

## Freedom of Speech within CECOS College Policy

This Code of Practice sets out CECOS's approach to freedom of speech for the benefit of students and staff of the College.

### 1. Background

1.1. Article 10 of the Human Rights Act states that everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The Higher Education (Freedom of Speech) Act 2023 imposes duties on higher education providers and builds on the existing duties set out in section 43 of the Education (no.2) Act 1986.

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

Reference has been made to the guidance issued by the Universities UK and the requirements of the Office for Students and Condition E6: Harassment and Sexual Misconduct and Condition E5

### 2. Introduction

2.1. The College supports the principle of freedom of speech and expression within the law as one of the fundamental principles upon which an institution of higher education is founded. It also has regard to the need to ensure that students and staff have freedom to question, test and to put forward new ideas and controversial or unpopular opinions, without placing themselves at any risk where these views are lawful. Every person employed by the College and every student enrolling at the College should be aware that joining the College community involves obligations and responsibilities which are consistent with the above principle and 'within the law'.

#### **Within the Law – what this means<sup>1</sup>.**

'The new legislation protects freedom of speech within the law. This means that speech is protected unless it contravenes some other law. It is not therefore necessary to point to a specific legal basis for particular speech. Rather, the starting point is that all speech is permitted unless it is restricted by law.

For example, some areas of criminal law restrict the ambit of protected speech such as:

- racially or religiously aggravated offences
- sexually related misconduct
- threats to kill
- endeavours to break up a public meeting
- fear or provocation of violence
- intentional harassment, alarm or distress
- acts intended or likely to stir up hatred on the grounds of race, religion or sexual orientation

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<sup>1</sup> How can universities prepare for the Higher Education (Freedom of Speech) Act? Universities UK, October 2023

- encouraging or assisting the commission of an offence
- incitement to commit acts of terrorism overseas
- inviting or encouraging support for proscribed organisation
- encouragement of terrorism including the glorification of the commission or preparation of terrorism
- dissemination of terrorist publications
- encouragement of terrorism and dissemination of terrorist publications through the internet.'

Importantly, the duty to promote academic freedom is also extended explicitly to academic staff. The Act defines academic freedom as freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions without being at risk of being adversely affected. Being adversely affected is defined as either losing their jobs or privileges at the provider, or a reduction in the likelihood of the staff member securing promotion or a different job at the provider.

The duty also states that universities and higher education providers must have 'particular regard' to the importance of freedom of speech when taking the 'reasonably practicable' steps – both these concepts are outlined further in this briefing.

#### **'Reasonably practicable': what does this mean?**

Reasonably practicable is a reasonably common statutory formulation, but case law has established that how it is construed within one piece of legislation does not necessarily mean it will be construed in the same way in another. There are at least two ways in which it can be construed.

The first is within the context of health and safety law, where a duty is placed on employers to ensure, so far as is reasonably practicable, the health, safety and welfare of its employees at work and others who may be affected by their undertaking.

The second is a broader, public law approach, whereby it is for the body on whom the duty is imposed to decide what steps are reasonably practicable and the courts will only interfere if the judgment is one that no reasonable body properly directing itself on the considerations before it could have arrived at. Provided that there is some basis for reaching the decision, the court will not consider whether the decision is a proportionate one.

2.2. This Code of Practice sets out the rights and obligations inherent in supporting the principle of freedom of speech and expression within the law.

The Code's obligations and rights apply to:

- the College (which includes all bodies or persons having authority to determine any matter relevant to this Code);
- all governors and staff of the College;
- all students of the College;
- any visiting or guest lecturers invited by the College;
- any person or organisation wishing to hire premises controlled by the College for an event.

2.3. In relation to the holding of any events on premises controlled by the College, the Code's rights shall also apply to:

- persons invited or otherwise lawfully on the premises for the purposes of the event; and

- persons who, if it were not for the provisions of this Code, would have been invited to the event.

2.4. Subject to clause 2.2, those who are under a duty to observe and uphold the principle of freedom of speech within the College shall do so at all times, irrespective of whether or not they are on property owned or controlled by the College.

