



UNIVERSITY OF  
LIVERPOOL

## **Policy and Code of Practice Regarding Freedom of Speech**

Approved 12<sup>th</sup> April 2016

Approved by Council

Responsible Officer Dr Paula Harrison Woods

Review Date April 2019

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## 1. Principles

Academic freedom is enshrined in the Statutes of the University. Statute 13.6.1 sets out the following principle:

“To ensure 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 themselves in jeopardy of losing their job or privileges.”

The University is also mindful of its obligations regarding Freedom of Speech and the Senate and Council have agreed that, so far as is reasonably practicable, the following principles shall apply within the University and to University branded events which take place off campus:

That any individual or body of persons shall be free, within the law, to hold meetings or engage in such other activities of the type set out in Appendix I on the premises of the University (including premises occupied by the Liverpool Guild of Students), regardless of the beliefs, views, policies or objectives of that individual or body.

That where there are concerns about an event, the University will seek to facilitate an open and transparent dialogue with the event organisers to establish whether the event can take place whilst ensuring the University meets its legal obligations. Event organisers will be expected to take part in this dialogue in an open and transparent manner.

That University branded events which take place off campus will reflect the values of the University and will comply with the spirit of the principles above.

## 2. Scope of the Policy and Code of Practice

The University has duties to secure freedom of speech within the law under Section 43 of the Education Act (1986) and for ensuring that it meets the requirements of Section 26(1) of the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism. The University is responsible for events which occur on campus and also for University branded events which take place off campus in the UK. Whilst legal obligations differ overseas, the same principles will apply to any University branded activity overseas.

## 3. Legal Framework

As noted above, Universities are required to secure freedom of speech within the law by the Education Act. The Prevent Guidance for Higher Education Institutions in England and Wales 2015 paragraph 11 sets out a statutory requirement that HEIs must consider whether,

*“views expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. In these circumstances the event should not be allowed to proceed except where RHEBs are entirely convinced that such risk can be fully mitigated without cancellation of the event.”*

The University must also take account of other legal obligations which may require it to have regard to what is said on its premises, for example, ensuring the health and safety of those attending the event, or ensuring that the content of a speech remains lawful. Universities UK produced a very helpful summary of relevant legislation in 2011 which is reproduced in full in Appendix VIII.

## 4. Purpose of Policy

This Policy sets out:

- a) the procedures to be followed by members of the University and visiting speakers in connection with the organisation of any public or private meeting or activity which is to be held or take place on University premises;
- b) the procedures to be followed by members of the University and visiting speakers in connection with the organisation of any University branded event taking place off campus;
- c) the conduct required in connection with any such meeting or activity; and
- d) steps which the University must take to secure compliance with the requirements of this policy including, where appropriate, disciplinary measures.

All members of the University and invited speakers shall be under a duty to assist the University in securing freedom of speech within the law in the University and promoting the principles set out above.

## 5. Responsibilities

**The Council** are responsible for ensuring that appropriate procedures are in place to comply with relevant legislative requirements.

**The Deputy Vice Chancellor** is responsible for confirming that appropriate risk assessments have taken place and for confirming that appropriate mitigation has been put in place for events which are deemed to be high risk. The Deputy Vice Chancellor may nominate another member of the Senior Management Team to undertake this role in his/her absence. All references to the Deputy Vice Chancellor within this document include his/her nominee.

**The Chief Executive Officer of the Guild** is the **appointed officer** responsible for ensuring that, if required, risk assessments take place for events taking place in the Guild and for events organised by student societies which take place off campus. S/he is also responsible for ensuring that all staff who accept bookings for rooms controlled by the Guild comply with this policy and that the University is notified about any events which are deemed to be high risk.

**The Director of Student Administration and Support** is the **appointed officer** responsible for ensuring that, if required, risk assessments take place for events taking place in centrally bookable rooms and for any events for which there is no other appointed officer.

S/he is also responsible for ensuring that this policy is updated to meet the requirements of relevant legislation.

**The Director of Residential and Commercial Services** is the **appointed officer** responsible for ensuring that, if required, risk assessments take place for commercial bookings.

**The Director of Marketing** is the **appointed officer** responsible for ensuring that, if required, risk assessments take place for University events taking place off campus. S/he is also responsible for ensuring that all staff involved in organising University branded events off campus comply with this policy.

**The Head of Operations London Campus** is the **appointed officer** responsible for ensuring that, if required, risk assessments take place for events taking place on the London campus.

**The Chair of the Heritage and Culture Committee** is the **appointed officer** responsible for deciding whether cultural events, other than those organised by student societies, which do not involve external speakers require a risk assessment.

**The Head of Student Academic Administration** is responsible for ensuring that the ORBIT Team, who are responsible for the allocation of centrally bookable lecture theatres and teaching rooms, comply with this policy.

**Heads of Academic Departments** are responsible for ensuring that all academic staff are aware of the contents of this policy and for informing staff that external speakers on academic programmes must comply with the principles set out in this policy. They are responsible for informing the Director of Student Administration and Support if there are any concerns about an external speaker who has been invited as part of an academic programme.

**School Managers** are responsible for ensuring that all staff who accept bookings for rooms controlled by Schools comply with this policy.

**The Conference Officer Manager** is responsible for ensuring that all staff who accept bookings for conferences comply with this policy.

**The Centre Operation Manager** is responsible for ensuring that all staff who accept bookings for events in the Foresight Centre comply with this policy.

NB. In the absence of the relevant appointed officer, another appointed officer should fulfil this role.

## **6. Procedures for the Organisation of Meetings and Activities Involving the Use of University Premises**

- a) All bookings and/or hirings of University premises must be applied for by completion and submission of the relevant paper form or web room booking form. Copies of specific forms are available from the Directors named in section 5 above.

- b) All bookings and/or hirings of Guild premises must be applied for using the Guild's room booking system.
- c) Administrative responsibility for the initial acceptance of bookings and/or hirings of all rooms and other space in or on University premises is allocated to individuals or post holders as specified in section 5.
- d) Each event booking must identify a principal organiser(s). The principal organiser(s) must make the booking or hiring of the desired space through the specified individual or post holder. Bookings which involve an external speaker should be made at least three weeks in advance to allow sufficient time for the booking to be considered using the processes set out below. If a booking is received with less than three weeks' notice, the University reserves the right to reject the booking on the grounds that there is insufficient time to follow the appropriate processes. On receipt of the application, the specified individual or post holder will review the application in line with the flowchart in Appendix IV. If the event involves an external speaker, then an initial internet search should be conducted to identify whether there are any initial concerns about the speaker. Details of the search should be recorded; a template for doing this is provided in Appendix VI. If such concerns are identified then a full risk assessment should take place.
- e) If the booking is for an exhibition, performance or other cultural activity which does not involve an external speaker but may involve material which may incite violence or draw people into terrorism, the relevant appointed officer must be informed. S/he will undertake an initial review of the material/ concept and will confirm whether a full risk assessment should take place.
- f) In most cases this review will not highlight any concerns which require a further risk assessment. In such cases, the specified individual or post holder will *either*:
  - i) accept the application and grant permission for the meeting or activity to take place, according to the requirements specified by the principal organiser on the form; or
  - ii) if suitable premises are unavailable, decline the application.
- g) If a risk assessment is required the relevant appointed officer or his/her nominee(s) must be informed.
- h) The appointed officer will be responsible for coordinating the risk assessment and, where appropriate, making recommendations based on the outcome of the risk assessment to the Deputy Vice-Chancellor. If the appointed officer is satisfied that following the implementation of appropriate control measures the event is low risk then s/he will confirm that the event can go ahead. If s/he is not satisfied that the event is low risk, the risk assessment and recommendations will be referred to the Deputy Vice Chancellor for agreement.
- i) The appointed officer will identify the risks associated with the event using the template in Appendix VII.

- j) If there are concerns about the speaker following an initial web based search, the Press Team within Marketing and Communications may be asked to provide support to establish further information about the individual. This includes identifying any groups with which the speaker is known to have an affiliation and checking this against the list of proscribed organisations. If there are concerns that the speaker has links to a proscribed organisation or has previously made public statements which incite violence against others and or may draw people into terrorism, the Director of Student Administration and Support should be contacted who will seek further information and advice from the Regional Prevent Coordinator for HE/FE and or the Local Authority Prevent Coordinator.
- k) If the review of the speaker does not identify and concerns about people being drawn into terrorism or of hate speech or serious public disorder then the appointed officer may decide to undertake the risk assessment on a virtual basis without the requirement for a meeting. In such circumstances, all members of the panel will be required to confirm agreement with the risk assessment and proposed measures in writing (email from an official University email account is acceptable).
- l) The appointed officer will determine membership of the panel based on the specific circumstances of the case. The panel should usually include the Head of Security or nominee, a member of Marketing and Communications and, where a student group is involved, a member of the Liverpool Guild of Students.
- m) If the initial assessment identifies that there may be a possibility of people being drawn into terrorism or of hate speech or serious public disorder or any other factor which causes concern, a panel meeting will be required to discuss the risk assessment.
- n) The risk assessment panel meeting is intended to be a discussion which encourages consideration of the need to facilitate free speech within the law alongside other legal requirements. The risk assessment pro forma in Appendix VII provides a template document for such discussions. The completed risk assessment should indicate who has been involved in compiling the risk assessment.
- o) Wherever possible, the principal organiser should be given an opportunity to contribute to the risk assessment. Representatives of groups which object to a particular event should also be given an opportunity to contribute to the risk assessment wherever possible. Encouraging dialogue at this stage may resolve concerns about the event.
- p) The risk assessment will consider measures to reduce any risks associated with the event; this may include requirements such as that:
  - i) admission tickets be issued;
  - ii) there be provision for checking the numbers and/or identity of all those attending the meeting;
  - iii) individuals be named as chairpersons for the meeting or activity;

- iv) speakers may be asked to provide written undertakings about the conduct of the event and the content of their speech;
  - v) speakers may be asked to provide an outline of their speech for approval prior to the event taking place;
  - vi) a specified number of stewards or porters be available, at the expense of whomsoever the Deputy Vice-Chancellor or his/her appointed officer deems appropriate;
  - vii) the local police be informed of the meeting or activity, and, if appropriate, be invited to attend;
  - viii) any charges levied by the local police be met by the organising body;
  - ix) a written explanation be given concerning the proposed conduct of the meeting or activity;
  - x) particular arrangements be made to comply with fire or other safety arrangements;
  - xi) payment in advance be required to cover hire charges and other reasonable contingencies;
  - xii) full details of the planned movements of speakers (time of arrival and departure, names of those accompanying the speaker) be made available as soon as known and any changes of arrangements be notified promptly.
- q) If the event is deemed to be low risk following the implementation of measures agreed in the risk assessment the appointed officer will grant permission for the event.
- r) If the event is not deemed to be low risk following the implementation of measures agreed in the risk assessment then the completed risk assessment and associated recommendations will be forwarded to the Deputy Vice-Chancellor who will grant permission provided that s/he is satisfied that:
- i) all reasonable steps can or will be taken to prevent any infringement of the law; and
  - ii) such conditions as are reasonably required within the risk assessment will be complied with.
- s) If the Deputy Vice-Chancellor withholds permission, s/he will explain in writing to the applicant the reasons for his/her decision.
- t) The Deputy Vice-Chancellor or his/her appointed officer has discretion to lay down further conditions, if appropriate, after consultation with the police and the organising body. Thus s/he may, for example, require the designated meeting or activity to be declared public (which would permit a police presence); s/he may also arrange for employees of the University or (where appropriate) of the Liverpool Guild of Students

to be responsible for all security arrangements connected with the meeting or activity and appoint a member of staff as 'controlling officer' for the occasion.

