative format.

Some institutions, such as the University of Bolton and St Mary's University Twickenham, include this important information at the back of their codes of practice in a 'document record'. These tables, which include additional information on the universities' chosen dissemination method for their code as well as a history of the document – stating at which board meetings it has been discussed and to which committees it has been circulated – was found to be a good template for institutions to use. However,

it was felt that putting this information up front on a cover page to a code would provide users with the necessary context behind the policy in question.

In order to provide users of the codes with necessary information about the policies (including approval and review dates, details of the policy owner and contact information), higher education institutions ought to consider adding a cover page to the codes for ease of reference. The reverse side of the cover page could also be used as a contents page to direct users to additional material which may be included to supplement the codes (as previously recommended in the *Proportionality* section of this report).

Timeliness

For four universities, the only codes of practice on freedom of speech which could be found online dated back to before the Prevent duty came into force, suggesting that either:

- a) these institutions have not updated their free speech policies in line with developments in legislation;
- b) internal processes for reviewing or publishing any updated material have not caught up; or
- c) more recently updated material has not been placed in the public domain.

Subsequent correspondence between HEPI and the Department for Education reveals a mixture of the above to be true. In three of the four cases, the universities' codes of

practice had in fact been updated either in 2015 in preparation for the Prevent duty or in 2016 after the Prevent duty came into force.²⁶ However, the fact that HEPI was unable to locate these three updated policies online can be explained by a number of reasons, including:

- a) one institution having chosen to disseminate its most recent policies on freedom of speech on sections of the university website only open to staff and students;
- b) another institution having failed to change the date of its updated free speech policy on its website from 2015 to 2016; and
- c) one updated policy still awaiting approval by the Council at its university, with the meeting scheduled for July 2018.²⁷

This additional information helps to show that universities are not neglecting their duty to update free speech policies. However, it also reaffirms the need for higher education institutions to ensure codes of practice are placed somewhere easy to find and include the most up-to-date information about their review process.

To ensure users are accessing the most recent version of an institutional code of practice on freedom of speech, universities need to ensure the codes:

- a) are regularly updated in line with any new developments in the law;**
- b) include up-to-date information about both the last time they were reviewed and any forthcoming reviews or approval processes; and**

c) are clearly signposted on public sections of university websites.

We do not recommend policies are housed on members-only areas of institutional websites, as this makes it extremely difficult for non-members to locate the relevant materials.

Remit

Most of the codes of practice analysed in this sample stipulated that the regulations contained in the codes are applicable across all university premises, including students' unions. The only institution to acknowledge its students' union is bound to different requirements is the University of East Anglia, whose code of practice on freedom of speech states that 'the Students' Union will operate its own arrangements for reviewing activities and bookings on University premises made by its officers, staff, clubs and societies'. This makes the University of East Anglia the only higher education institution in the sample whose code of practice is actively in line with guidance issued by Universities UK, which considers students' unions not to be directly subject to university legislation governing free speech.

Students' unions are not the only grey area when it comes to the codes' remit. From the free speech policies analysed in this sample, only Canterbury Christ Church University has written about the implications of applying its code of practice on freedom of speech in other countries or jurisdictions. It states that the remit of its code 'includes venues in the UK and overseas'. However, it also acknowledges that 'all activities led or hosted/co-hosted by the University, irrespective of where

they take place, are to comply with this Code unless to do so would breach that country's law'.

Higher education institutions with religious underpinnings, such as those belonging to The Cathedrals Group of universities, have a particular duty to be mindful of the requirements of their faith-based foundations. Institutions with Catholic underpinnings may encounter barriers to the remit of their codes across their premises. The code employed by St Mary's University Twickenham states that its policy 'does not apply to the University Chapel, the Crypt or the "Chapel in the Woods" to which separate rules apply under Canon Law', suggesting that Catholic universities may need to take special measures to ensure that sacred spaces do not become loopholes for the restriction of free speech.

