



Lincoln College Code of Practice on Freedom of Speech

I. PREAMBLE

The special position of universities

S.26 of the Counter Terrorism and Security Act 2015 requires universities 'to have due regard to the need to prevent people from being drawn into terrorism.'

This very broad injunction gives universities a large measure of discretion, both in assessing the level of risk they face and in framing appropriate policies that are proportionate to that level of risk.

It seems obvious that, in Oxford Colleges, the risk of people being drawn into terrorism is extremely low. Therefore, existing welfare, pastoral, and other administrative policies are likely to be adequate to discharge the statutory duty so long as they contain a reference to the need to prevent people from being drawn into terrorism and indicate proportionate and rights compliant steps to be taken in the very unlikely event that a PREVENT issue ever arises.

In framing compliant policies it is essential that Colleges understand that the application of PREVENT to the university sector is different from its application to any other category of public body. This is for two reasons:

- **Firstly** because S.31 of the Counter Terrorism and Security Act requires universities to have special regard to their pre-existing statutory obligation (under S.41 of the Education (No 2) Act 1986) 'to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.'
- **Secondly**, because of the foundational importance of free expression to intellectual inquiry- and therefore to the central purpose of a university, which cannot properly function in its absence.

Free speech

This means that statute and principle combine to require that, in Colleges, the PREVENT duty should be applied in such a way that any risk to free expression is kept to an irreducible minimum. College free speech policies must be drafted in a manner that achieves this outcome.

Colleges should therefore ensure that all PREVENT key individuals understand the overriding and paramount importance of free speech in the academy, and the importance of their adhering closely to the provisions of S 41 of the Education Act (No 2) 1986. College policies should foster an open and civil environment in which ideas and beliefs continue to be exchanged, debated and challenged freely within the law.

A culture of mechanistic over-compliance in response to PREVENT is a real threat to the culture of Colleges and to their academic and pedagogical mission. In the face of very low risk, the imposition of excessive and intrusive new layers of bureaucracy, along with policies significantly corrosive of existing rights, would amount to over-compliance. Such a response would undermine both academic freedom and relations between Colleges, staff and students to no useful public policy purpose. It is to be avoided.

The importance of existing rights

For all these reasons, the proportionate and lawful way to comply with the PREVENT duty in the very low risk College context is to make it subject to free expression rights within the law and to those other rights that, within the law, underpin academic freedom. These include rights to autonomy, confidentiality and equal treatment under the law.

Autonomy: the right to hold, articulate and act upon political, ideological and religious beliefs within the law and subject to contractual terms. In Colleges, PREVENT policies must be drafted in such a way that they do not impede expressions of belief, speech or actions that are within the law and consistent with contractual terms.

Confidentiality: the right to a private life within the law. In Colleges, PREVENT policies must not intrude into the privacy of individuals in the absence of a perceived risk of terrorist crime. In particular, student confidence in College welfare policies must not be undermined by ill-considered or disproportionate PREVENT activity. Such an outcome would likely damage the openness of College relationships in a way quite inimical to the purposes of the legislation.

Equal treatment under the law: the right not to be discriminated against on grounds of race or ethnic origin, gender, sexual orientation, disability or religion. College PREVENT policies must not be discriminatory in any way and they must not result in discriminatory outcomes. Policies that result in discriminatory outcomes are likely to be unlawful.

PREVENT in the Colleges

This approach will not cause any failure to comply with the PREVENT duty. This will be met by Colleges applying out their existing welfare and pastoral policies, by mandating proportionate rights compliant responses to any perceived risk of terrorist crime, and by their strictly upholding the existing criminal law as it relates to incitements to racial and religious hatred, criminal incitement generally, and to other relevant criminal offences.

Colleges may safely regulate and proscribe these unlawful categories of speech in a way that is entirely consistent with free expression rights, academic freedom and other relevant rights protections.

On the other hand, the definition of ‘non-violent extremism’ to be found in the PREVENT Guidance (**‘vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs’**) would, if applied literally as a proscription tool in the very low risk environment of Oxford Colleges, close down whole swathes of legitimate academic and intellectual discourse conducted in terms that represent no breach whatsoever of the criminal law.

This would be entirely disproportionate in the context of Oxford Colleges, causing very significant damage both to scholarship and to teaching. To seek to proscribe such categories of speech in Oxford Colleges would not assist in the purposes of the legislation.

It is within the bounds of the Colleges’ discretion to determine that while criminal speech should be proscribed, speech that is not unlawful may be dealt with through debate, exposure and, where necessary, by counter argument.