- u) If s/he is not satisfied that adequate arrangements can be made to maintain good order, s/he may refuse or withdraw permission for the meeting or activity. Such a step will normally only be taken after the police have been consulted.
- v) Any appeal against conditions required by the Deputy Vice-Chancellor or his/her appointed officer or against withholding, withdrawing or declining of permission should be addressed to the Vice-Chancellor, who will determine the matter in consultation with the President of the Council. Any such decision will be reported to the following meeting of the Council of the University.
- w) If an individual objects to a publicised event s/he should put his/her concerns in writing to the Deputy Vice-Chancellor who will decide whether the objections materially alter any risk assessment which has taken place. If the objections may materially alter the risk assessment, the Deputy Vice-Chancellor will appoint an officer to review the case using the process set out in steps 2e to 2u. The outcome of this review will be notified to all relevant parties in writing.

## **7. Sharing Concerns about Speakers**

- a) As noted in 5i above, if the appointed officer believes that the speaker has previously made public statements which incite violence against others and/or may draw people into terrorism s/he will contact the Director of Student Administration and Support who will contact the Regional Prevent Coordinator for HE/FE and/or the Local Authority Prevent Coordinator.
- b) If, during preparations for the event or during the event, the appointed officer or others believe that the speaker has incited violence against others and or made statements which may draw people into terrorism s/he must contact the Director of Student Administration and Support who will contact the Regional Prevent Coordinator for HE/FE and/or the Local Authority Prevent Coordinator with this information and ask for advice about sharing the information further.
- c) If the appointed officer is aware that the speaker is due to speak at another University s/he should inform the Director of Student Administration and Support who will contact the Regional Prevent Coordinator for HE/FE and discuss appropriate approaches to sharing this information.

## **8. Conduct of Meetings and Activities Involving the Use of University Premises**

- a) It is the responsibility of the principal organiser to ensure that all preparations for a meeting or other activity have been adequately made. This shall include:
  - i) the provision of a clear indication in any advertisement for a meeting or other activity as to whether it is 'public' or 'private';

- ii) ensuring that no advertisement for a meeting or activity contains material likely to incite breaches of the Code;
- iii) the regulation, where necessary, of drinks, flags or any other article; the admission of press, radio and television reporters; and arrangements for calling the police in the event of a breach of the peace;
- iv) ensuring, in so far as is practicable, that the admission arrangements are such that the rule set out in 3(b) below is complied with;
- v) ensuring that any seating plans which are in place do not require segregated seating other than during an act of religious observance (single gender events may be permissible if it is agreed that there is a need for positive action to address inequality);
- vi) ensuring that persons who would otherwise be entitled to attend the meeting or activity may only be excluded if there are reasonable grounds for believing that their admission is likely to lead to a breach of the Code;
- vii) No article or object likely to lead to injury, damage or disruption may be taken inside the room (and/or building if appropriate) where the meeting or activity is taking place;
- viii) The person chairing a meeting has a duty, so far as possible, to ensure that both the audience and the speakers act in accordance with the law and the accepted canons of good behaviour during the meeting. S/he shall start the meeting by stating this and explaining how the meeting should be conducted;
- ix) If unlawful or unacceptable conduct occurs, the person chairing the meeting will give appropriate warnings. If such conduct persists, the chairperson will require the withdrawal or removal of the person(s) concerned by stewards, security staff or police. The appointed officer must be informed of this as soon after the event as possible. If there is no appointed officer, the Director of Student Administration and Support should be informed;
- x) If hate speech or speech which is likely to draw people into terrorism occurs the chairperson (or, as appropriate, the principal organiser or controlling officer) will endeavour to close the meeting. S/he will need to take into account the potential impact of this action and whether this may result in a breach of the peace or increased risk of disturbance or distress to those present. In this case s/he may choose to postpone closing the meeting until appropriate police or other assistance can be obtained and/or decide not to close the meeting to ensure the safety of those present. The appointed officer must be informed of the concern and the action taken in writing as soon after the event as possible. The appointed officer must inform the Director of Student Administration and Support. If there is no appointed officer the Director of Student Administration and Support should be informed directly;
- xi) Where a breach of the peace occurs, the chairperson (or, as appropriate, the principal organiser or controlling officer) may close a meeting or activity and ask

for police assistance to be called. The appointed officer must be informed of this as soon after the event as possible. The appointed officer must inform the Director of Student Administration and Support. If there is no appointed officer the Director of Student Administration and Support should be informed directly;

- xii) Premises used for meetings or activities must be left undamaged and in a clean and tidy condition, in default of which the expense of additional cleaning and repairs shall be met by whomsoever the Deputy Vice-Chancellor or his/her appointed officer deems appropriate. Such person or body may appeal against such order to the Vice-Chancellor, who shall determine the matter in consultation with the President of the Council;
- xiii) Where unlawful or unacceptable conduct, hate speech or speech which is likely to draw people into terrorism or a breach of the peace occurs, the Director of Student Administration and Support will inform the Deputy Vice Chancellor, the Regional Prevent Coordinator of HE/FE and/ or the Local Authority Coordinator for HE/FE and any other relevant parties;
- xiv) The Deputy Vice Chancellor will nominate a senior member of staff to investigate the circumstances surrounding the event to identify any improvements to practice for future events.

## **9. Procedures for the Organisation of University Branded Meetings and Activities Off Campus**

- a) Events organised by student societies which take place off campus will be considered in line with section 5 above. The Chief Executive of the Guild is the appointed officer for these events.
- b) University branded meetings and activities which take place off campus **must** be organised through the Corporate Events and Marketing Communications Teams in Marketing and Communications Department
- c) The Corporate Events Team will liaise with external venues and ensure that the event complies with the venue's terms and conditions.
- d) The Public Relations Team and (depending on the speaker) the Philanthropy and Alumni Relations Team will review the purpose and content of the event and conduct appropriate checks on external speakers.
- e) The Corporate Events Team will establish an event plan which will include appropriate measures to manage any risks associated with the event.
- f) If the Public Relations Team and Marketing Communications Team decide not to support an event initiated by another part of the University, the Director of Marketing and Communications will explain the reasons for this in writing to the relevant staff.
- g) It is expected that all off-campus University branded events will be conducted in line with section 7 of this Policy.

## **10. Record Keeping**

Appointed Officers are responsible for ensuring that a record is kept of all internet searches in relation to external speakers. The Due Diligence Checklist Template in Appendix VI.

Appointed Officers are responsible for ensuring that copies of all risk assessments within their area are maintained and for reporting the total number of risk assessments in their area and the number which were referred to the Deputy Vice Chancellor to the Director of Student Administration and Support on an annual basis.

The Director of Student Administration and Support is responsible for collating this information on an annual basis.

## **11. Investigation of Breaches of the Code of Practice**

Every member, student and employee of the University is under an obligation to assist such investigation or hearing as may be undertaken, whether by the Deputy Vice-Chancellor or otherwise, into any allegations of a breach of the provisions of this Code.

## **12. Discipline**

a) Any person who:

- i) organises or participates in the organisation of a meeting or other activity without complying with the provisions of this Code of Practice or any conditions laid down pursuant to Clause 2(f)(ii) above; or
- ii) deliberately disrupts or seeks to disrupt any meeting or other activity (save only for reasonable heckling); or
- iii) fails unreasonably to comply with any obligation placed on him by the Code of Practice; or
- iv) makes vexatious objections to events held by particular groups or individuals on campus and/or University branded events off campus

may be considered to have committed a breach of this Code of Practice, constituting a disciplinary offence to be investigated under the relevant disciplinary procedure i.e. the University's Policy on Student Conduct and Discipline or the Staff Disciplinary Procedure.

## **13. Definitions**

For the purpose of this Code of Practice the following definitions shall apply:

a) 'The members of the University' means those persons defined, as follows, in Ordinance 2.1 (Membership of the University):

- (i) The members of the University Council
- (ii) The staff employed by the University
- (iii) The registered students of the University
- (iv) The Emeritus Professors of the University

- (v) The Alumni of the University
- b) 'The Students of the University' means those persons registered full-time or part-time for any qualification or course of the University, or otherwise participating in any form of instruction provided by the University.
- c) 'The Employees of the University' means those persons or bodies currently employed or engaged, either for remuneration or otherwise, by the University itself or any other legal or charitable body associated or affiliated with the University.
- d) 'University Premises' means any building, land or other space occupied either wholly or in part by the University, including any premises for the time being occupied by the Liverpool Guild of Students.
- e) 'Public Meeting or Activity' means a meeting or activity open to all members of the general public.
- f) 'Private Meeting or Activity' means a meeting or activity where admission is restricted to a specified group or groups of persons.
- g) 'Use of University Premises' means the holding of a public or private meeting or activity on University premises. A list of examples of such activities covered by the Code of Practice is given in Appendix I.
- h) 'Principal Organiser' means the person responsible for booking and/or hiring University premises for any meeting or other activity.
- i) 'Organising Body' means the society, group or organisation responsible for booking University premises and under whose auspices a meeting or other activity is organised.
- j) 'Controlling Officer' means the member of the University staff appointed by the Deputy Vice-Chancellor or his/her appointed officer to be responsible for security arrangements connected with a particular meeting or other activity, and for ensuring that such meeting or activity is observed.