Higher education institutions with unconventional university set-ups must also be mindful of the interaction between their codes and those of constituent parts of their institutions – such as the collegiate universities of Oxford and Cambridge. The University of Cambridge's code of practice on freedom of speech analysed in this sample includes a section which details how the provisions of the 1986 Education Act 'apply also to the Colleges in respect of their own members, students, and employees, and in respect of visiting speakers'. It also reminds Colleges that they are also subject to the Prevent duty and that 'each College is requested by the University to name a senior member who will be responsible for enforcing the provisions of the Act in that College'. This leaves no room for any constituent College of the University to create a loophole for the non-application of the code.

To ensure users understand their obligations to the code of practice on freedom of speech in all parts of a higher education institution, governance teams should stipulate in their codes the precise areas of remit they cover, including their interaction with competing legislation (in the case of faith-based institutions) or in other parts of the university with different governance arrangements.

If a code is deemed to apply overseas, then care should be taken to add a disclaimer to the code that it will apply only to the extent that it does not breach another country's law. This is particularly pertinent for higher education institutions with branch campuses overseas. In these cases, providers ought to consider adding a dedicated section in an appendix to the policy on the interaction of the code with the national law in these territories.

Schedules

While the majority of codes of practice on freedom of speech analysed in this sample stipulate specific timescales required for an initial request to host an external speaker or event, some policies remain vague and do not specify timings or deadlines. These include the University of Bolton, which makes no reference to timescales at all, and University College London, which stipulates only that 'requests must be made as far as possible in advance of the projected meeting date'.

Of the higher education institutions which specify lead-in times, these can vary from 30 days (Aberystwyth University) to 'five clear days' (University of Cambridge) – with the word 'clear' presumably referring to a full working day, although this remains ambiguous. It was found that most institutions

in the sample ask for a lead-in time of 10 days (University of Edinburgh), yet only seven institutions in the sample seek to clarify whether this includes working days or not. Without this additional information, required lead-in times – even if stipulated – remain ambiguous and open to different interpretations.

To ensure users of the codes of practice of freedom of speech know how much lead-in time they need to provide before applying to host an event or an external speaker, as well as how long it will take to receive a reply – and, if applicable, lodge an appeal – universities ought to highlight required and realistic timescales clearly throughout their policies.

Mitigation

Several codes of practice in the sample state that institutions reserve the right to require information or material in advance of an external speaker or event, in order to make a judgement on whether the event should go ahead or not. Some of these requests include asking speakers, if thought to be controversial, 'to provide an outline of their speech for approval prior to the event taking place' (University of Liverpool and St Mary's University Twickenham) or asking for the 'date of birth of the speaker' (University of Hull). The JCHR, in its report on its inquiry into freedom of speech in UK universities, deemed requests like this to be 'unreasonable'.

To ensure higher education institutions do not appear unwelcoming spaces for speakers, providers should consider removing from their codes of practice on freedom

of speech any requests considered to be ‘unreasonable’ by the JCHR, such as asking for transcripts of speeches before they are made.

Assistance

In several codes of practice analysed in this sample, higher education institutions show they are prepared to give assistance to those hosting an event or an external speaker that looks likely to attract dissenting voices to ensure the event can still go ahead as planned. The University of Hull’s code, for example, says the University ‘will make available, on request, a public address system if there is reasonable cause to consider this to be necessary to enable the speaker to be heard’. Other institutions, such as the University of Bolton, say they are willing to declare a meeting or an activity to be a ‘public event, which would permit the police to be present’, meaning the event could still take place but with an added security presence. Offering forms of assistance such as this in the codes helps to project the impression of an institution that seeks to exhaust all reasonable options to promote freedom of speech and expression before considering cancelling a speaker or event.

To ensure codes of practice on freedom of speech are not used to restrict controversial speakers and events unnecessarily, higher education institutions ought to include in their policies reasonable options that can be provided to organisers to enable the event to go ahead as planned. These can include, but are not restricted to, added security provisions or room facilities (such as microphones, PA systems and projector screens).