### **3. Academic freedom**

3.1. The principle of freedom of speech set out in this Code shall extend to the performance by all staff of their duties and responsibilities and to any visiting or guest lecturer invited by the College. It shall also extend to students presenting or exhibiting work produced during the course of their studies with the College.

3.2. Any person or body to which this Code applies shall not take any action (other than by reasonable and peaceful persuasion) to prevent the holding or continuation of any lecture, tutorial, exhibition, or other academic activity because of the views held or expressed or which are reasonably likely to be expressed, (whether or not within the College) by the lecturer or tutor or student concerned, except as provided for in paragraph 4.3.

3.3. Any person or body to whom this Code applies shall not take any action (other than reasonable and peaceful persuasion) to prevent any student or group of students from attending any academic activity required by, or properly associated with, the course for which they are enrolled because of the views or beliefs held or lawfully expressed (whether or not within the College) by that student or because of the reasonable likelihood that such views will be expressed.

### **4. Events**

4.1. Where any person or body subject to the obligations of this Code wishes to hold any event for the expression of any views or beliefs held or lawfully expressed on premises controlled by the College, consent shall not be unreasonably refused.

4.2. Save for the provisions in paragraph 4.3, it shall not be a reasonable ground of refusal of permission or facilities for any event that the views likely to be expressed there may be controversial or contrary to any policy of the College, or Central or Local Government, provided that the expression of such views is lawful. Expression of opinions which are annoying, offensive, in bad taste, or ill-mannered is not automatically unlawful and should not be the sole ground for refusal unless this would result in the College failing in its wider legal duties (for example, to promote equality of opportunity and good relations between persons of different racial groups). The fact that disorder may result at any event is not of itself a ground for refusal of permission or facilities unless the creation of such disorder is the intention of the organisers of, or speakers at, any such event or public safety and order might be jeopardised.

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

- The views likely to be expressed by any speaker are contrary to the law;
- The intention of any speaker is likely to be to incite breaches of the law or is to intend breaches of the peace to occur;
- The views likely to be expressed by any speaker are for the promotion of any illegal organisation or purpose;

- The views likely to be expressed by any speaker are for the promotion of any organisation subject to the College's "No Platform" policy as amended from time to time;
- It is in the interests of public safety, the prevention of disorder or crime or the protection of those persons lawfully on premises under the control of the College, that the event does not take place.
- By 'speaker' this Code means any organiser or other person invited to address the meeting other than members of any audience at that meeting.

4.4. Subject to paragraphs 6.3 and 6.5, where the College is reasonably satisfied that the otherwise lawful expression of views at any event is likely to give rise to disorder, the College shall consider what steps it is necessary to take to ensure:

- The safety of all persons,
- The maintenance of order; and
- The security of premises controlled by the College.

4.5. The College may impose such conditions and requirements upon the organisers as are reasonably necessary in all the circumstances. These may include, but are not limited to, requirements as to provision of stewards, variation of location and time, and whether the event shall be open to the public at large.

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

4.7. Where any person or body to whom this Code applies is engaged in the organisation of any event on premises controlled by the College at which it is reasonably suspected that disorder is likely to occur, the organiser shall normally give the Programme Manager not less than 28 days' notice in writing of such a proposed event. The Programme Manager, following consultation with the Principal, shall inform the person or body organising the event in writing within seven days of the date of the notice whether the meeting may go ahead.

4.8. If any person or organisation believes that the actions of the Programme Manager in refusing permission or facilities for the holding of any event, or the actions of the College in imposing conditions are unreasonable, it shall have a right to make representations. Any representation shall be made to the Principal within seven days of the date of the letter confirming the original decision. The Principal shall consider such representations and within seven days shall confirm in writing to the relevant person or organisation whether the original decision is to be upheld or varied. If the event organiser has been unable, for legitimate reasons, to comply with the normal requirement to provide 28 days' notice to the Programme Manager, the Principal shall, at his/her absolute discretion, have the right to vary this procedure in order to ensure that a final decision is provided to the organiser prior to the date of the meeting.

4.9. Any person or body wishing to hold an event on premises controlled by the College must complete the relevant booking form which is available from the Programme Manager. This requirement applies to both internal and external bookings for any venue controlled by the College. It will be a mandatory requirement that the organisers of any event indicate they accept the terms of this Code when making a venue booking.

