

## *Are Confucius Institutes legal?*

The United Kingdom is home to 30 Confucius Institutes. Each Institute is based in a British university and is a partnership between that British university, a Chinese entity (usually a university), and a central Chinese government agency, the Centre for Language Cooperation and Exchange (CLEC).

An Institute is typically based on campus in a physical location, sometimes a dedicated building. Its staff typically include administrative staff from the UK, Chinese language teachers from China, a 'British co-director' recruited by the British university, and a 'Chinese co-director' recruited by the Chinese partner entity but based in the British university at the Confucius Institute.

The purpose of the Confucius Institute programme is to advance the Chinese Communist Party's (CCP) interests. These interests include political and business networking, the promotion of scientific collaboration, propaganda and activities intended to shape how China and the CCP are viewed and studied academically, and the teaching of Mandarin.<sup>1</sup>

A full list of British universities that have a Confucius Institute is included as an [appendix](#) at the bottom of this document.

*Are Confucius Institutes legal?* is a research project conducted by UK-China Transparency. The project consists of the publication and analysis of a range of primary source data about British universities' Confucius Institutes.

**The data indicates that British universities are operating Confucius Institutes illegally and enabling transnational repression in the UK. The key findings are as follows:**

- I. Staff at Confucius Institutes are recruited in a highly discriminatory way that is illegal under UK law.
- II. Staff are being recruited based on their ability to enforce 'CCP discipline' in the UK and are obliged to undermine free speech and to conduct harassment on command.
- III. Universities are systematically enabling this in a way that breaches their legal obligations to staff and students.
- IV. The Home Office is systematically enabling this by means of an unlawful dedicated visa route which makes the employment status of Confucius Institute staff unclear.

**The data is fully searchable and hosted on UK-China Transparency's digital library, which can be accessed [here](#).** There are three main datasets:

1. The responses to a series of Freedom of Information (FOI) requests to British universities;
2. Agreements signed a) between British universities and Chinese partner entities, and b) between British universities and CLEC (obtained through FOI requests);
3. Translated Mandarin-language material relating to the processes used to recruit Confucius Institute staff from China.

These datasets are supplemented by the results of a FOI request to the UK's Home Office, a department of the British government, and by some other files released in response to FOI requests. UK-China Transparency's data is organised by British university: with all the data from each university gathered and summarised together.

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<sup>1</sup> <https://henryjacksonsociety.org/publications/an-investigation-of-chinas-confucius-institutes-in-the-uk/>

## **I. Staff at Confucius Institutes are recruited in a highly discriminatory way that is illegal under UK law**

UK-China Transparency has analysed the recruitment processes of the Chinese universities which hire staff for the Institutes - these staff are sent to the UK to work in British universities, and from there many are sent on to schools. Political, age-based, sexist, religious and racist forms of discrimination are built into the recruitment process.

The Chinese government demands applicants for roles at Confucius Institutes fill in a special form, the 'National Application Form for Teachers Going Abroad' (国家公派出国教师申请表), on a dedicated portal (pmplatform.chinese.cn).<sup>2</sup> The form, which has been translated and reproduced by UK-China Transparency, demands that applicants:

- Provide details of their “political characteristics” and “ethnicity”;
- Promise not to have a child whilst working abroad;
- Have their current employer/manager evaluate their “political attitude”;
- Be evaluated by a CCP Committee.

These practices are illegal under UK law.

The question about “ethnicity” cannot be interpreted in the same way as questions about ethnicity in the UK. In China, the government is engaged in a campaign of aggressive “Sinicisation”, a form of ethnic cleansing, against several minority ethnic groups, such as Tibetans and Uyghurs. The systematic application of discriminatory rules against such groups is well-documented and the request for applicants’ “ethnicity” should be understood in this context.

Many Chinese universities employ additional discriminatory processes, such as the following:

- Several universities exclude applicants from minority religious groups persecuted in China. For example, Beijing International Studies University (which recruits for the University of Central Lancashire) asks applicants to promise that they are not a “member of any illegal organisations and do not participate in any activities that are detrimental to the national interests of China”. In China, “illegal organisations” includes numerous religious groups associated with Islam, Christianity, and Buddhism, membership of which is a protected characteristic in UK law.
- Several universities exclude individuals over or under a certain age. For example, Nankai University (which recruits for Glasgow University) states that applicants for the role of ‘Chinese co-director’ must be between 35 and 55.

