

FREEDOM OF SPEECH CODE OF PRACTICE

HIGHER EDUCATION (FREEDOM OF SPEECH) ACT 2023

1. The [Higher Education \(Freedom of Speech\) Act 2023](#) (the **HE(FoS)A**) which amends the Higher Education and Research Act 2017 and replaces the duty previously imposed on universities under s.43 of the Education (No.2) Act 1986 places duties on the Board of Governors to take steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order for it to achieve the objective of securing freedom of speech and academic freedom within the law for its staff, members, students and visiting speakers (we refer to this in this Code of Practice (**Code**) as the **Secure Duty**). The Secure Duty applies to the University's activities in England.
2. This **Code**, which is also a requirement under the HE(FoS)A and issued by the Board of Governors, sets out how the University will fulfil the Secure Duty.
3. A glossary of terms can be found at Annex B of this Code but for ease of understanding the meanings of **freedom of speech** and **academic freedom** are included below:
 - 3.1 **Freedom of speech:** means the freedom to impart ideas, opinions or information (referred to in **Article 10 of the European Convention on Human Rights** as it has effect for the purpose of the Human Rights Act 1998) (the **Convention**) by means of speech, writing or images (including in electronic form).
 - 3.2 The rights under Article 10 of the Convention are as follows:
 - 3.2.1 *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.*
 - 3.2.2 *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.*
 - 3.3 **Academic freedom**, in relation to the University's academic staff: means their freedom within the law (a) to question and test received wisdom; and (b) to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of being adversely affected by (i) loss of their jobs or privileges at the University; or the likelihood of their securing promotion or different jobs at the University being reduced.

4. Unless the context suggests otherwise, references to **freedom of speech** (or **free speech**) within this Code are to be read as including, for academic staff, **academic freedom**. References to **speech** includes writing or images (including in electronic form).

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5. This Code covers:
- 5.1 The University's values relating to freedom of speech and how our values aim to fulfil the Secure Duty.
 - 5.2 The scope of this Code.
 - 5.3 The steps the University takes to fulfil the Secure Duty.
 - 5.4 The approach the University will take when complying with its Secure Duty and managing free speech issues under this Code.
 - 5.5 The general principles for procedures under this Code.
 - 5.6 The code of conduct applicable to this Code.
 - 5.7 The scope of meetings and similar activities (Events) which fall within the scope of this Code, the applicable procedures, and the approach the University will take when carrying out its Secure Duty and making decisions.
 - 5.8 How the University manages complaints relating to freedom of speech.
 - 5.9 Approval and authorisations under this Code.
 - 5.10 Annex A includes further details on:
 - 5.10.1 the HE(FoS)A the University's duties under it and the University's other legal and regulatory duties.
 - 5.10.2 unlawful speech which will not be protected.
 - 5.11 Annex B – A glossary of terms used in this Code.
 - 5.12 Annex C – The University's external (visiting) speaker procedure.

VALUES RELATING TO FREEDOM OF SPEECH

6. The principles of freedom of speech and academic freedom within the law are fundamental to the University's objects (to advance knowledge, education and research) and are embedded in our constitution through the Articles of Government. They form a cornerstone of our purpose to transform lives. We believe free speech enhances knowledge and learning, stimulates research and innovation, encourages critical thinking and enables our students and community to be exposed to, understand, challenge and debate differing viewpoints, beliefs and perspectives within a respectful and inclusive

environment without fear of reprisal. As such, it is critical that free speech within the law is both protected and encouraged across the University.

7. The law rightly affords a high level of protection to the right of free speech and speech will generally be protected unless unlawful. This includes speech which to some may be shocking, disturbing or offensive.
8. Having particular regard to, and placing significant weight on, the importance of free speech, we will take reasonably practicable steps to secure lawful free speech including on complex, controversial and contested matters. In allowing lawful free speech this does not mean the University endorses or supports a particular view, but that we understand the importance of allowing that view or perspective to be heard. The University will remain neutral, creating an environment that will encourage a range of lawful views to be explored and considered.
9. As the University operates within a complex legal and regulatory framework, decisions relating to freedom of speech are not always straightforward. We need to balance our freedom of speech duties, having particular regard to their importance, with our other legal and regulatory obligations, which on occasions may seem to conflict. This means we will make decisions relating to freedom of speech carefully, and act reasonably and objectively and with due consideration to all relevant issues and obligations. Please see Annex A for further details of the legal and regulatory landscape in which the University operates and relevant legislation including further detail on the University's duties as required by the HE(FoS)A.
10. Notwithstanding our Secure Duty, the University will not tolerate and stands firmly against any type of unlawful speech. We have set out what can amount to unlawful speech in Annex A below.
11. We expect our members, staff and student community and visiting speakers to remain respectful and tolerant of others, regardless of whether they hold similar or opposing views. We also expect them to comply with our code of conduct under this Code as detailed in sections 23 to 26.
12. Recognising the importance of lawful free speech to the University, we have established a Freedom of Speech Oversight Group (**FoSOG**) whose role initially is to oversee and monitor the implementation of the HE(FoS)A and thereafter monitor the University's compliance. The Group also acts as an incident response group, as necessary, when issues of freedom of speech arise.