Accountability

All the codes of conduct analysed in this sample make clear with whom the final decision lies when deciding whether a controversial external speaker or event can go ahead. In the majority of cases, it is a member of a higher education institution's senior leadership team – usually the Vice-Chancellor (or equivalent) – who has the final say on an application or an appeal from the host of an event previously deemed controversial. However, it is not always the Vice-Chancellor who makes the initial assessment. This varies considerably between roles, ranging from the Chief Operating Officer, Deputy Vice-Chancellor, Registrar or Senior Proctor in some institutions to the Director of Estates and Facilities, Director of Strategic Planning and Governance or Head of Campus Support in others.

In some institutions, the decision is even made by a panel, such as at the University of Sussex, which has an 'External Speakers' Panel', or London South Bank University, which relies on the combined judgement of its Chief Operating Officer, the Executive Director of Human Resources and the Dean of Law and Social Sciences. A panel approach can be a good strategy, as the decision is made by more than one person – something which may be helpful in the case of more controversial speakers – and combines a wider range of expertise. A panel may, however, require a longer length of time to reach a decision, so institutions should select staff members who would be willing to work together on applications for events or external speakers at short notice.

To ensure organisers of events or external speakers know who is responsible for decisions at each stage of

the process, universities should include in their codes of practice on freedom of speech information about their chosen accountable officer. This could also be included in process flowcharts (as mentioned in the section on *Clarity*).

Appeals

Every code of practice analysed in this sample makes reference to an appeals process. However, the timescales surrounding these appeals are wide-ranging. For example, Queen Mary University of London requires an appeal to be lodged 'within two working days' of a decision, while St Mary's University Twickenham will accept an appeal within 14 working days of permission being refused.

In all cases, it was found that the codes do not make clear when an event organiser can expect to hear the result of an appeal. Both St Mary's University Twickenham and the University of Edinburgh state only that their Vice-Chancellors will consider an appeal 'as soon as is reasonably practicable'. To cover themselves against slow appeals processes, some higher education institutions in the sample were even found to add disclaimers to their codes to buy themselves time to assess an appeal. The University of Winchester's code, for example, states 'it will not normally be possible to resolve an appeal quickly and it is likely that a proposed event will need to be postponed'.

Although such techniques serve to enshrine a right for universities to take their time over an appeal, it nevertheless leaves event organisers in limbo, with no clear guidelines as to when to expect to hear the outcome of their petition. Universities should, therefore, endeavour to provide an

outcome within a certain timeframe, covering themselves for longer assessment times only in cases of particularly complicated and controversial appeals.

To ensure event organisers have a clear idea of the timescales required for an appeals process, higher education institutions should endeavour to write into their codes clear and practicable timescales to assess an appeal, providing where possible a rough estimate as to when the result of an appeal will be received. To cover themselves in cases where an appeal may take longer to resolve, universities ought to consider writing into their codes a disclaimer that more time may be required than the stipulated number of days when concerning particularly sensitive or controversial speakers or subject matter.

Conclusion and recommendations

Free speech has long been at the heart of what higher education institutions do – encouraging debate, challenging ideas and continually pushing forward the boundaries of knowledge. Ensuring freedom of speech on campuses across the country is, therefore, about much more than responding to legal requirements – it preserves the essence of higher education.

In the turbulent political times we live in, it is inevitable that some people will have political opinions or social attitudes with which others might not agree. Debates over whether these voices should be heard, together with concerns over the need to protect certain individuals from these views, are largely behind recent censorship attempts on campuses. Yet, with student populations set to expand over the coming decade and become more diverse – incorporating more students from previously under-represented groups like Black and Minority Ethnic (BME) communities, Lesbian, Gay, Bi-sexual and Transgender communities (LGBT+) or migrants and asylum seekers – tensions about what voices can legitimately be heard on campuses will undoubtedly increase.²⁸ It is therefore imperative that higher education institutions grip the issue of free speech now to ensure political and social attitudes continue to be properly debated, to expose unpalatable and extremist attitudes for what they really are and, above all, to promote a culture of tolerance and respect.

