TB/23-24/72

Imperial College Union
Board of Trustees / 24 July 2024

Freedom of Speech Code of Practice

Author(s): Management Committee
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Eleanor McCarthy (Policy & Research Coordinator)

Purpose: For the Union to approve a required Free Speech Code of Practice

Decision(s): To approve

1. Background

The Higher Education (Freedom of Speech) Act 2023 made changes to Section A6 of Part A1 of the Higher Education and Research Act 2017 regarding the protection of free speech.

The Act gave the Office for Students (the 'OfS', the Higher Education regulator) new duties to introduce a complaints scheme for individuals to raise free speech grievances against Higher Education providers and students' unions (SUs), and to directly require SUs to promote and protect free speech.

As a part of these new duties, SUs are required to have a free speech Code of Practice in place by 1st August 2024. The OfS has issued (draft) guidance for SUs on how to draft a Code of Practice in order to meet the requirements of the Act. Accordingly, the proposed Code below sets out: our values relating to free speech as an organisation; how our processes and procedures for organising activities manage to uphold free speech; the circumstances in which we would cancel an activity; and the conduct we expect from our staff and students when engaging in activities associated with, or run by, ICU. *Italicised tracked comments on the draft Code overleaf quote relevant sections of the OfS guidance which have specific requirements that we need to ensure we meet.* Other tracked comments are notes to indicate ongoing work in the area or ongoing discussions with the College.

We propose this Code be added to the Annual Calendar of Business for review by the Board in a year's time, in order to ensure the Union is continuing to meet its free speech duties and to account for any updated guidance we receive from the OfS.

Policy Statement

As part of the new duties, any policy which may affect free speech[1] needs to have a policy statement, linking to our Code of Practice. The proposed text for this statement can be found in **Annex 1**. The Governance & Executive Manager will ensure the implementation of this following approval of the Code.

2. Recommendation

Management Committee recommends that Board **approve** the proposed Imperial College Union Freedom of Speech Code of Practice, appended to this paper.

[1] The OfS guidance outlines examples of the policies which may need to include a policy statement on free speech. The list can be found on page 19 of this guidance.

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Imperial College Union
Freedom of Speech Code of Practice

Audience: All external stakeholders (to be made publicly available on website), internal stakeholders (e.g., Union staff, students and College staff)

Owner(s): Board of Trustees

Created Date: 24 July 2024

Review Date: July 2025

1. Principles of the Code

1.1 This Code of Practice sets out how Imperial College Union (ICU) complies with Section A6 of Part A1 of the Higher Education and Research Act (2017) and the additional duties imposed by the Higher Education (Freedom of Speech) Act (2023).

1.2 At ICU, we are committed to upholding the fundamental right of lawful freedom of speech. All members of our community (including students, staff and invited guests) have the right to freedom of speech within the law and this Code sets out the reasonable steps we take to ensure all can express their lawful views.

1.3 The Freedom of Speech Code of Practice applies to all ICU staff, students, honorary or life members, visitors and invited guests.

1.4 Scope
This Code applies to all activities (on or off campus, or in virtual spaces), including events and meetings, organised by ICU and its members (e.g., student groups, representatives, or campaigners), whether or not these activities include an external speaker. This Code and upholding the protection of free speech must be considered in the implementation of all other ICU policies and codes.

1.5 Definitions

Member – all members of ICU including, students, ICU staff, honorary, life and affiliate members.

Event organisers – An individual(s) responsible for an event being organised. This mainly includes members of our student groups (clubs, societies and projects etc.)

Activity - any activity or event organised by members held in any venue or location in the UK for which ICU is directly responsible, permanently or temporarily, external premises (including outdoor spaces), or virtual spaces on any ICU supported online platform (such as Teams or Zoom) This includes events organised on ICU premises by third parties e.g. those using the space on a commercial basis. The Code applies equally to events where external speakers are present and those where no external speakers are present. This includes:

- Debates, speeches, talks, public meetings
- Clubs, Societies and Projects (CSPs) activity
- Protests, demonstrations, rallies.

Commented [MR1]: *The scope of the procedures section of the document should be broad. It should not be limited to policies relating to external speakers or events. The code of practice should apply (and be linked) to the procedures to be followed by staff and students of the provider, constituent institution or students unions when organising any activities that relate to academic life, whether those activities take place on or off campus.*

External speaker – an individual or an organisation who has been invited to speak at an event who is not a current member of ICU or staff member at Imperial.