## **14. APPENDIX I**

Activities covered by the Code of Practice include:

- i) Meetings, lectures, talks, seminars, tutorials, classes, short courses, conferences, other teaching or informative activities of a similar nature;
- ii) Stage plays, cinematic or video film showings, music concerts, literary readings;
- iii) Demonstrations, processions, pickets.

## 15. APPENDIX II

**ORBIT Use only**  
**BR:**

### **APPLICATION FOR THE USE OF UNIVERSITY PREMISES**

Please note that we do not allow any refreshments in any of the shared teaching rooms on the Liverpool campus. If you are aware that you have attendees with access issues, please mention this on the booking form (in Section 6) to ensure that you have booked an appropriate location.

#### **EVENT INFORMATION**

<b>1. Name of department, organisation or society:</b>	<b>2. Name and address of principal organiser (person responsible for hiring University premises):</b>  <b>Tel:</b>  <b>Email:</b>  <b>Student Number (if student society):</b>
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#### **ROOM INFORMATION**

<b>Day(s) and Date(s)</b>	<b>From (e.g. 09:00)</b>	<b>To (e.g. 11:00)</b>

**Rooms required – please state building and room name/number**

**(e.g. Rendall, Seminar Room 4)**


**EVENT INFORMATION cont:**

<p><b>3. Title or purpose of meeting:</b></p>          <p><b>Are any controversial or potentially provocative issues involved which might lead to a disruption of the event?</b></p>	<p><b>4. Name and position of speaker(s) (if any):</b></p>          
<p><b>5. Number of participants / audience:</b></p>          	<p><b>6. Are there any specific seating arrangements (please note that this refers to the seating of attendees and not the room-layout):</b></p>          

<p><b>7. Is this booking being made on behalf of a University department or LGOS society?</b></p>	<p><b>8. Is this booking directly related to undergraduate teaching (i.e. is it linked to a module)?</b></p> <p><b>If yes, please state which module(s):</b></p>
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**FINANCIAL INFORMATION**

<p><b>9. Name and address of person to whom the account should be sent (if different from person in section 2):</b></p> <p><b>Name:</b></p> <p><b>Address:</b></p> <p><b>Tel:</b></p> <p><b>Email:</b></p> <p><b>Student number (if student society - your booking will not be processed any further if you do not provide a student number for payment):</b></p>																				
<p><b>10. If a University department, state the account number to be charged:</b></p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="width: 20px; height: 20px;"></td> </tr> </table> <p><b>Please note, your booking will not be processed any further if you do not provide an account code</b></p>																				

## **ADDITIONAL SERVICES AND FACILITIES**

<p><b>Catering</b></p>	<p>If you require catering or refreshments, please contact Hospitality Liverpool directly: <a href="mailto:catering@liverpool.ac.uk">catering@liverpool.ac.uk</a> or 0151 794 2328.</p> <p><i>Please note that refreshments are not allowed in the shared teaching rooms and foyers are not bookable in term-time between 9:00-17:00.</i></p>
<p><b>Cleaning</b></p>	<p>If you require any additional cleaning services for your event, please contact Facilities Management Help Desk directly: 0151 794 3000 to arrange.</p>
<p><b>Additional Equipment (e.g. poster boards, trestle tables etc)</b></p>	<p>The ORBIT team does not have any additional equipment. If you require additional equipment, please contact Facilities Management Help Desk directly: 0151 794 3000.</p> <p>If your conference has residential accommodation, please contact the Conference Office who will coordinate your event: <a href="mailto:conference@liv.ac.uk">conference@liv.ac.uk</a> or 0151 794 6440.</p>
<p><b>AV technicians</b></p>	<p>Please tick if you require an AV technician: <input type="checkbox"/></p> <p>What time(s) will you require an AV technician:</p> <p><i>If you require an AV technician, we will liaise with CSD to see if this is possible. However, on some occasions, CSD will not be able to guarantee their services.</i></p> <p>What are your AV requirement:</p> <p><i>Please note that we will liaise with CSD to see if they can meet your requirements but this cannot be guaranteed.</i></p>

**PLEASE CONFIRM THAT YOU HAVE READ THE TERMS AND CONDITIONS FOR  
HIRING UNIVERSITY PREMISES**

WHEN THIS FORM HAS BEEN PROCESSED WE WILL PROVIDE YOU WITH WRITTEN CONFIRMATION.

PLEASE RETURN THIS COMPLETED FORM TO [orbit@liv.ac.uk](mailto:orbit@liv.ac.uk) OR RETURN TO:

**ORBIT team  
2<sup>nd</sup> Floor  
Foundation Building  
Brownlow Hill  
Liverpool  
L69 7ZX**

**FOR ORBIT USE ONLY:**

**Copy:**

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## 16. APPENDIX III



### General Booking Conditions For The Hiring Of Rooms And Facilities

#### General Booking Conditions For The Hiring Of Rooms And Facilities

**1 Representative** The client shall appoint a responsible adult (the Representative) who shall be present throughout the client's event and in advance of the event shall inform the University in writing of the identity of that Representative. The Representative will be responsible for the good conduct of those people participating in the event and shall liaise with the Facilities Management staff when necessary during the event.

**2 Bookings** All requests to use University premises and other services must, in the first instance, be made on the Application For The Use of University Premises booking form.

#### **3 Event Details**

3.1 Upon receipt of the Booking Form the University will, as soon as is reasonably practicable, send to the Client confirmation of the booking, detailing the University's understanding with the Client of the Services required.

3.2 If the Client requests changes from that detailed in the confirmation, the University will attempt to co-operate but is not bound to do so. If the changes result in an increase in numbers or any other increase in the Services, these will be subject to an extra charge which will be calculated at the University's then current rates.

**4 Cancellation** Should the Client wish to cancel the event then written notice of cancellation must be received by the University at least 10 working days before the start of the event. The University reserves the right to charge in full all Services, as detailed in the booking confirmation, if written notice is not received as stated.

## 5 Payment

- a. **Clients accepted by the University for a credit account.** Payment is due immediately after the event. The University will issue an invoice and the Client shall pay within 14 days of the date of the invoice.
- b. **Clients who do not have a credit account with the University.** Clients shall be required to pay for the Services in full prior to the event. Any additional Services supplied during the event will be invoiced at the University's normal rates immediately after the event, and the Client shall settle any such invoice within 14 days of the date of the invoice.
- c. All charges in this Agreement exclude VAT which will be charged, where applicable, at the rate ruling at the time of invoicing.

**6 Overdue Accounts** The University reserves the right to charge interest on all overdue accounts at the rate of 1.5 % per month calculated on a daily basis.

**7 Alteration to Charges** At any time after a firm price for the event has been agreed between the Client and the University, the University may alter charges by written notice to the Client. Alterations to charges will only be applied when necessary to reflect changes in costs outside the control of the University.

**8 Liability** The University shall indemnify the Client without monetary limit against any liability for death or personal injury to the extent it results from the negligence of the University in the performance of this Agreement. The University shall also indemnify the Client against any direct physical damage wholly caused by the negligent act or omission of the University, its agents or employees in performing this Agreement, provided that such liability shall be limited in respect of any one event or connected series of events to One Million Pounds Sterling. Except as stated above, the University's liabilities and obligations in respect of performing this Agreement are expressly limited to performing and providing the Services detailed in the Booking Agreement and the Client shall indemnify the University against all other liability for death or personal injury or loss or damage to property, including that of the University or third parties arising directly or indirectly from this Agreement and/or the ensuing event.

The University shall not in any event be liable for any indirect, consequential loss or damage or loss of profits, however caused or arising, save as aforesaid.

The Client accepts responsibility for ensuring that guests, speakers, entertainers and performers it invites to the event, act and speak at all times within the law, and in this regard shall indemnify the University against any loss, expense or damages that it may suffer, either directly or indirectly, arising from the claims of third parties or its employees, servants or agents.

**9 Allocation of facilities** Whilst having due regard for the Client's

preferences regarding particular facilities, the University reserves the right to vary the allocation of facilities due to unforeseen circumstances such as fire or flood, industrial dispute or due to necessary maintenance work or for any other reason in the interests of efficient management. The Client will be given as much notice as is practicable in the circumstances if changes have to be made and equivalent alternatives will be offered whenever possible.

**10 Catering** Advice and assistance relating to catering arrangements can be sought from Hospitality Liverpool (Tel No: 0151 794 2328). Clients are not permitted to supply their own food and drink for consumption on University land or premises.

## **11 Food Safety**

**11.1 Buffet Meals** A 4 hour time period only is allowed for food safety best practice in regard to buffet meals. After 4 hours has elapsed, the University cannot guarantee the safety of food used from the buffet or subsequently taken home. The responsibility and care of any food buffet consumed after 4 hours has elapsed, passes to the client.

**11.2 Barbecue Food** thorough cooking of foods is extremely important for food safety and for this reason the University insists that food to be served as barbecue food is conventionally part-cooked prior to final cooking on the barbecue.

**12 Cleaning** The Client and Representative shall ensure that all rooms used during the event are left in a reasonably clean and tidy state when the event has finished. The University reserves the right to make an additional charge to the Client if extra cleaning, over and above the normal provision, is required before the rooms are re-used.

**13 Accidents** The Representative must report all accidents involving damage to property or injury to persons without delay to the nearest responsible member of University staff.

**14 Insurance** The Client shall arrange insurance against their obligations under this Booking Agreement, particularly Clauses 3,4,8,9,11,12,13,15,16,17 and 19

The University may insist that such insurance be arranged with an insurer acceptable to the University. The Client shall provide to the University upon request, evidence that such insurance is in force.

**15 Copyright, Registered Trade Marks & Other Intellectual Property Rights** The Client shall indemnify the University against all costs, damages and expenses, which may arise from any infringement of copyright, registered trade mark or intellectual property rights by any person attending the event, or anything arising from the event

**16 Freedom of Speech** The University has a legal responsibility to ensure

that freedom of speech is upheld on its premises. Accordingly, Clients are required to declare in advance to the University, any meeting with a topic or speaker(s) that may provoke other persons to inhibit freedom of speech by violent or threatening behaviour. The Client is responsible for conducting the event in an orderly manner and in accordance with the principle of freedom of speech within the law. To that end, the Client must take all necessary steps to ensure the safety of any visiting speaker(s) and his or her safe conduct to and from the University's premises. The University reserves the right to prohibit any activity that may, in its view, lead to riot or, in any other way, endanger University staff, students, clients, visitors or property. A copy of the University's Code of Practice on Freedom of Speech is available from the University on request.