The recommendations presented in this report are numerous, yet necessary to help higher education institutions to enhance the reach, efficacy and relevance of codes of practice on freedom of speech. By offering practical suggestions on policy content

and surrounding processes and policies, this report goes further than the existing guidance issued by other sector bodies to help providers of higher education create or update policies to secure freedom of speech on campus. Its recommendations can be summarised in the following action plan:

To optimise the format of codes of practice on freedom of speech, we recommend universities:

- include a cover page to the code detailing the document's history, including key information on the date of its approval, the next date of review and contact information for the responsible officer;
- consider formulating the codes in other formats (such as braille or audio) to ensure the widest possible readership;
- enhance the usability of the codes by employing hyperlinks throughout all online versions of the policies, as well as writing out web addresses in full in an appendix to the code (or in footnotes or endnotes) to ensure this information is not lost when the codes are printed out;
- make use of additional appendices to the codes to host vital supplementary documentation including application forms and additional guidance, so that this information is all housed in one place;
- visualise application and assessment processes in the form of process flowcharts wherever possible, to allow event organisers to easily understand what is required of them and to ensure the policies are as simple as they can be during the design process;

- take care to define what the code covers both in terms of meeting size and meeting format; and
- outline the precise remits of the code if intended, for example, to be applicable to students' unions, in other countries, in constituent parts of a university with otherwise autonomous governance structures (such as Oxbridge colleges) or in faith-based institutions, where contradictions may occur with religious doctrine (such as Canon Law in Catholic institutions).

To optimise the processes surrounding the codes of practice on freedom of speech, we recommend universities:

- regularly review and update their code, particularly in line with developments in relevant legislation;
- ensure the latest versions of the code are swiftly approved by relevant university boards and committees, and published accordingly on university websites;
- keep a visual record of where the code has been disseminated to allow university committees and boards to decide whether this is appropriate and sufficient at the next review meeting;
- avoid requesting information from speakers or event organisers that could be deemed unreasonable or off-putting (such as routinely requesting copies of speeches before they are made);
- include in the code reasonable timescales for both the initial application to host an event or external speaker and the appeals process;

- offer in the code assistance to event organisers – such as PA systems or added security provisions – to give an event the best chance of going ahead before considering it for cancellation;
- consider including a disclaimer in the code to cover more lengthy and complex decision processes over appeals (although every effort should be made to stick to the original timescales outlined as above); and
- consider employing the expertise of an assessment panel, as opposed to just one accountable officer, to help in the case of deciding whether more complex or controversial events or speakers should go ahead.

In addition, higher education institutions – particularly in England – may consider producing additional governance documents, such as statements of commitment to the codes of practice. This will not only help institutions to become clear about what their codes of practice are for, and what purpose they serve, but also help them to prepare for life under the Office for Students and its new *Regulatory Framework*, which may well require providers of higher education to justify their policies and processes in more detail in the future.

Endnotes

- 1 The full HEPI report produced for the JCHR can be accessed here: <https://www.parliament.uk/documents/joint-committees/human-rights/2015-20-parliament/HEPIreport090218.pdf>
- 2 See Martin Coulter, 'Cambridge University slammed by senior academics over "crackdown on free speech" at student Palestine event', *Evening Standard*, 8 November 2017, available at: <https://www.standard.co.uk/news/uk/cambridge-university-slammed-by-senior-academics-over-crackdown-on-free-speech-at-student-palestine-a3685811.html>
- 3 Nick Hillman, *Keeping Schtum? What students think of free speech*, HEPI Report 85, available at: http://www.hepi.ac.uk/wp-content/uploads/2016/05/Hepi_Keeping-Schtum-Report-85-Web.pdf
- 4 *Freedom of speech in universities*, JCHR report, 27 March 2018, paragraph 93 (available at: <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/589.pdf>)
- 5 'Sam Gyimah hosts free speech summit', 3 May 2018, available at: <https://www.gov.uk/government/news/sam-gyimah-hosts-free-speech-summit>
- 6 The full transcript of the oral evidence session is available on the JCHR website: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/freedom-of-speech-in-universities/oral/77559.html>
- 7 The relevant Section of the Human Rights Act 1998 is available here: <https://www.legislation.gov.uk/ukpga/1998/42/crossheading/other-rights-and-proceedings>
- 8 The relevant Section of the Education Act 1986 is available here: <https://www.legislation.gov.uk/ukpga/1986/61/section/43>