1.6 Values

Our values concerning free speech are central to what we do, we:

- encourage and support all members to express themselves and their opinions freely within the law, even where these views may be offensive to others.
- expect all members and invited guests to maintain mutual respect and tolerance to those with different viewpoints.
- understand that free speech must operate within the law, and do not accept harassment or discrimination in any unlawful form.

1.7 Free speech within the law

All speech is permitted unless restricted by law, however freedom of speech is not an unqualified right and the expression of views which amount to racial or religious hatred, incitement of violence or public disorder, harassment or unlawful discrimination are not protected and are examples of speech which is not within the law.

Where speech falls on the protected or unlawful boundaries is a complex and evolving area and requires examination of the context surrounding the speech. Therefore, we encourage all our members to engage in debate respectfully, considering the effect their speech may have on others.

As an organisation we will ensure that our policies and procedures reflect the high level of protection given to the expression of lawful viewpoints and take reasonably practicable steps to uphold this.

2. Activity organisation

2.1 When supporting our members to organise activities, we endeavour to allow all events to go ahead. Any cancellation of an activity is due to exceptional circumstances and as a last resort.

2.2 Where external speakers have been invited to an activity, the approval of such an activity will not be dependent on the ideas of the individual/body or their policies/objectives/ideas, so far as protected by law.

2.3 The processes which need to be followed in order for a member to organise an activity are outlined in the ICU. Further information on event planning and considerations such as catering/alcohol/external attendees etc. Can be found on our Events page.

2.4 All events will need an approved event proposal and risk assessment. Some events may require additional essential documentation dependent on the type of event e.g., supplier contracts, a map of the event area, a proposed budget and any external hire contracts. All event proposals will be examined, and organisers will receive a response back from our Activities team within a reasonably practicable timeframe The minimum submission times for events are:

a) Large event – 2 months
b) External speaker event – 6 weeks
c) Union Venues event – 1 month
d) All other activity – 3 weeks

Commented [MER2]: *A statement that freedom of speech within the law may include speech that is offensive.*

Commented [MER3]: *A statement about the overarching vale of freedom of speech within the law for the organisation in question.*
A statement about how those values uphold freedom of speech within the law at the provider, constituent institution or relevant students' union.

Commented [MER4]: *If any code, contract or policy that regulates speech, or has the effect of regulating speech, identifies a category of restricted speech (such as 'harmful speech' then: a. such a category should be defined in a way which is not capable of restricting freedom of speech within the law, or academic freedom; and b. that definition should explain that the interpretation of that category includes an objective element (so it does not depend only on the perception of the alleged victim)*

Commented [MER5]: *A statement emphasising the very high level of protection for the lawful expression of a viewpoint.*

Commented [MER6]: *They should make clear that the starting point for any event is that it should go ahead and that cancellation is exceptional and undesirable.*

Commented [MER7]: We do not currently have a working definition of what constitutes a 'large' event, but this will be established by the Activities team in September and this document will be updated accordingly.

Commented [MER8]: *A students' union should set out a process for the timely consideration of risks to the event. The purpose of the process would be to put in place steps that permit the event to go ahead. The document should specify who would be responsible for planning and taking these steps.*

2.5 Rooms for student group organised events are booked via the Events procedure. For room bookings related to ongoing student group activity, e.g., committee meetings, this is done through an annual room booking process to support student groups' core activity. Rooms members wish to book on an ad hoc basis can be organised by contacting the named contacts below for CSP and rep related activities. All approvals of room booking requests will have this document attached to them for students to follow.

2.6 The booking of outdoor spaces on Imperial campuses for students not part of a CSP, can be made through Imperial via the Community Safety and Support Team by emailing security.control@imperial.ac.uk.

2.7 All decision-makers and staff at ICU must act compatibility with the statutory free speech duties when making decisions or adopting policy that could directly or indirectly (positively or negatively) affect free speech.

2.8 This Code of Practice has been written in conjunction with Imperial and any activity which is organised to take place by a member of ICU, will also be subject to Imperial's Code of Practice.

2.9 For any questions relating to the procedures for organising meetings and activities on SU premises contact Lucy Brown (Student Activities Manager, Events and Activities) at: lucy.brown1@imperial.ac.uk, if your query relates to CSP activity. If your query relates to a rep activity contact Helena Schofield (Representation Manager) at h.schofield@imperial.ac.uk.

Commented [MER9]: *The content of the procedures section should clearly and expressly require decision-makers, in making any decision or adopting any policy that could directly or indirectly (positively or negatively) affect freedom of speech to act compatibly with the statutory free speech duties.*

Commented [MER10]: *There should be an identified person responsible for deciding whether and how an event may proceed.*

There should be a single, identified point of contact for questions about the process.