**17 Fire Precautions** The Client and Representative shall ensure that all persons attending the event shall acquaint themselves with any instructions relating to fire alerts and escape routes. In the event of a fire alert, the Representative shall ensure that all persons attending the event obey the fire instructions whether displayed on notices or issued verbally by responsible University staff.

The Client, the Representative and those attending the event shall not interfere with, move or reposition any fire extinguishers within University premises or interfere with fire precautions in any other way.

**18 Pets** With the exception of a guide dog accompanying a visually-impaired person, pets are not permitted on University premises.

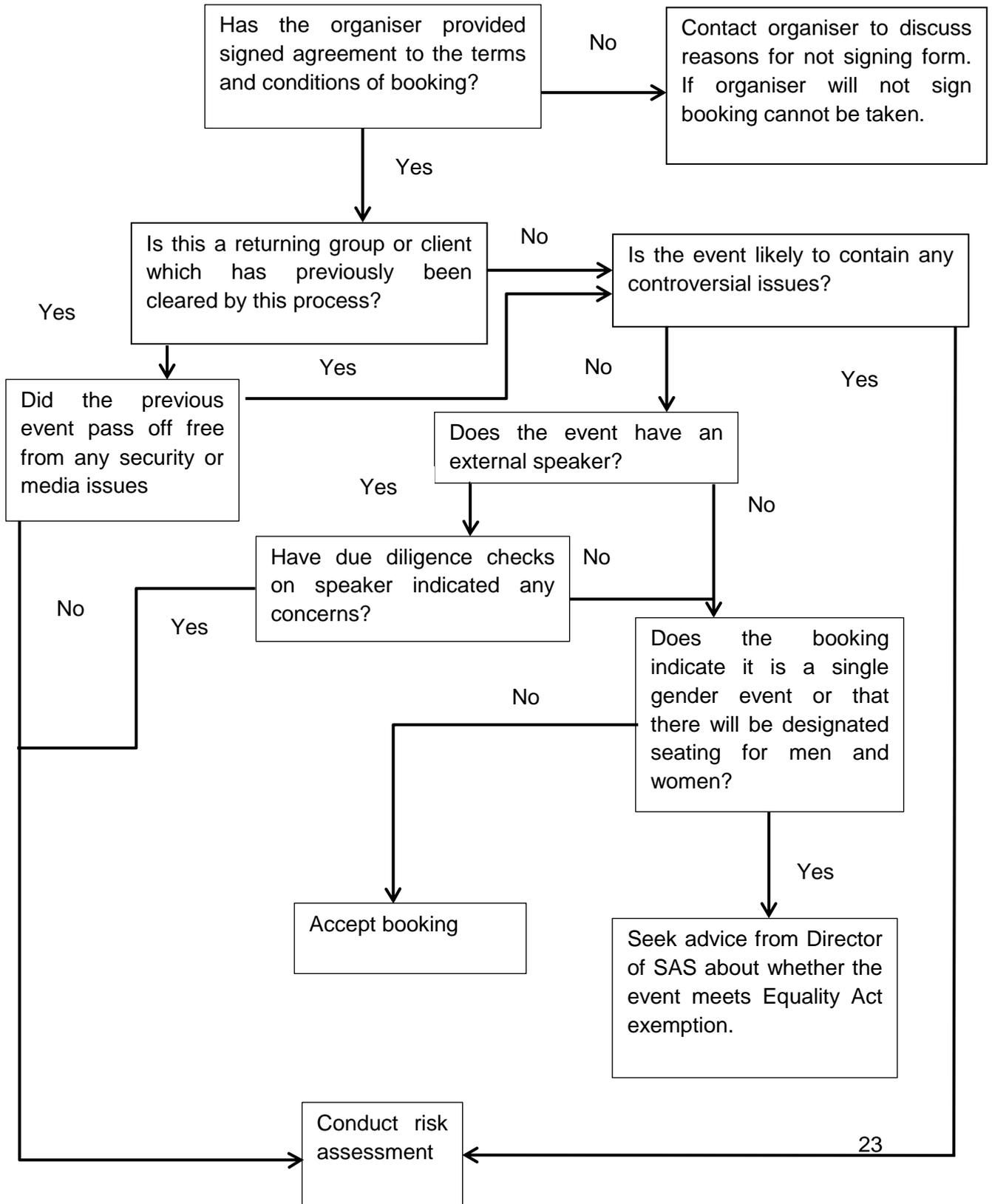
**19 Force Majeure** If the University is rendered unable, in whole or in part, to carry out its obligations for any reason beyond its reasonable control, then the University will be released from those obligations which can no longer be fulfilled.

**20 Law** This Agreement shall be interpreted and judged under English Law.

ORBIT/11/14

# 11. APPENDIX IV

## Process for Accepting a Booking



## 12. APPENDIX V Checklist For Accepting a Booking

	Yes	No	Risk assessment required	Comments
Is this a returning group or client which has previously been cleared by this process?				
Did the previous event pass off free from any security and media issues?			If answer is no	
Has the organiser provided signed agreement to the terms and conditions of booking?			If answer is no	
Has the organiser indicated that seating arrangements may require men and women to sit in designated area?			Maybe if the answer is yes	Seek additional information about the purpose of the meeting; segregated seating is only permissible for acts of religious observance.
Has the organiser indicated that the event will be a single gender event?			Maybe if the answer is yes	Seek additional information about the purpose of the event and advice from the Equality and Diversity Officer about whether the event meets the definition of positive action.
Is the speaker linked with a controversial or proscribed organisation? Examples of controversial groups may include: <ul style="list-style-type: none"> <li>• A group whose views may be deemed as being discriminatory or inflammatory to others</li> <li>• A group which advocates violence</li> </ul>				For a list of proscribed organisations see <a href="https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2">https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2</a> If the speaker is currently linked to a proscribed organisation the event cannot go ahead.
Is the event likely to include or address any controversial issues. Examples of controversial issues may be: <ul style="list-style-type: none"> <li>• Subject to adverse media attention</li> <li>• Associated with a campaign or</li> </ul>			If answer is yes	

<p>political pressure group</p> <ul style="list-style-type: none"><li>• Associated with animal rights issues</li></ul>				
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### 13. APPENDIX VI

#### External Speaker Due Diligence Checklist

Title of Event	
Date booking received	
Date of event	
Is this activity recurring?	
Film? If yes, title.	
Notes	
Ext. Speaker? If yes, who? (Complete 2nd Tab)	
Initial research completed? Date and by whom	
Research Link 1	
Research Link 2	
Research Link 3	
Are there any associations with a group which advocates violence?	
Are there any associations with animal rights issues?	
General Risk Assessment required?	
Appointed officer notified	
Enhanced Risk Assessment required?	
Enhanced Risk Assessment completed? Date and by whom?	
Notes	

## **14. APPENDIX VII**

This Appendix provides a pro forma risk assessment for speaker events where there may be controversy. This template is based on a template prepared by the Liverpool Guild of Students for events. The template should be completed following discussion by a Risk Assessment Panel. The template is intended as a guide only and it is anticipated that additional measures will be required to address the specific concerns relating to each event.

## SPEAKER EVENT RISK ASSESSMENT

<b>EVENT TITLE:</b>		<b>VENUE:</b>		<b>DATE AND TIME OF EVENT:</b>	
<b>PRINCIPAL ORGANISER'S NAME AND CONTACT DETAILS:</b>					
<b>HOW HAS THE ORGANISING GROUP BEEN INVOLVED IN THIS RISK ASSESSMENT?</b>					
<b>HOW HAS ANY INDIVIDUAL OR GROUP OBJECTING TO THIS EVENT BEEN INVOLVED IN THIS RISK ASSESSMENT?</b>					
<b>DATE BOOKING RECEIVED:</b>		<b>DATE OF RISK ASSESSMENT MEETING:</b>			
<b>HAZARDS</b>	<b>WHO CAN BE HARMED?</b>	<b>CURRENT CONTROLS</b>	<b>RISK SCORE</b>	<b>ADDITIONAL CONTROLS REQUIRED (To include responsibilities and timescales)</b>	<b>RESIDUAL RISK SCORE</b>
Slips, Trips and Falls	Attendees, Committee & University Staff	Ensuring that chairs are laid out in a suitable manner and that any wires not obstructing walkways  Committee members will ensure that hazards or spillages are reported to staff			
Violence and Protesting	Attendees, Committee & University Staff	Speaker / company to be confirmed at time of room booking  Any safety concerns to be reported to University staff			

Overcrowding	Attendees, Committee & University Staff	Capacity will be confirmed with the principal organiser  A maximum number of tickets be sold depending on capacity  Doorways and fire exits are not obstructed			
Electrical	Attendees, Committee & University Staff	Only equipment which has been PAT tested by the University will be used			
Fire Safety	Attendees, Committee & University Staff	At the beginning of the event all attendees will be informed of the fire exit and assembly point in case of emergency  Only equipment that has been PAT tested by the University will be used  Rooms will only be filled to maximum capacity			

Members of Risk Assessment Panel:

Chair of Risk Assessment Panel (signature).....Date.....

Agreed by the Deputy Vice-Chancellor (signature).....Date.....

## COMPLETING THE RISK ASSESSMENT FORM

- School/Department – note down the School and/or Department where the task is being carried out.
- Building – note the specific building(s) where the task is being carried out.
- Task – specify clearly the task being carried out.
- Hazards – make a list of all the relevant hazards associated with the task/activity (i.e. anything that has the potential to cause harm).
- Who can be harmed – make a list of ALL categories of people who could be harmed by the hazard.
- Current controls – list what is currently in place to protect people from the hazards. This will include physical controls, e.g. guarding, ventilation, procedural controls, e.g. permits, safe systems of work, and behavioural controls, supervision.
- Risk score – using the tables below and taking into account your current control measures, rate each hazard based on the likelihood of injury occurring and the likely consequence.

Likelihood	
1	Very unlikely
2	Unlikely
3	Fairly likely
4	Likely
5	Very likely

Consequence	
1	Insignificant – no injury
2	Minor – minor injuries needing first aid
3	Moderate – up to seven days absence
4	Major – more than seven days absence; major injury
5	Catastrophic – death; multiple serious injury

Consequences	5	5	10	15	20	25
	4	4	8	12	16	20
	3	3	6	9	12	15
	2	2	4	6	8	10
	1	1	2	3	4	5
		1	2	3	4	5
		Likelihood				

- Additional control required – list any additional control required that will reduce the risk rating score. Ensure responsibilities for tasks and timescales are added.
- Residual risk score – re-calculate the risk score after the introduction of the additional controls. Compare residual risk score with table below. Take further action if necessary.