II. INTRODUCTION

Statutory obligations

1 The Education Act (No. 2, 1986), Section 43, imposes on the authorities of universities and their constituent colleges’ obligations to safeguard the lawful exercise of freedom of speech and requires each of them to issue a code of practice to facilitate the discharge of its duties under the Act. The authorities are further required to take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to ensure compliance with the code of practice. The duties imposed by Parliament, and the interpretation provisions, are as follows:

- (1) Every individual and body of persons concerned in the government of any establishment to which this section applies 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.
- (2) The duty imposed by sub-section (1) above includes (in particular) 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 of objectives of that body.
- (3) The governing body of every such establishment shall, with a view to facilitating the discharge of the duty imposed by subsection (1) above in relation to that establishment, 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; and dealing with such other matters as the governing body consider appropriate.
- (4) Every individual and body of persons concerned in the government of any such establishment 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 that establishment, issued under subsection (3) above, are complied with.
- (5) The establishments to which this section applies are -
- (a) any university;
 - (b) any establishment which is maintained by a local education authority and for which section 1 of the 1968 (No. 2) Act (government and conduct of colleges of education and other institutions providing further education) requires there to be an instrument of government; and
 - (c) any establishment of further education designated by or under regulations made under section 27 of the 1980 Act as an establishment substantially dependent for its maintenance on assistance from local education authorities or on grants under section 100(1)(b) of the 1944 Act.

- (6) In this section -

"governing body", in relation to any university, means the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs (that is to say the body commonly called the council of the university);

"university" includes a university college and any college, or institution in the nature of a college in a university.

(7) Where any establishment -

(a) falls within subsection (5)(b) above; or

(b) falls within subsection (5)(c) above by virtue of being substantially dependent for its maintenance on assistance from local education authorities;

the local education authority or authorities maintaining or (as the case may be) assisting the establishment shall, for the purposes of this section, be taken to be concerned in its government.

(8) Where a students' union occupies premises which are not premises of the establishment in connection with which the union is constituted, any reference in this section to the premises of the establishment shall be taken to include a reference to the premises occupied by the students' union.'

The University's own statutes include under Tit. XI (Of University Discipline) the following provision:

(1) No member of the University shall in a university context intentionally or recklessly:

(a) disrupt or attempt to disrupt teaching or study or research or the administrative, sporting, social, cultural, or other activities of the University;

(b) disrupt or attempt to disrupt the lawful exercise of freedom of speech by members, students, and employees of the University or by visiting speakers;

(c) obstruct or attempt to obstruct any officer, employee, or agent of the University in the performance of his or her duties;

(d) deface, damage, or destroy or attempt to deface, damage or destroy any property of or in the custody of the University or of any college or of any member, officer, employee, or agent of the University or of any college, or knowingly misappropriate such property;

- (e) occupy or use or attempt to occupy or use any property or facilities of the University or of any college except as may be expressly or impliedly authorised by the university or college authorities concerned;
 - (f) forge or falsify any university certificate or similar document or knowingly make false statements concerning standing or results obtained in examinations;
 - (g) engage in action which is likely to cause injury or to impair safety;
 - (h) engage in violent, indecent, disorderly, threatening, or offensive behaviour or language;
- (2) Every member of the University shall, to the extent that such provisions may be applicable to that member, comply with the provisions of the Code of Practice on Freedom of Speech issued from time to time by Council pursuant to the duty imposed by Section 43 of the Education (No. 2) Act 1986 and duly published in the University Gazette.'
- (3) The College's by-laws provide that a breach of the Code of Practice on Freedom of Speech is a "serious offence" for the purposes of the College's disciplinary system, which is set out in the College Memorandum.

III. CODE OF PRACTICE

The following provisions constitute the Code of Practice adopted by Lincoln College to operate with effect from 1 September 1987 to facilitate the discharge of the duty imposed by Section 43(1) of the Education (No. 2) Act 1986, in relation to Oxford University. The provisions also take into account the duties imposed by the Counter Terrorism and Security Act 2015.

PART 1 – General Duties

1 General duty to uphold freedom of speech

Members, students, and employees of the College are bound at all times so to conduct themselves as to ensure that freedom of speech within the law is secured for members, students, and employees of the College and for visiting speakers. Any member, student, or employee who organises a meeting in College is under an obligation to remind speakers and audience alike of their responsibilities to observe the College's policies on harassment and to conduct civil academic discussions at all times.

- 2 The freedom protected by para. 1 of this Code of Practice is confined to the exercise of freedom of speech within the law. Examples of statements which involve a breach of

the criminal law are incitement to commit a crime (including a terrorist crime), sedition, and stirring up racial and religious hatred in contravention of statute. Statements may also be unlawful if they are defamatory or constitute a contempt of court.

3 General duty not to impede access to places at which the right of freedom of speech is exercised on premises of the College

Subject to such limitations on access as may lawfully be imposed by the competent college authorities, it shall be the duty of every member, student, and employee of the College not to impede the free access of any person entitled to be present to a place where the right of freedom of speech is being or is to be exercised on premises of the College.

4 Right of peaceful protest

Nothing in this Code of Practice shall be taken to prohibit the legitimate exercise of the right to protest by peaceful means; provided always that nothing is done which contravenes the foregoing general principles of the other requirements of this Code.