3. Conduct at activities

3.1 The expected conduct outlined in this section is not limited to the organisation of external speaker or related events but encompasses all meetings and activities that ICU staff and members organise.

3.2 All members of ICU and invited guests have the right to free speech within the law and, as your students' union, we seek to provide spaces for discussion, debate and learning from a wide range of viewpoints.

3.3 All members and external invited attendees taking part in an activity at ICU are encouraged to behave respectfully towards one and other and respect viewpoints that may differ from their own.

3.4 All activity must take place within the law and, if an invited speakers breaks the law at an event, it is the speaker who is culpable.

Commented [MER11]: *If a speaker breaks the law, it is the speaker who is culpable.*

3.5 Protest itself is a legitimate expression of freedom of speech and ICU supports the right of members of our community to protest activity at ICU, however, protest must not shut down debate.

3.6 ICU seek to support all events organised by our members and no society or student group is denied affiliation or benefits over another.

4. Cancellation of activities

4.1 As far as possible, we support event organisers to run activities successfully. Some activities may be granted permission to go ahead with mitigations in place. These are

used for particularly significant events such as those with a large capacity or high-profile and public attendees for their protection. They are used to allow the event to go ahead and not to cancel an event. Any such mitigations will be communicated to the event organisers by the ICU Activities Team who will support the group to ensure the event can go ahead, wherever reasonably practicable.

4.2 Whilst we will always endeavour to support an event to go ahead, ICU reserves the right to decide that practical considerations such as the cost, short notice period or inability to provide the necessary level of security may require an event to be modified, curtailed, postponed or – in exceptional circumstances – cancelled.

4.3 Where events are cancelled, this may be due to the correct procedures being incorrectly followed by the event organisers, (e.g., notifying us of an event the day before it is due to take place), the physical health and safety assessment of the event not being acceptable (e.g., proposed room capacity being too small and causing a fire hazard) or the organising not having sufficient funds in their budget to run the event. These cancellations occur in exceptional circumstances, and it is not routine for ICU to cancel activities for these reasons without first working with the event organisers to make necessary changes.

4.4 If student group provides us with all the necessary information, following our time parameters, in most cases the activity will be able to go ahead.

4.5 Event organisers are expected to budget for all security costs related to an event. Where this exceeds the proposed budget, such that the proposer(s) would go into debt, the event will not go ahead. We work closely with our event organisers to support them to cover security costs within their proposed budget. We anticipate this would only happen in exceptional circumstances as we do not routinely cancel events based on the associated security costs.

4.6 Allowing all member activity to continue remains our priority and we would assist groups in planning their budget and working with our College's security teams to overcome any barriers relating to security, where reasonably practicable.

5. Complaints

5.1 For complaints regarding freedom of speech at ICU, members can raise a complaint via [link]. For complaints relating to freedom of speech or academic freedom at Imperial, these can be raised using Imperial's Free Speech Complaints Procedure [link].

5.2 The Office for Students (OfS) operates a free speech complaints scheme. Under that scheme, the OfS can review complaints about free speech from members, students, staff, applicants for academic posts and (actual or invited) visiting speakers. Information about the complaints that the OfS can review is available on its website. [link]

5.3 This code of practice is published on our website for anyone to access [add link]. Once a calendar year we will share this code of practice and information relating to the OfS's free speech complaints scheme to our students. This will be done through our social media and communication channels (e.g., newsletters) and we will work with our College to include in with prospectuses and student handbooks etc.

Commented [MER12]: *HERA requires that a students' union must secure that, apart from in exceptional circumstances, use of its premises by any individual or body is not on terms that require the individual or body to bear some or all of the costs of security relating to sue of their premises.*

The criteria for 'exceptional circumstances' in which a students' union may pass on security costs to the organiser of the event are for the student's union to set. However, HERA places a duty on students' unions to set out in their code of practice the criteria for determining whether there are exceptional circumstances.

These criteria should be clear, objective and neutral and should not depend (so far as consistent with the law) on an individual's/body's ideas or opinions, policy or objectives, opinions of it's members or the ideas/opinions likely to be legally expressed at the event.

The criteria should be framed in such a way that 'exceptional' circumstances only arise very rarely.

6. Disciplinary procedures

6.1 We will ensure ICU members adhere to the code of practice. In exceptional cases where compliance with the code is not met, the appropriate procedures, such as disciplinary procedures, will be followed.

Annex 1 – Summary Statement

To be included in all ICU policies that could relate to freedom of speech:

> 'ICU upholds and values free speech within the law and have a Code of Practice (link) which sets out our values and processes relating to free speech. None of the points in this policy inhibit your right to freedom of speech within the law.'