ACTION TO BE TAKEN	
1-4 Acceptable	No further action but ensure controls are maintained
5-9 Adequate	Look to improve at next review
10-16 Tolerable	Look to improve within specified timescale
17-25 Unacceptable	Stop activity and make immediate improvements

## 21. Appendix VIII Extract from Freedom of Speech on Campus: rights and responsibilities in UK universities (Universities UK 2011)<sup>1</sup>

### Annexe C: The law: a summary of the legal framework

The legal framework governing academic freedom, freedom of speech and freedom of expression in the higher education sector has two main elements. First, as Section A explains, there are specific legal obligations on universities to promote, protect and respect these key freedoms. However, the rights to academic freedom and freedom of speech and expression are not absolute – they are freedoms ‘within the law’. Consequently, the criminal and civil law also sets limits on the lawful exercise of these rights, as summarised below in Section B.

One fundamental point in this analysis is that it is the law alone which can set restrictions on freedom of speech and expression and on academic freedom – it is for the law, and not for institutions or individuals within institutions, to set the boundaries on the legitimate exercise of those rights.

Section C considers other relevant legal considerations, namely:

- the public sector equality duty including the duty to promote good relations. As we explain, these duties do not set additional restrictions on freedom of speech or academic freedom within the law, but may require universities to take a more active stance in maintaining the distinction between lawful and unlawful activity. The duty to promote good relations does not, however, require universities to stifle the expression of controversial or unpopular views or expressions, where these are otherwise lawful
- the position of students’ unions under charity law
- the law relating to disclosure of information between universities or students’ unions and the police or other law enforcement agencies, in the context of concerns about, or investigations into, unlawful activity

### Section A: Freedom of speech and academic freedom

#### (i) The Education (No. 2) Act 1986

Section 43 of the Education Act (No. 2) 1986 is the most specific and direct legislative obligation on universities to promote and protect freedom of speech. It provides that:

*persons concerned in the government of any establishment... 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. (our emphasis)*

Section 43 is of fundamental importance in the context of this report. It imposes a positive and proactive legal duty. The obligation is not merely to refrain from limiting or infringing freedom of speech, but rather to do all that is reasonably practicable to ensure that freedom of speech is secured. The duty is directed at freedom of speech for all participants in university life – members, students, staff and visiting speakers.

Without detracting from, or limiting in any way, that broad duty, section 43 also imposes a number of specific further obligations:

- A duty on governing bodies to issue, and keep updated, a code of practice regarding the organisation of meetings and other activities on the university’s premises. The code must set

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<sup>1</sup> NB this guidance has not yet been reviewed in light of the Counter Terrorism Act 2015 and the Prevent Duty Guidance for higher education institutions in England and Wales.

out the conduct required of members, students and employees in connection with any such meeting or activity and the procedures they must follow.

- The code may also deal with such other matters as the governing body considers appropriate. These codes will typically include the right to refuse permission for, or to close, an event in lawful circumstances, and will detail the responsibilities of event organisers and members of the university, including the requirement to observe good order during an event. These elements reflect the fact that freedom of speech is to be enjoyed (and secured) within the law.
- A duty on every individual and body of persons concerned in the government of the institution to 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 are observed.
- A duty to ensure that the use of any university premises is not denied to any individual or body of persons on the grounds of their beliefs, views, policies or objectives.

The section 43 duty is directed at the governing body and senior management. While it does not directly apply to staff or to students or students' unions, the duty is indirectly applied to them through the required code of practice and rules and practices adopted to support and implement the section 43 duties.

## **(ii) The Education Reform Act 1988 – academic freedom**

The term 'academic freedom' is well recognised but does not itself appear in any UK legislation. It is a convenient 'shorthand' reference to the provisions of section 202 of the Education Reform Act 1988, which in relation to pre-1992 universities required university commissioners to have regard, inter alia, to the need to 'ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions.'

This legal obligation is imposed not directly on institutions but on the university commissioners, whose role was created by the 1988 Act but whose functions were ended in 1996. However, through the role of the commissioners in regulating the constitutions of universities, the principle of academic freedom became enshrined in the statutes and articles of government, for example as a guiding principle for the interpretation of the 'Model Statute' provisions regarding dismissal for good cause and redundancy, and academic staff grievances, in Chartered Universities.

Equivalent provisions protecting academic freedom are sometimes included in the articles of association of post-1992 universities. The principle of academic freedom may therefore operate as a constraint on action taken by universities in relation to academic staff. Put simply, it prevents academic staff being disciplined, dismissed or suffering other detriment on the grounds that they have exercised academic freedom. This recognises and protects a vital aspect of academic life, and complements the duty on institutions under section 43 of the Education (No. 2) Act 1986 to secure freedom of speech within the law.

It should, however, be noted that the protection conferred by section 202 of the Education Reform Act 1988 is limited to academic staff only, rather than staff generally. Students and visiting speakers are not covered and cannot invoke a right of 'academic freedom'.

The right to academic freedom is qualified by the phrase 'within the law'; as with the duties to ensure free speech under section 43 of the Education (No. 2) Act 1986, the boundaries on academic freedom are set by the criminal and civil law, with the effect that acts which are unlawful are not protected.

Recent detailed analysis of the scope of academic freedom and the law is described in the National and sector resources section of this report at Annexe A.

## **(iii) The Human Rights Act 1998**

The Human Rights Act incorporates the European Convention on Human Rights into UK law.

A number of Convention rights are relevant to freedom of speech and expression:

- freedom of thought, conscience and religion (Article 9) – including the freedom, either alone or in community with others, and in public or private, to manifest one's religion or belief, through worship, teaching, practice and observance
- freedom of expression (Article 10) – including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority
- freedom of assembly and association (Article 11)

In addition, under Article 14, the enjoyment of the rights and freedoms set out in the Convention must be secured without discrimination 'on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.' Article 14 does not therefore establish any free-standing right not to suffer discrimination – its effect is that the state must ensure that the other Convention rights are not regulated in a discriminatory fashion.

The non-discrimination provisions of Article 14 are wider than the scope of UK discrimination law, most specifically in this context because they extend to 'political or other opinions'. As is explained below, the UK law on religion and belief discrimination is capable of covering philosophical beliefs but does not protect pure opinions (political or otherwise).

These Convention rights under Articles 9 to 11 are not absolute, but qualified. The Convention states that, 'the exercise of these freedoms, since they carry with them 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' for the following purposes:

- 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 the reputation or rights of others
- for the prevention of the disclosure of information received in confidence

These Convention rights may therefore be constrained by the state. Once again they are 'freedoms within the law'. The inter-relationship between UK law and these Convention rights is complex. The position can be summarised as follows:

- It is unlawful for public authorities to act in a manner incompatible with the Convention rights. The acts of universities – at least in relation to their public functions – must therefore respect the rights and freedoms set out above.
- In any event, in relation to 'private' bodies or 'private' acts, UK law must be interpreted and applied, as far as possible, consistently with these Convention rights.

As a result, even where the Human Rights Act is not directly relied on as the basis of a claim, tribunals and courts have to take its provisions into account when determining legal disputes. For example, the right to freedom of expression could be taken into account by an employment tribunal when determining a case of unfair dismissal. Where freedoms and rights in the Convention are qualified, the courts can regulate legal limitations on them by considering whether these restrictions are necessary in a democratic society for one of the purposes set out above.

#### **(iv) Discrimination law**

Although discrimination law can operate as a limiting factor on freedom of speech and expression (by making speech and conduct unlawful), it also has a role to play in protecting these freedoms.

In particular, the Equality Act 2010 prohibits discrimination – including detrimental treatment and harassment – relating to one of the equality areas including gender, race, sexual orientation, disability, age, and religion and belief.

The term 'religion and belief' is broad in scope. It is not confined to religious or faith-based beliefs – non-religious philosophical beliefs are also protected. Further, the absence of a specific belief is also protected. As a result, for every religious or other belief which is protected, equal protection is given to differing or dissenting beliefs (religious or otherwise) and to the rejection or denial of that belief.

Case law has also demonstrated that the support of a political party does not qualify as a protected belief (although underlying political philosophies may qualify). Violent or extremist views will not qualify on the grounds that they are incompatible with human dignity, conflict with the fundamental rights of others, and are not worthy of respect in a democratic society.

Accordingly, a belief in the racial supremacy of a particular racial group will not qualify for protection under the Equality Act.

The protection in relation to qualifying beliefs includes protection against detrimental treatment or harassment relating to the holding of, or expression of, these beliefs. These concepts are discussed further in section B(ii).

## **Section B: Legal constraints**

The rights to freedom of speech and expression and academic freedom are not absolute – they are freedoms within the law. This section identifies the key relevant criminal and civil law provisions which restrict or limit these rights.

### **Criminal law restrictions**

#### **(i) Public Order Act 1986 – violent, threatening or abusive conduct and speech**

The Public Order Act 1986 contains a range of criminal offences which can be committed by speech and conduct and therefore limit the exercise of the rights to freedom of speech and expression and academic freedom. These offences are characterised by violent conduct or by speech or actions which threaten violence or cause fear, alarm or distress.

The use or threat of unlawful violence to another, where that conduct would cause a person of reasonable firmness present at the scene to fear for his personal safety, constitutes the criminal offence of **affray**. The relevant threat cannot be made by the use of words alone.

Where groups engage in unlawful violence or the threat of unlawful violence (including violence to property) the offences of **violent disorder** (three or more persons present together) or **riot** (12 or more persons present together) are committed.

The criminal offence of **fear or provocation of violence** is committed where a person:

- uses threatening, abusive or insulting words or behaviour
- distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting **with the intention** to cause another to believe that immediate unlawful violence will be used against him or another; or to provoke the immediate use of unlawful violence by another; or to cause another to believe that such violence will be used or is likely to be provoked.

The offence of **causing harassment, alarm or distress** may be committed by:

- the use of threatening, abusive or insulting words or behaviour or disorderly behaviour
- the display or any writing, sign or visible representation which is threatening, abusive or insulting within the hearing or sight of a person likely to be caused harassment, alarm or distress. It will be noted that this offence can be committed without an intention to cause harassment, alarm or distress (where that intention is present, an aggravated form of the offence is committed). Indeed, the offence is focused on the likelihood of that effect rather than whether or not it is actually caused. However, where there is no intent, it is a defence for the person concerned to show that he had no reason to

believe that there was any person within hearing or sight likely to be caused harassment, alarm or distress, or that the conduct was reasonable.