- 9 Guidance on the legislation is available here: https://www.legislation.gov.uk/ukdsi/2015/9780111133309/pdfs/ukdsiod_9780111133309_en.pdf. The UK Government has also issued two sets of statutory guidance to support the Prevent duty in both (i) England and Wales and (ii) Scotland – the first applies to specified authorities, while the second is specifically aimed at higher education institutions in each of those parts of the UK. This guidance is available here: <https://www.gov.uk/government/publications/prevent-duty-guidance>
- 10 *Freedom of speech in universities*, paragraph 91
- 11 This guidance has been analysed by Vicky Olive in Appendix 1, pp.37-42, of the original report prepared by HEPI for the JCHR (see endnote 1).
- 12 *Freedom of speech in universities*, Conclusions and recommendations, paragraph 10.
- 13 ‘Commission response to report on freedom of speech in universities’, 14 May 2018, available at: <https://www.gov.uk/government/news/commission-response-to-report-on-freedom-of-speech-in-universities>
- 14 *Securing student success: risk-based regulation for teaching excellence, social mobility and informed choice in higher education*, 19 October 2017, p.33, available at: https://consult.education.gov.uk/higher-education/higher-education-regulatory-framework/supporting_documents/HE%20reg%20framework%20condoc%20FINAL%2018%20October%20FINAL%20FINAL.pdf
- 15 ‘Guidance to the Office for Students: Written statement – HCWS495’, made by Sam Gyimah, 28 February 2018, available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-02-28/HCWS495/>
- 16 *Securing student success: Regulatory framework for higher education in England*, Office for Students, February 2018, available at: https://www.officeforstudents.org.uk/media/1085/ofs2018_01.pdf

- 17 See 'Suspension of registration', *Securing student success*, 2018, p.59
- 18 The full transcript of the oral evidence session is available on the JCHR website: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/freedom-of-speech-in-universities/oral/77559.html>.
- 19 The full transcript of the oral evidence session is available on the JCHR website: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/freedom-of-speech-in-universities/oral/77559.html>
- 20 *Freedom of speech in universities*, paragraph 98
- 21 It was acknowledged that some universities may well house their codes of practice on 'members-only' pages of institutional websites. However, due to the tight timeframe to conduct this research, it was deemed unsuitable to contact these institutions for copies of their codes of practice and a selection was, therefore, made from universities with their codes available freely online.
- 22 This is reflected in the fact that the only Scottish university in this analysis – the University of Edinburgh – has a 'policy on speakers and events', as opposed to a specific code of practice on freedom of speech.
- 23 Since there are no universities in the UK with non-Christian foundations, only higher education institutions with Catholic or Church of England missions were included in the study – all of which are members of The Cathedrals Group of universities.
- 24 The Welsh Language Act 1993 is available at: http://www.legislation.gov.uk/ukpga/1993/38/pdfs/ukpga_19930038_en.pdf
- 25 The University of Southampton's process flowchart is housed on the JCHR's website at: https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/58913.htm#_idTextAnchor066

- 26 The other institution's code of practice was also scheduled for review in spring 2018
- 27 Based on an exchange of information between the author and the Prevent team at the Department for Education in March 2018
- 28 See Bahram Bekhradnia and Diana Beech, *Demand for Higher Education to 2030*, HEPI Report 105, available at: <http://www.hepi.ac.uk/wp-content/uploads/2018/03/HEPI-Demand-for-Higher-Education-to-2030-Report-105-FINAL.pdf>

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The question of whether UK higher education institutions are effectively promoting free speech on campus is a political hot potato. Recent attempts to 'no platform' speakers by students and academics have caused Government and policymakers to question whether the right balance is being struck by higher education institutions, which have a legal obligation (in England and Wales) to formulate and implement codes of practice to uphold freedom of speech on their premises.

This report presents a practical guide for institutions to use when composing or updating these codes of practice. It looks at what works in existing codes, as well as what does not, and presents a set of practical recommendations to the sector to ensure future codes of practice on freedom of speech are as simple, effective and user-friendly as possible.

HEPI was established in 2002 to influence the higher education debate with evidence.

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