There appears to be some attempt on the part of certain Chinese universities to disguise the nature of the recruitment practices from those who do not speak Mandarin:

- Other than the ‘National Application Form’ (see above), the University of Science and Technology of Beijing (USTB), which recruits for De Montfort University, asks applicants to fill in a Chinese-language form asking for their “political characteristics” and the details of a close relative, and the close relative’s “political characteristics”. USTB also asks applicants to fill in a short form in English, but this form makes no reference to politics. Both forms are available online.

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<sup>2</sup> CLEC’s letter to this effect can be found here <http://www.yxnu.net/info/1426/23573.htm> – the ‘National Application form’ itself can be found here <https://archive.vn/15FsF>

## II. Staff are being recruited based on their ability to enforce ‘CCP discipline’ in the UK and are obliged to undermine free speech and to conduct harassment on command.

The mandatory ‘National Application Form for Teachers Going Abroad’ demands that applicants must:

- Promise to abide by the laws of China (while abroad)
- Be evaluated by a CCP Committee
- Have their current employer give a reference detailing their:
  - “Political attitude”
  - Ability to comply with CCP *Discipline for Foreign Affairs* (外事纪律) guidelines

The *Discipline* guidelines demand, amongst other things, that individuals “act in strict accordance with the CCP’s policies in all foreign activities” and “strictly implement the request and report system” (the system is referred to as 请示报告制度).<sup>3</sup> In CCP terminology, this refers to the system whereby CCP members pass information to their superiors: it mandates authoritarian practices such as peer surveillance, peer intimidation and informing.<sup>4</sup>

UK-China Transparency has also identified, translated and reproduced two documents relating to the recruitment of the ‘Chinese co-directors’ of Confucius Institutes – as opposed to the recruitment of language teachers, to which the ‘National Application Form’ applies (see above). The ‘Chinese co-directors’ are senior management staff recruited in China but based in the UK, who run Confucius Institutes at British universities in partnership with a ‘British co-director’.

- One document is a form published by Wuhan University, which recruits for the Confucius Institute at Aberdeen University. The form states that applicants must be under 58, abide by Chinese law whilst abroad, and agree to “proactively resist any speech or behaviour that brings harm to friendly collaboration between China and the foreign country” and to “maintain close communication with the Chinese Embassy or Consulates” in the foreign country.
- The other document is a notice published by Nankai University, which recruits for the Confucius Institute at Glasgow University. The notice states that, upon the orders of the Chinese government, Nankai University should prioritise the “ideological-political qualities” of candidates, “strictly control the selection of candidates in political terms”, only recommend candidates who are “loyal to the ancestor-land [China]”, who possess “political firmness”, and who are between 35 and 55 years old. Applicants must be CCP members, meaning they have already taken an oath to obey the CCP’s command. The notice states that, overall, the CCP Committee of the university should lead on the recruitment process.

The two documents are designed to ensure that loyal and obedient CCP members are deployed to Confucius Institutes in the UK. The documents appear to oblige successful applicants to take the lead on enforcing ‘CCP discipline’ upon Chinese citizens at British universities, but also to undermine and silence attempts to criticise academic partnerships with China in general. Both documents state that they are based on national guidelines, implying similar measures are in place at other Chinese universities. However, UK-China Transparency did not locate other material relating to the recruitment of the ‘Chinese co-directors’.

<sup>3</sup> See Baidu Baike, <https://baike.baidu.com/item/党的外事纪律/9640843>

<sup>4</sup> See, for example, <https://archive.vn/unmso> This CCP announcement from 2019 states that the ‘request and report system’ is “an important way for our Party to maintain political discipline”.

Both the ‘National Application Form for Teachers Going Abroad’ and the documents relating to the recruitment of ‘Chinese co-directors’ indicate that Confucius Institute staff in the UK are selected base on their ability to enforce ‘CCP discipline’ abroad and are obliged to do so while in the UK. This amounts to the staff recruited in this way being obliged to take action against those speaking or acting against the CCP.

There is therefore a systematic risk of Confucius Institute staff involving themselves in transnational repression by subjecting vulnerable individuals in the UK to harassment or intimidation and undermining freedom of speech on campus. Vulnerable individuals include those with Chinese citizenship, or British citizens with parents or grandparents in the country – this includes British citizens born in the UK.

UK-China Transparency has been made aware of incidents of this systematic risk being realised but cannot divulge details at this stage.