## **(ii) Protection from Harassment Act 1997**

This legislation (which does not apply in Northern Ireland) creates both criminal offences and gives rise to civil rights and remedies. Although there are slight textual differences between the provisions of the Act which apply in Scotland and those for England and Wales, the essential element of the offence of harassment is the same in both jurisdictions – a course of conduct which amounts to harassment and which the offender knows to amount to harassment, or which a reasonable person in possession of the same information would think amounted to harassment of the other.

The Scottish law provisions expressly state that ‘harassment’ of a person includes causing the person alarm or distress. Otherwise, beyond the provision that a course of conduct must consist of at least two separate acts, there is no definition of harassment. However, case law indicates that the conduct in question must be ‘oppressive and unacceptable’ and in the context of civil claims be serious enough to be at a level that would sustain criminal liability.

The provision applicable in England and Wales also creates a separate offence of ‘putting people in fear of violence’. This offence is committed by a person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against them. A person is guilty of an offence if they know that their course of conduct will cause the other so to fear on each of those occasions or if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on each occasion.

The Act also allows individuals to enforce the act through civil claims for damages or for injunctions to restrain harassing behaviour.

## **(iii) Racial and religious hatred**

The Public Order Act 1986 also contains specific offences relating to the **stirring up of racial and religious hatred**. The religious hatred offences differ significantly more than those relating to racial hatred, and are much more narrowly focused.

### ***Racial hatred***

The following acts are criminal offences if they are committed with the intention of stirring up racial hatred or if, in all the circumstances, they are likely to stir up racial hatred:

- the use of threatening, abusive or insulting words or behaviour
- the display of any written material which is threatening, abusive or insulting
- the publication or distribution of written material which is threatening, abusive or insulting
- the public performance of a play which involves the use of threatening, abusive or insulting words or behaviour
- the distribution, showing or playing of a recording of visual images or sounds which are threatening, abusive or insulting
- the possession of written material or a recording of visual images or sounds which is/are threatening, abusive or insulting, with a view to their display, distribution, publication or playing

As one key aspect of the offences is the use of threatening, abusive or insulting words or behaviour, these acts may also be unlawful under the more general Public Order Act offences described above.

Where there is no intention to stir up racial hatred, it is a defence to show that there was no intention or awareness that the words or behaviour concerned might be threatening, abusive or insulting. In the case of written material or recordings, it is a defence for the person concerned to show that they were not aware of their content and did not suspect, or have good reason to suspect, that they were threatening, abusive or insulting.

In respect of performances, there is an additional defence of not knowing or having reason to suspect that the performance would use the offending words or behaviour or that the circumstances of the performance were such that racial hatred would be likely to be stirred up.

### ***Religious hatred***

Religious hatred offences (introduced into the Public Order Act 1986 by the Racial and Religious Hatred Act 2006) occur where the following actions are committed with the intention to stir up religious hatred:

- the use of threatening words or behaviour
- the display of threatening written material
- the publication or distribution of written material which is threatening
- the public performance of a play involving threatening words or behaviour
- the distribution, showing or playing of a recording of visual images or sounds which are threatening
- the broadcasting of a programme which includes threatening visual images or sounds
- the possession of written material or the recording of visual images or sounds which are threatening, with a view to their display, distribution, publication, playing or broadcasting

It will be noted that the focus of these offences is on **threatening** words or behaviour but not insulting or abusive words or behaviour. Further, as the offences all involve the **intent** to stir up religious hatred, the defences available in relation to racial hatred do not apply. Intent is a necessary ingredient of the offences – it is not sufficient to show that religious hatred was likely to be stirred up.

A specific provision in the religious hatred legislation reinforces the right to freedom of expression. This provides that the religious hatred offences should not be applied ‘in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.’

It is therefore not a criminal offence under the racial hatred legislation to insult or abuse a religion or religious belief. Such actions may, however, breach the civil law if they constitute direct discrimination or harassment against individuals.

### **(iv) Terrorism offences**

In the context of this report, the principal offences under the Terrorism Acts 2000 and 2006 are as follows: directly or indirectly

- inciting or encouraging others to commit acts of terrorism, including through the glorification of terrorism
- belonging to or professing to belong to a proscribed organisation or to support a proscribed organisation
- disseminating terrorist publications, including those publications that encourage terrorism, and those that provide assistance to terrorists
- possessing a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism
- offences associated with terrorist property (including, but not limited to, money)
- giving or receiving training in terrorist techniques and attendance at a place of terrorist training

A number of these offences directly restrict freedoms of speech and expression, and academic freedom, by making the relevant speech or conduct unlawful. Some offences are relevant in other ways to the issues examined in this report – for example, raising questions about the lawfulness of academic activity relating to terrorism which involves the possession or study of terrorist training materials. The offences relating to proscribed organisations also include restrictions on meetings and events on university premises and potential liabilities for the organisers of such events.

A proscribed organisation is an organisation considered to be a terrorist organisation and is prohibited by law from operating in the UK. A list of organisations that are currently proscribed can be found on the Home Office website<sup>2</sup>.

### **Definition of terrorism**

The first element in the definition of terrorism under the Terrorism Acts is the use or threat of one of the following prohibited actions:

- serious violence against a person
- serious damage to property
- endangering another's life
- creating a serious risk to the health and safety of the public or any section of the public
- serious interference or disruption to an electronic system

All of the prohibited acts would amount to criminal offences in their own right and so would fall outside the scope of legitimate freedom of expression and speech, and academic freedom in any event. They are converted into terrorist acts if they are committed

- for the purpose of advancing a political or religious or ideological objective (so, for example, animal rights extremism would be an ideological objective)
- with the design of influencing the Government or any international government organisation or of intimidating the public or any section of the public (this element is not required where the prohibited action or threat involves use of firearms or explosives)

### **Acts of terrorism - 'failure to disclose' offences**

Under the Terrorism Act 2000, it is an offence for a person to fail, without reasonable excuse, to disclose to the police, as soon as is reasonably practicable, information which he knows or believes might be of material assistance in:

- preventing the commission by another person of an act of terrorism
- securing the apprehension, prosecution or conviction of another person in the UK for an offence involving the commission, preparation or instigation of an act of terrorism

For these purposes, an act of terrorism means the offences referred to in the above definition of terrorism.

As noted below, it is also an offence to fail to disclose, without reasonable excuse, a belief or suspicion that another person has committed an offence relating to terrorist money or property.

These offences are exceptions to the general rule under UK criminal law that there is no legal duty to prevent criminal acts, to report suspicions or beliefs that criminal acts may be committed, or to proactively disclose information about actual or potential criminal offences.

It should also be noted that there is no equivalent offence of failing to disclose information or suspicions about the other categories of terrorism offences described below relating to 'speech and conduct', terrorist publications, meetings involving members of proscribed organisations, terrorist training, and the collection or possession of information useful for acts of terrorism.

It is only to this limited and specific extent that institutions, staff and students have obligations under the criminal law to disclose information to the police about terrorism offences or activities. The Terrorism Act does not create any general legal obligation to monitor and report the activities of members of a university's community.

### **'Speech and conduct' terrorism offences**

The restrictions on speech and expression, and related conduct, under the Terrorism Acts are as follows:

- belonging or professing to belong to an organisation proscribed by the secretary of state

- inviting support (other than money or other property) for a proscribed organisation
- addressing a meeting (of three or more persons) with the purpose of encouraging support for a proscribed organisation or to further its activities
- wearing an item of clothing or wearing, carrying or displaying any article in such a way or in such circumstances as to arouse reasonable suspicion that you are a member or supporter of a proscribed organisation

In addition, it is an offence under the Terrorism Act 2006 to:

- publish, or cause another to publish, a statement likely to be understood as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism with the intent that members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism, or being reckless as to whether that effect will be caused.

Where there is no proof of the relevant intent, it is a defence for a person to prove that the statement did not express his or her views, nor have his or her endorsement and that the circumstances of the publication made this clear

Without limiting the scope of statements which encourage or induce terrorism, the Act expressly provides that such statements include:

every statement which glorifies (including any form of praise or celebration) the commission or preparation of terrorist acts (whether in the past, in the future or generally) if it is a statement from which members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.

That test is applied by reference to the content of the statement as a whole and the circumstances and manner of its publication.

### ***Terrorist publications***

A range of offences also exist in relation to terrorist publications, defined as those containing matter likely:

- to be understood, by some or all of the persons to whom it is or may become available as a consequence of that conduct, as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism (again including the glorification of terrorism as described above)
- to be useful in the commission or preparation of such acts and to be understood, by some or all of those persons, as contained in the publication, or made available to them, wholly or mainly for the purpose of being so useful to them

These tests are applied by reference to the contents of the publication as a whole and to the circumstances in which the relevant conduct occurs.

The relevant offences make it illegal to:

- distribute or circulate a terrorist publication
- give, sell or lend such a publication
- offer such a publication for sale or loan
- provide a service to others that enables them to obtain, read, listen to or look at such a publication, or to acquire it by means of a gift, sale or loan
- transmit the contents of such a publication electronically
- possess such a publication with a view to it being used as described above with the intention that an effect of this conduct will be a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism; or will provide assistance in the commission or preparation of such acts; or being reckless as to whether these effects will arise.

Where there is no proof of the relevant intent, it is a defence to prove that the publication did not express the views of the defendant nor have their endorsement and that the circumstances of the publication made this clear.

In relation to electronic statements and publications which are 'unlawfully terrorism-related' as described above, the police have powers to serve notices requiring the statement, article or record to be secured, withheld from the public or modified so that it is not terrorism related. It is an offence to fail, without reasonable excuse, to comply with such notice.

#### ***Offences relating to terrorist property including failures to disclose***

The Terrorism Acts also establish a range of offences in relation to 'terrorist property' – defined as money or other property likely to be used for the purposes of terrorism (including the resources of any proscribed organisation), the proceeds of the commission of acts of terrorism, or the proceeds of acts carried out for the purposes of terrorism.

These offences include inviting another to provide money or other property, or receiving or providing money or other property with the intention that it should be used, or with reasonable cause to suspect it will be used, for the purposes of terrorism.

It is also an offence to fail to disclose to the police, without reasonable excuse, a belief or suspicion, gained in the course of employment, that another person has committed an offence relating to terrorist money or property. Such disclosures also secure exemptions from data protection obligations (as they are expressly permitted by law) and a defence to any criminal liability relating to involvement in the transactions in question.