4.10. All event organisers shall ensure proper security and organisation (including stewarding and chairing) of the event for the purpose of protecting the right of freedom of speech. Whilst the heckling of speakers is a right not to be disturbed, it shall be contrary to the Code to seek, by systematic or organised heckling or disruption of such activity, to prevent the lawful expression of views.

4.11. It shall be contrary to this Code for any person or body subject to the Code to organise, engage in or become associated with, any conduct with the intention of preventing (other than by reasonable and peaceful persuasion) any event subject to this Code from being held or from continuing.

4.12. The organisers of the event shall have a duty so far as is reasonably practicable to ensure that both the audience and the speaker act in accordance with the law during the event. In the case of unlawful conduct, the event organiser shall give appropriate warnings and, in the case of continuing misconduct, the event organiser shall require the withdrawal or removal by the stewards or if necessary by the police of the person(s) concerned.

4.13. It shall be the responsibility of the organisers of the event to ensure that no articles or objects shall be taken inside the venue where the event is being held in circumstances which are likely to lead to injury, damage or breach of the law.

## **5. No Platform Policy**

5.1. The College will offer no platform to those who are intolerant of the free speech of others both generally and where it includes the denial of the right to hold or express an opposing opinion. This also includes those who engage in the active prevention of permitting others to speak, such as the interruption violent or otherwise - of meetings (see 4.3). Those who offer no platform to others, without any reasonable or justifiable basis for doing so, should not benefit from the freedom to speak at the College.

5.2. The College will offer no platform to those who advocate or engage in violence in the furtherance of their political, religious, philosophical or other beliefs.

5.3. The College will offer no platform to those who hold and disseminate views which are repugnant to the maintenance of liberty under the rule of law in the UK or who advocate or engage in the violent overthrow of democracy in the UK or elsewhere.

5.4. The College reserves to itself the right to debar speakers or organisations from the College where the College reasonably believes that their presence on College property is not conducive to the good order of the College, or where it would offend the principles of scholarly inquiry, or where it would put at risk the safety of students, staff or the general public. The College further reserves the right to list the names of individuals or groups which it debars either under this general reserved right or in accordance with the principles above.

5.5. The College will maintain a list of organisations considered by the College to be within the scope of the provisions in 5.1 – 5.4. Any amendments made to the list from time to time by the College shall be deemed as included or excluded as appropriate with effect from the date that the amendment is made.

## **6. Freedom of Expression**

6.1. Because CECOS is committed to free and open inquiry in all matters, it guarantees all members of the CECOS community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the College, CECOS fully respects and supports the freedom of all members of the CECOS community “to discuss any problem that presents itself.”

6.2. Of course, the ideas of different members of the CECOS community will often and quite naturally conflict. But it is not the proper role of CECOS to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although CECOS greatly values civility, and although all members of the CECOS community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

6.3. The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. CECOS may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of CECOS. In addition, CECOS may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of CECOS. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with CECOS’s commitment to a completely free and open discussion of ideas.

6.4. In a word, CECOS’s fundamental commitment is to the principle that debate, or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the CECOS community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the CECOS community, not for CECOS as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the CECOS community to engage in such debate and deliberation in an effective and responsible manner is an essential part of CECOS’s educational mission.

6.5. As a corollary to CECOS’s commitment to protect and promote free expression, members of the CECOS community must also act in conformity with the principle of free expression. Although members of the CECOS community are free to criticise and contest the views expressed on campus, and to criticise and contest speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, CECOS has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.

## **7. General**

7.1. Any breach of the provisions of this Code shall be punishable under the Disciplinary Procedures of the College where applicable.

7.2. It shall be the duty of all those subject to the Code to assist the College in upholding the rights of freedom of speech set out in this Code.

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

7.4. Where breaches of the criminal law occur, the College shall, where appropriate, assist the Police and the Crown Prosecution Service. In respect of any criminal charges, the College, shall not, unless the Principal determines otherwise, proceed with any disciplinary proceedings in respect of the same matters, until the conclusion on any ongoing criminal proceedings.

7.5. The operation of the Code shall be monitored by the Principal and Board of Governors.