PART 2 - Academic Activities

5 All persons concerned with the organisation or conduct of an activity which forms part of the College's teaching, study, or research (such as a tutorial, lecture, seminar, class, conference, research work, or examination) shall immediately give notice to the Senior Dean of any facts coming to their notice which indicate that such activity is likely to be delayed or disrupted by improper means.

6 The Senior Dean shall be empowered to give such directions and to adopt such measures as seem appropriate to prevent or minimise the delay or disruption of an academic activity, and all persons concerned with the organisation or conduct of the academic activity under threat shall co-operate in carrying out the Senior Dean's directions and in facilitating the measures adopted.

7 In the event that any academic activity is delayed or disrupted by improper means a report shall forthwith be made to the Senior Dean by the person or persons responsible for the conduct of such activity.

PART 3 - Meetings and assemblies on premises of the College of clubs, societies, and other organisations

8 Students of the College who wish to hold a meeting on College premises or to hold events elsewhere which are college funded, affiliated or branded must obtain the

Senior Dean's written permission in advance, and book the College room with the Domestic Operations Manager. The Senior Dean should be aware of their responsibilities to consider the College's duties under the Prevent Duty strictly within the context of pre-existing rights, including under the Human Rights Act, the Education (No 2) Act and the Equality Act. A College room may be booked for a meeting of a university society only by a member of College who is a bona fide officer of the society. Details of the availability of the College's various rooms for different kinds of meeting, and of the conditions normally attached to the Senior Dean's permission, are set out in section 10.6.1 of the College Memorandum.

- 9 Any member, student, or employee of the College who, whether alone or in collaboration with other persons, makes arrangements for the holding on premises of the College of any meeting or assembly of persons (including any meeting of any club, society or other organisation and whether with or without a restriction to college membership), or who makes arrangements to hold events elsewhere which are college funded, affiliated or branded, and who becomes aware of facts indicating that such meeting or assembly is likely to be delayed or disrupted by improper means, shall immediately report such facts to the Senior Dean.
- 10 In relation to any such meeting or assembly which he or she believes to be threatened, the Senior Dean shall be empowered to give such directions and to require the adoption of such measures as seem appropriate to prevent or minimise the improper delay or disruption, and all persons concerned shall be bound to co-operate in carrying out the Senior Dean's directions and in facilitating the measures required to be adopted.
- 11 Fellows of the College who wish to hold meetings on College premises shall be responsible for risk-assessing their own events.

PART 4 - Powers of the Senior Dean in relation to threatened meetings

12 (1) **Directions and measures to be adopted**

In relation to any academic activity or any meeting or assembly of persons which the Senior Dean believes to be threatened by disruption, the Senior Dean may give directions and require measures to be adopted pursuant to paras. 6 and 10 of this Code on the following (amongst other) matters:

- (a) the number of persons to be admitted to the premises where the meeting is to be held;
- (b) the issue of tickets of admission;

- (c) the designation of one or more persons as the official organisers of the meeting with direct responsibility to the Senior Dean for all the arrangements thereof;
- (d) the designation of a person as the chairman of the meeting with responsibility for the proper conduct of such meeting;
- (e) the admission (or non-admission, as the case may be) of members of the public;
- (f) the appointment of stewards to assist with the control of the meeting;
- (g) the employment of security staff to ensure the orderly conduct of the meeting and safe access to and egress from the meeting;
- (h) the carrying of banners, placards and similar objects into the meeting;
- (i) the place where the meeting is to be held.

(2) **Meetings where breach of the law is anticipated**

The Senior Dean may as necessary consult with the Proctors and the local police about forthcoming meetings and activities covered by this Code of Practice. In any case where a breach of the law may be anticipated the Senior Dean shall have power, having taken into consideration such advice from the police and others (such as the Rector) as may be available, to order the cancellation, postponement, or relocation of the meeting.

(3) **Expenses incurred in safeguarding academic activities and other meetings**

Where expenses are incurred (e.g. in the engagement of stewards or the employment of security staff) to safeguard an academic activity under Part 2 of this Code of Practice the cost thereof shall be borne by the College. In all other cases the cost shall be borne by the person or persons organising the meeting, save that the Senior Dean may (if so advised) make representations to the Governing Body of the College suggesting that the cost shall be borne in whole or in part by the College and the Governing Body may decide the matter.

PART 5 – College premises made available for use by outside organisations

- 13 In any case where the College is proposing to grant permission to an outside organisation or group to hold meetings on its premises, the attention of such outside organisation or group will be drawn to the contents of this Code of Practice and permission to use the premises may be refused unless the outside organisation or group both undertakes to secure that the principles embodied in this Code will be upheld and satisfies the college authorities of its ability to discharge its obligations in regard to upholding freedom of speech.

PART 6 - Miscellaneous

- 14 The Governing Body of the College is under a duty pursuant to Section 43(3) of the Education (No. 2) Act 1986 to keep this Code of Practice up to date. No revision of the Code will, however, take effect until after due notice has been given.
- 15 Failure to comply with the provisions of this Code of Practice may render the offender liable to disciplinary proceedings. Nothing in this Code of Practice affects the normal operation of the criminal law.