It is important to note that Confucius Institute staff too may be vulnerable individuals. In general, those conducting coercion and threats on behalf of the CCP are themselves often subject to threats and coercion.<sup>5</sup>

### **III. Universities are systematically enabling this situation in a way that breaches their legal obligations to staff and students**

The Education (No 2) Act of 1986 applies to universities. It states (italicised):<sup>6</sup>

*(1) Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.*

*(2) The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with—*

*(a) the beliefs or views of that individual or of any member of that body; or*

*(b) the policy or objectives of that body.*

*(3) The governing body of every such establishment shall, with a view to facilitating the discharge of the duty imposed by subsection (1) above in relation to that establishment, issue and keep up to date a code of practice setting out—*

*(a) the procedures to be followed by members, students and employees of the establishment in connection with the organisation—*

*(i) of meetings which are to be held on premises of the establishment and which fall within any class of meeting specified in the code; and*

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<sup>5</sup> See, for example, Dr David Tobin’s work on the role of Uyghurs in CCP surveillance of Uyghurs outside of China <https://www.sheffield.ac.uk/seas/research/we-know-you-better-you-know-yourself-chinas-transnational-repression-uyghur-diaspora>

<sup>6</sup> <https://www.legislation.gov.uk/ukpga/1986/61/section/43>

*(ii) of other activities which are to take place on those premises and which fall within any class of activity so specified; and*

*(b) the conduct required of such persons in connection with any such meeting or activity;*

*and dealing with such other matters as the governing body consider appropriate.*

In addition to this, British universities also typically have anti-harassment policies and serious responsibilities relating to harassment and intimidation.

The recruitment processes discussed in sections 1 and 2 above indicate that Confucius Institutes create a fundamental risk of harassment, of intimidation and of freedom of speech being curtailed. Given the necessary role of Chinese entities subject to CCP discipline in Confucius Institutes and staff recruitment, it is hard to see how this risk could possibly be mitigated in a way that enables British universities to fulfil their legal responsibilities and to protect students and staff.

There are two further issues:

i. A lack of awareness and a lack of legal advice

UK-China Transparency is publishing the responses to FOI requests sent to British universities asking whether Chinese law applies to Chinese staff working at Confucius Institutes in the UK.

The responses indicate clearly that universities are not aware that Confucius Institute staff are pledging to abide by Chinese law (and enforce ‘CCP discipline’) in the UK.

UK-China Transparency is also publishing the results of a set of FOI requests asking universities about the legal status of Confucius Institute staff from China and whether legal advice has been sought about their status.

No British universities stated that they had sought specific advice about the legal status of staff from China. A number of universities sought to classify the staff as ‘seconded’, ‘contracted’ or ‘academic visitors’, and clarified that university behavioural guidelines and rules apply to these staff; but without any reference to the obligations of Confucius Institute staff to enforce ‘CCP discipline’ abroad. This issue intersects with that of the employment status of Confucius Institute staff (see overleaf).

ii. Extraterritoriality: Chinese law on campus

UK-China Transparency is publishing agreements signed between British universities and Chinese partner entities, and between British universities and the Chinese government agency responsible for Confucius Institutes. Many of the agreements state: “The Institute activities [...] shall not contravene the laws and regulations of the UK and China.” In some cases, references to Chinese law have been removed in renewed versions of an agreement.

In addition, UK-China Transparency is publishing the results of a series of FOI requests to British universities which ask whether Chinese law applies to the university’s Confucius Institute or to the Chinese staff who work there, and whether the university has signed agreements to this effect. Universities that *have* signed such agreements have, in some cases, stated in response to FOI requests that they *have not* signed such agreements.

In fact, universities cannot contract out of UK law and clauses implying otherwise are null. Nonetheless, the ‘Chinese law’ issue brings to attention two important facts.

- Vulnerable students and staff at British universities will and do face legal consequences in China should they behave in certain ways, even if their behaviour or speech is protected under UK law.
- Many universities are unaware of this and are failing to project leadership and reassurance to victims and vulnerable individuals.

#### **IV. The Home Office is systematically enabling this situation by means of an unlawful dedicated visa route which makes the employment status of Confucius Institute staff unclear.**

In April 2014, shortly before the visit of senior CCP leader Li Keqiang to the United Kingdom, the Home Office launched a new kind of Tier 5 (Temporary Worker - Government Authorised Exchange) visa route. This was the Overseas Government Language Programme visa scheme. The first and only such scheme is the China-UK Mandarin Teachers' Scheme.

The scheme's sponsor is The Centre for Language Education and Cooperation, UK Ltd. This is a limited company based in London but under the control of the Chinese government. The Centre for Language Education and Cooperation (CLEC) is the name of the Chinese government agency responsible for the Confucius Institute programme. CLEC was previously known as Hanban, and CLEC UK Ltd was previously known as Hanban UK Ltd.