#### ***Restrictions on meetings***

It is also an offence to arrange, manage, or assist in arranging or managing, a meeting of three or more persons in the knowledge that the meeting is:

- to support a proscribed organisation
- to further the activities of a proscribed organisation
- to be addressed by a person who belongs or professes to belong to a proscribed organisation.

In the case of a private meeting (to which the public are not admitted) it is a defence to prove that you had no reasonable cause to believe that the address would support a proscribed organisation or further its activities.

## **Terrorist training and training materials**

#### ***Training in relation to firearms or weapon use***

It is an offence to provide or receive instruction or training in the making or use of firearms, radioactive material, or weapons, explosives or chemical, biological or nuclear weapons, or to invite another to receive such training (within or outside the UK). No offence is committed if the person concerned can show that any action or involvement in relation to the training was wholly for a purpose other than assisting, preparing or participating in terrorism.

#### ***Training for terrorism***

It is an offence:

- to provide instruction or training in terrorism skills, in the knowledge that a person receiving it intends to use the skills in which he is being instructed or trained in connection with the commission or preparation of acts of terrorism; or assisting the commission or preparation by others of such acts or offences
- to receive training or instruction in terrorism skills with the intention to use those skills for or in connection with the commission or preparation of acts of terrorism or for assisting the commission or preparation by others of such acts or offences

- to attend at any place (anywhere in the world) while instruction or training of the type mentioned above is provided, in the knowledge or belief, or where a person could not reasonably have failed to understand, that such training is being provided there for purposes connected with the commission or preparation of acts of terrorism

Terrorism skills are:

- the making, handling or use of a noxious substance
- the use of any method or technique for doing anything else that is capable of being done for the purposes of terrorism, in connection with the commission or preparation of an act of terrorism or in connection with assisting the commission or preparation by another of such an act or offence
- the design or adaptation for the purposes of terrorism, or in connection with the commission or preparation of an act of terrorism, of any method or technique for doing anything

The offences described above should not, in practice, restrict legitimate and genuine academic teaching and research activity. While the definition of 'terrorism skills' is extensive, the key element of the offence for the 'trainer' is the knowledge of an intention to use those skills for acts of terrorism.

### ***Collecting or possessing information useful for acts of terrorism***

It is also illegal to collect or make a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism or to possess a document or record containing information of that kind. It is a defence for a person to prove that he had a reasonable excuse for his actions or the possession of the information or record.

This offence is of relevance to the study and research of terrorism within universities. The language of the offence is deliberately wide and unspecific about the type of information it is aimed at. The study of terrorism may involve the academic use and access to a wide range of information that could fall within the potential scope of this offence – for example terrorist 'handbooks' or 'manuals', terrorist tactics, terrorist propaganda, and the study of methods and techniques of radicalisation and incitement to terrorism.

The key point is that the defence of 'reasonable excuse' would be available for legitimate research or academic activity. However, it is the defendant who has the burden of proving that defence. It is recommended that research or other academic activity relating to issues relevant to this offence should be notified to a nominated university officer or committee so that there is an audit trail regarding the scope and purpose of the research/activity which will assist in establishing the relevant defence.

### **(v) Civil law constraints**

The rights to freedom of speech and expression and academic freedom within the law are also subject to a number of civil law constraints. These include civil law torts relating to defamation and malicious falsehood and the civil law rights under the Protection from Harassment Act 1997. The law of trespass is also relevant in the context of protest activity, especially occupations and sit-ins, and allows universities to seek injunctions to remove trespassers.

Defamation involves the making or publishing to a third party of a statement which has a tendency to lower or adversely affect a person's reputation in the estimation of right thinking people generally, or to expose a person to hatred, contempt or ridicule. The defences to an action of defamation include that the statement or imputation is true or constitutes fair comment.

The defence of qualified privilege acknowledges the public interest in freedom of speech, allowing statements to be made by a person who has a moral, legal or social duty to make them to a person who has a corresponding interest in receiving the statement or are made by a person who is acting to further or protect an interest and to a person who has a common or corresponding duty or interest to receive it. Under the Human Rights Act, the law of defamation requires a balance to be struck between Article 8 (respect for private life) and Article 10 (freedom of expression).

## **(vi) Equality and discrimination legislation – Equality Act 2010**

Equality and discrimination legislation is a significant civil law constraint on the freedoms of speech and expression and on academic freedom. If speech or conduct amounts to unlawful discrimination, it falls outside the scope of those freedoms on the grounds that it is no longer 'within the law', the rationale being that the fundamental rights of others are infringed.

UK discrimination law is now contained in the Equality Act 2010, and covers a wide range of equality strands or protected characteristics – sex, race, disability, age, sexual orientation, religion or belief, marital or civil partnership status and gender reassignment. The Equality Act does not apply in Northern Ireland, where section 75 of the Northern Ireland Act remains in force.

In the context of higher education, the law on discrimination confers rights on employees and workers not to suffer discrimination by their university employer in relation to their employment, or in applications for employment, and on students not to suffer discrimination by a university in relation to admission to courses, the provision of education, facilities services or benefits or through any other detriment.

Unlawful discrimination can take a number of forms:

- direct discrimination – less favourable treatment because of a protected characteristic
- indirect discrimination – the application of a provision, criterion or practice which, although apparently 'equality neutral', tends to disadvantage those who share a particular protected characteristic
- harassment
- victimisation – detrimental treatment on the grounds, for example, of making a complaint of discrimination

Of these, direct discrimination and harassment are the most relevant in the context of this report.

The Equality Act significantly extends the scope of unlawful discrimination in these areas.

For example, unlawful direct discrimination can now occur on the basis of:

- a perception that a person has a protected characteristic (for example a perception regarding religious or other protected belief, even if that perception is wrong)
- a person's association with another who has the relevant protected characteristic. A claimant need not actually have the relevant protected characteristic him/herself in order to bring a claim

Unlawful harassment has been extended under the Equality Act to cover the harassment of staff (employees and workers) by third parties, including students, contractors and visitors.

Further, the unwelcome conduct or speech which constitutes the harassment now needs 'to relate to a protected characteristic'; previously the actions constituting harassment had to be committed on the grounds of the victim's protected characteristic. This represents a significant shift of focus away from the reason for the treatment – the law now focuses on the content and effect of the speech or behaviour concerned. The result of this change includes widening the scope of harassment law. For example, offensive remarks relating to race or ethnicity are now actionable regardless of the claimant's own race or ethnicity.

Universities will be vicariously liable for harassment committed by their employees or agents – including the harassment of staff and of students. As discussed above, universities will also be liable for acts of harassment by students and other third parties toward their employees and workers, in certain circumstances.

Unlawful harassment occurs where there is unwanted conduct (speech or action) which relates to a protected characteristic which has the purpose or effect of violating another's dignity or of creating a hostile, intimidating, offensive or humiliating environment.

Where speech or conduct relating to a protected characteristic is intended to have the effect of violating another's dignity or creating a 'hostile, intimidating' (and so on) environment, it will amount to unlawful harassment and take the words or conduct outside the scope of legitimate freedom of speech or expression.

Where that effect – often, in practice, the causing of offence – is not intended, it is not sufficient merely for the complainant to state that the speech or conduct has had the relevant effect. The test applied is not purely subjective. The complainant's perception is one factor in an analysis which requires consideration of all the circumstances of the case and, crucially, whether or not it is reasonable to conclude that the speech or conduct had the prohibited effect.

## **Section C: Other relevant legal issues**

### **(i) Public sector equality duties**

The Equality Act 2010 replaces the existing public sector equality duties in relation to race, gender and disability equality, with a new single public sector equality duty which will also cover age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment. This duty applies directly to universities, not to students' unions or student societies.

The new duty (expected to come into force in April 2011) will require universities, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation
- advance equality of opportunity between different groups
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

These duties are proactive and positive obligations – for example, universities must not simply refrain from discrimination but must consider the need to take positive steps to eliminate it.

These duties do not, however, represent additional constraints on freedom of speech and expression or academic freedom. They do not extend the boundaries of what is already unlawful discrimination and therefore outside the exercise of these rights 'within the law'.

So, for example, the impact of the duty to eliminate unlawful discrimination and harassment includes the creation of a proactive duty to take action (such as disciplinary action) when incidents of actual or potential harassment arise. However, that is not an obligation to challenge or restrict freedom of speech or academic freedom, as unlawful acts fall outside the scope of those freedoms. At most, the positive duties create additional focus on the distinction between legitimate freedom of speech within the law and unlawful discrimination, and the need for institutions to actively monitor that boundary.

The duty to foster good relations is expressly stated in the Act as requiring due regard, in particular, to the need to tackle prejudice, and promote understanding. The relationship between this duty and the protection of freedom of expression is complex, but the two are not necessarily in conflict. Particularly where competing 'protected characteristics' are involved – for example clashes between religious faith/morality and sexual orientation – the duty to promote good relations should in no way be seen as automatically requiring either party to refrain from expressing their opinions or beliefs. Tolerance and respect for opposing viewpoints, and the right to hold and express those opinions, are as central to fostering good relations as they are to preserving the right of freedom of speech.

### **(ii) Data disclosure**

#### ***Introduction***

In the case of investigations into possible breaches of the criminal law, or where there are concerns about unlawful activity, universities and/or students' unions may be asked (or may wish) to disclose

information to the police or other law enforcement agencies. Issues around information disclosure and data sharing may also arise in the context of the sharing of information between a university and its students' union or student societies, or between institutions.

The legal regulation of data sharing applies to the ad hoc disclosure of information between organisations (including in response to an emergency situation or one-off disclosure) as well as the more systematic sharing of data between organisations under agreed standing arrangements.

The legal framework governing the systematic or one-off disclosure of information to third parties consists of the following elements:

- the legal powers (express, implied or incidental) of the organisation to share the information
- legislative or other legal provisions which protect the rights of individuals, by imposing restrictions, restraints or prohibitions on the freedom of the organisation to share information or make the relevant disclosure. These include the Human Rights Act 1998, the Data Protection Act 1998 and the common law rules on confidentiality

As explained below, disclosures to the police or other law enforcement agencies for the purposes of reporting, or assisting investigations into, crimes or potential criminal activities are lawful in principle. However, care must be taken to ensure that the information disclosed is no wider than necessary to meet the purpose of the disclosure.