Various documents that shed light on the China-UK Mandarin Teachers' scheme have been obtained by UK-China Transparency:

- Agreements signed between British universities and Chinese partner entities, and between British universities and the Chinese government agency responsible for Confucius Institutes;
- The response to a FOI request sent to the Home Office;
- Materials produced by the scheme's sponsor, CLEC UK Ltd, released by British universities in response to FOI requests.

These documents make clear that there are two major legal issues associated with the scheme:

i. Applicability of UK employment law

Evidence in sections 1 and 2 above shows that the recruitment of teachers is of a manner that is illegal under UK law, and that the obligations of staff recruited in this way present legal problems for universities in that it appears those staff have obliged themselves to conduct harassment on command. These two issues are both systematic and have ramifications for the legality of the Home Office scheme.

In response to a FOI request asking about the applicability of British law to those who use the scheme, the Home Office stated: "UK employment and equality law applies to employment under [the Government Authorised Exchange programme]." The Home Office's understanding appears to be that individuals who use the scheme are employed in the UK and that UK employment law applies to their employment in the UK.

Every British university that responded to a FOI request from UK-China Transparency asking whether the individuals who use the scheme are employed by the university answered in the negative: British universities consider that they do not *employ* individuals who use this scheme.

Two documents, referred to as 'Letters of Commitment', released in response to a FOI request by Manchester University and reproduced by UK-China Transparency, indicate that British universities are claiming not to employ Confucius Institute staff despite 'committing'

to take on the responsibility of informing the staff's visa sponsor, CLEC UK Ltd, if the nature or location of the staff's employment changes.

In summary, it appears that there is a lack of legal clarity as to whether UK employment law applies to the employment at British universities of Confucius Institute staff from China.

ii. Filling vacancies

The nature of the scheme under Tier 5 dictates that it is not for the filling of vacancies. This is abundantly clear in the guidance issued by the Home Office.

The Immigration Rules issued by the Home Office state that those seeking to use the scheme “must have a valid Certificate of Sponsorship for the job they are planning to do; which to be valid must: [...] (f) confirm that the role does not fill a vacancy in the workforce”.<sup>7</sup>

The Temporary Work caseworker guidance issued by the Home Office in relation to the scheme states that in issuing a certificate of sponsorship, the sponsor confirms that:<sup>8</sup>

“All roles sponsored on the route must be supernumerary, meaning that the role is over and above any normal staffing requirement and does not fill a vacancy. The route cannot be used to facilitate the supply of labour.

“Potential indicators that the role is not supernumerary include: the job description or information provided about the role suggests it is not in addition to normal staffing requirements...”

Every British university with a Confucius Institute, except Oxford Brookes, has released at least one of the two agreements that govern its Confucius Institute – one with the relevant Chinese government agency, and one with a Chinese partner entity (usually a university).

In the case of each such British university, at least one of the agreements specifically states that the Confucius Institute must have a ‘Chinese co-director’ (though this exact phrase might not be used) and this role is substantially defined as a key role for the management of a Confucius Institute.

Further detailed definition of the nature of the role is offered by CLEC UK Ltd, itself the sponsor of the China-UK Mandarin Teachers scheme, in a letter issued to Coventry University, ‘Communications Note for China-UK Mandarin Teachers Scheme (Version Jan 2022)’, which was obtained through a FOI request and reproduced by UK-China Transparency.

In summary, the role of ‘Chinese co-director’ is to all intents and purposes a role fundamental to a Confucius Institute and is filled by single individuals in turn. Those who fulfil the role are therefore likely to be filling a vacancy, calling into question the legality of Home Office’s authorisation of the visa scheme.

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<sup>7</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-t5-temporary-worker-government-authorised-exchange-worker-route>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1148764/Temporary\\_Work.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1148764/Temporary_Work.pdf)

## Appendix 1: List of British universities that host a Confucius Institute

- Edinburgh University
- University College London (based at the Institute of Education)
- London School of Economics
- Manchester University
- London South Bank University
- Nottingham University
- Sheffield University
- Cardiff University
- The University of Wales Trinity St David
- Central Lancashire University
- Strathclyde University
- Liverpool University
- Lancaster University
- Glasgow University
- Southampton University
- Ulster University
- Leeds University
- Goldsmiths University
- Bangor University
- Newcastle University
- Aberdeen University
- Edge Hill University
- De Montfort University
- Heriot-Watt University
- Queen Mary University of London
- Hull University
- Coventry University
- Oxford Brookes University
- Huddersfield University
- (There is also an Online Confucius Institute associated with the Open University)