Guidance on data sharing produced by the Department for Constitutional Affairs in November 2003 and updated in 2007 remains a useful reference point. It contains a detailed exposition of the fundamental legal issues which must be considered in respect of any information-sharing initiative and a checklist of relevant legal considerations which focus on the lawful basis for activity and possible restrictions imposed by the law of confidence and data protection.

In October 2010, the information commissioner issued a draft code of practice giving practical guidance on 'data sharing': the disclosure of data by transmission, dissemination or otherwise making it available. The draft code covers not only the sharing and pooling of personal data sets but also 'one-off' disclosures of personal data and is relevant to all disclosures of personal data. The draft code was subject to a consultation which closed in January 2011. Once approved by the secretary of state, the code must be taken into account by the commissioner in carrying out his functions and will be admissible in evidence in any legal proceedings. Further, the Information Rights Tribunal or a court conducting any proceedings under the Data Protection Act, or any court or tribunal conducting any other legal proceedings (even outside the strict remit of the DPA), must also take account of the code.

### ***The legal power to make the disclosure***

The issue to be considered here is whether the organisation has an express, implied or incidental power to make the disclosure.

The express powers of universities are set out either in their constitutions or in legislation. These are unlikely to contain an express power to make disclosures of information to third parties. The absence of an express power is not, however, a complete bar to disclosure. An implied power to disclose may exist where the disclosure is ancillary to an express power or function. In other words, if the disclosure would support the exercise or discharge of an express function or power, then the power of disclosure can be implied.

In the case of disclosures to the police or other law enforcement agencies, it will be possible to rely on an implied power to disclose personal information to prevent or detect crime or to assist the administration of justice. That, however, is only a starting point, as the further elements of the legal framework set out below still need to be satisfied, especially in relation to the scope (that is, the proportionality) of the information to be disclosed.

Disclosures between universities and between universities and their (separately constituted) students' unions may also be permitted under implied or incidental powers, for example to enable the regulation of student discipline. The legal obligations on universities to ensure freedom of speech within the law, eliminate discrimination and foster good relations may also form a basis for implying powers on universities to disclose information to third parties.

It is more difficult to use these to imply powers on students' unions to disclose information to universities as the students' unions themselves are not the subject of these legal obligations.

For that reason, it may be prudent to add relevant express powers of disclosure into the constitutions of students' unions.

### ***The Human Rights Act 1998 (HRA)***

The HRA implements the European Convention on Human Rights and Fundamental Freedoms into UK law. Article 8 of the Convention states that 'Everyone has the right to respect for his private and family life, his home and his correspondence.'

This is a qualified right – interference by public authorities with the exercise of this right is permitted where it is 'in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

Disclosures to the police relating to concerns regarding national security, public safety, disorder or criminal activity would clearly fall within the scope of the permitted interference with this right, but two further conditions need to be satisfied.

The first is that any disclosure be made 'in accordance with the law' – the fact that the disclosure relates to criminal activity, for example, does not of itself make the disclosure a lawful interference with the Article 8 right. Where the law imposes a duty to disclose – for example in relation to terrorist property offences under the Terrorism Acts – the disclosure will be lawful. In the absence of a legal duty to disclose, lawfulness is determined by reference to the powers of the organisation to make the disclosure (see above) and the other relevant legal provisions discussed below.

The second requirement is for the interference to be 'necessary in a democratic society'. The word 'necessary' does not mean 'strict necessity' but rather that the interference must be proportionate in all the circumstances of the case. The greater the interference with Article 8, the greater the justification required (although the test applied is the range of reasonable responses). Again, the legal framework set out below is relevant in ensuring that these qualifications to the Article 8 right are satisfied.

### ***Data Protection Act 1998***

Personal privacy is protected by the Data Protection Act 1998 (DPA) which implements the European Directive on Data Protection.

### ***Key terms***

Key terms in the analysis below include:

- personal data – data relating to an identified or identifiable living individual
- sensitive personal data – including personal data which relates to racial or ethnic origin, political opinions, religious beliefs, trade union membership, physical or mental health, sexual life, the commission or alleged commission of any offence or criminal proceedings
- processing of personal data – the obtaining, holding, using, disclosure or destruction of personal data

- data controller – meaning any legal person who determines the purposes for which and the manner in which personal data is processed. Universities will be data controllers, as will students' unions, with a legal identity separate to that of the university

**Rules on disclosure and other processing**

The DPA requires (subject to certain exemptions discussed below) that any person processing personal data should do so in accordance with eight Data Protection Principles. Particularly relevant are the requirements that:

- data must be processed 'lawfully' and 'fairly' (First Principle)
- personal data shall be obtained only for one or more specified and lawful purpose, and shall not be further processed in any manner incompatible with that purpose (Second Principle)
- personal data shall be adequate, relevant and not excessive in relation to the purpose for which they are processed (Third Principle). In relation to processing by disclosure, this again emphasises that the disclosure must be proportionate to its purpose

The requirement under the First Principle for data to be processed fairly requires consideration of how the data was obtained, and whether the person from whom the data was obtained was misled or deceived as to the purposes for which the data would be processed.

Fair processing also interrelates with the right to notice of processing, the right to object to processing and other obligations under data protection principles.

The requirement for 'lawful' processing under the First Principle means that legal obligations under statute and common law must be observed. The DPA itself does not confer a legal right to disclose or otherwise process the data. In addition, Schedules 2 and 3 to the DPA contain conditions for the processing of personal data and sensitive personal data respectively and at least one of these conditions must be satisfied for the processing to be 'lawful' under the First Principle.

One of the Schedule 2 and 3 conditions is that the data subject has consented to the processing. However, in the context of disclosure relating to criminal activities, such consent is unlikely to have been given.

Other relevant Schedule 2 conditions (for non-sensitive personal data) are:

- that the processing is necessary to comply with any legal obligation to which the data controller is subject, other than a contractual obligation (The 'legal obligation condition')
- that the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party to whom the data is disclosed, except where processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject (the 'legitimate interest condition')

The Schedule 3 conditions (expanded by the Data Protection (Processing of Sensitive Personal Data) Order 2000) include that:

- the processing is necessary in order to protect the vital interests of the data subject or another person in a case where the data controller cannot reasonably be expected to obtain the consent of the data subject (the 'vital interest condition')
- the processing is in the substantial public interest; is necessary for the purposes of the prevention or detection of any unlawful act; and must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice those interests (the 'public interest condition')

Exemptions under the DPA allow the disclosure of data to the police and other law enforcement agencies without the consent of the data subject. For example, section 28 of the DPA exempts the processing of personal data for the purpose of safeguarding national security. Section 29 provides a qualified exemption from the restrictions on disclosure under the data protection principles (including the First and Second Principles) where the disclosure is for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders, and those purposes would be

prejudiced if the non-disclosure principles were applied. However, one or more of the conditions in Schedule 2 (or Schedule 3 in the context of sensitive personal data) must still be satisfied under this exemption. The legal obligation condition will be satisfied if there is a legal obligation to disclose the information. Otherwise, the legitimate interest, vital interest or public interest conditions are likely to apply.

In terms of disclosures between universities or between universities and (legally separate) students' unions, the legitimate interest, vital interest or public interest conditions may also provide a basis for disclosure, for example in relation to regulating student discipline and investigating offences, monitoring the exercise of freedom of speech within the law and in the context of relevant codes of practice under s43 Education (No. 2) Act 1986, and the legal duty to eliminate discrimination and foster good relations. If data is intended to be shared in this way, it would be good practice to refer to this in relevant policies or protocols and data processing notices.

### ***Disclosures to the police – additional points***

The police and other law enforcement agencies have standard forms which are used when requesting disclosures of data under s28 and 29 DPA. These forms will certify the purposes for which the information is required and that the failure to disclose the information would prejudice the investigation. Where these forms are not used to make requests, it is prudent for the body from which disclosure is requested to ensure, wherever possible, that the request is made in writing, to verify that the identity of the person and body making the request is genuine (for example, is on official or headed paper and signed by an officer of the requesting organisation), that the nature of the information requested is clear, and that the request clearly states that the request is for one of the purposes referred to above and failure to disclose will prejudice that objective.

Where information is requested urgently in the context of emergency situations, there may not be time for the request to be put in writing. Anyone disclosing the information should be satisfied that the request is genuine and of the identity of the person making the request and should ask for the request to be subsequently confirmed in writing.

This exemption allows the data controller to make the requested disclosure but does not itself make the disclosure compulsory. In the absence of a court order requiring the production of the information, the data controller has discretion to disclose. The principle of 'proportionality' runs throughout the legal framework around disclosure and data sharing – including the DPA provisions. Data controllers need to establish the purpose for which the information is requested and to be reasonably satisfied that the disclosure goes no further than is reasonable to achieve the relevant purpose. They are entitled to question the person making the request, where they have concerns about proportionality. The data controller should also ensure that the information disclosed goes no further than that which is actually requested, that the information being provided is up to date and accurate, and be alert to the risk that the disclosure may also involve disclosure of data relating to individuals not within the scope of the request. Where feasible, they should take steps to remove this third party data before making the disclosure.

Where a university and a students' union are separate legal entities, each will have its own obligations as data controllers. A request by the police to a students' union for disclosure of data should not be treated as a request to the university – the police should make a separate request to the university.

It is also prudent for organisations to have clear written policies and procedures for dealing with police requests, to provide a clear framework of responsibility and accountability to nominated officers and to ensure that requests are responded to in a structured and consistent manner.

Once information is disclosed to the police or another law enforcement agency, that body will also have obligations under the DDA as a data controller, and under the wider legal framework regarding data sharing. The purposes of criminal law enforcement and the protection of national security will

typically allow the sharing of data with other law enforcement agencies. Universities will not be legally responsible for any misuse or wrongful disclosure by the third party, but it is suggested that universities should be alert, when responding to disclosure requests by the police, to the risk of further data sharing, particularly in the context of the proportionality of the disclosure.

***Common law obligations of confidentiality***

An obligation of confidence will arise:

- in respect of personal information where the information has the necessary quality of confidence – that is where the information is not in the public domain, is not readily available from other sources and has a degree of sensitivity and value
- where the information was communicated in circumstances where there was an express or implied obligation of confidence
- where the body holding it knows or should know that disclosure would be a breach

An obligation of confidence may be overridden where a greater public interest is served by disclosure of the information. The test of public interest is a high one and applies on a case-by-case basis. However, disclosures to the police relating to potential criminal activities would fall within the scope of this public interest defence. Once again, this is subject to requirements of proportionality as a result of other aspects of the overall legal framework.