SCOPE

13. This Code covers **all aspects of academic life** at the University where issues of free speech may be engaged, and applies to University members, staff, Students' Union staff when arranging meetings or activities on University premises, students and visiting speakers.

14. This includes, without limitation, the University's regulations, policies, codes, procedures and practices relating to:
 - 14.1 admissions, appointments, re-appointments and promotions;
 - 14.2 disciplinary matters;
 - 14.3 employment contracts;
 - 14.4 equity, equality, diversity and inclusion including the Public Sector Equality Duty (PSED);
 - 14.5 fitness to practise policies and procedures;
 - 14.6 bullying, harassment and sexual misconduct policies;
 - 14.7 IT regulations and policies and on the use of social media;
 - 14.8 the Prevent duty;
 - 14.9 principles of curricular design;
 - 14.10 research ethics;
 - 14.11 complaints processes;
 - 14.12 meetings and events, including those involving visiting speakers (see sections 27 to 45);
 - 14.13 conduct, problem resolution and discipline of students and staff.

STEPS TAKEN BY THE UNIVERSITY TO FULFIL THE SECURE DUTY

15. The University takes the following measures to fulfil the Secure Duty:
 - 15.1 we have established the FoSOG whose role is set out in section 12;
 - 15.2 we will ensure all relevant regulations, policies, codes, procedures and contracts, use legal definitions where available, accurately reflect and do not misrepresent the scope of the University's other legal duties, apply objective tests where appropriate, explicitly recognise and accurately reflect our Secure Duty and the right to lawful free speech. This includes, as far as academic freedom is concerned, reflecting this right in the employment contracts of our academic staff. **When applying its policies and procedures and this Code the University will have particular regard to, and place significant weight on, the importance of freedom of speech within the law;**
 - 15.3 we will not enter into a non-disclosure agreement with any University member, staff member, student or visiting speaker relating to a complaint made by such person of: misconduct or alleged misconduct which relates to sexual abuse, sexual harassment, sexual misconduct, bullying or harassment (**relevant complaint**);
 - 15.4 we have established procedures which apply to the use of University premises and other events taking place off campus but under the authority of the University for those

categories of meetings and events which are referred to in section 27 (Events). These aim to ensure the University meets its Secure Duty including that the use of the University premises:

15.4.1 is not denied to any individual or body; and

15.4.2 the terms on which such premises are provided are not to any extent, based on any ground in relation to the ideas or opinions of individuals or the policy or objectives of the body.

15.5 we will bring our duties under the HE(FoS)A and this Code to the attention of our students and staff at least once a year;

15.6 we will develop and maintain a programme of induction, ongoing training and awareness raising in matters affecting freedom of speech within the law;

15.7 we will, take our duties seriously and, where necessary, take disciplinary action for failure to comply with this Code;

15.8 we will monitor and review the operation of this Code, and amend and update as necessary, through the FoSOG. Any recommended amendments or updates to this Code will be subject to the approval of the Board of Governors.

THE APPROACH THE UNIVERSITY WILL TAKE WHEN MANAGING FREE SPEECH ISSUES

16. When carrying out its Secure Duty, the University will adopt a **three-step process**:

16.1 **Step 1: Is the speech lawful?** There is a presumption that speech is lawful unless the law prohibits it. Law in this context means primary and secondary legislation (i.e. Acts of Parliament and Statutory Instruments respectively), case law or precedent.

If the speech is lawful, we move on to step 2. If the speech is unlawful the Secure Duty will not apply (see Annex A which provides further detail of unlawful speech).

16.2 **Step 2: Are there reasonably practicable steps the University can take to secure the speech?** If yes, we will take those steps to secure the speech. In this context reasonably practicable steps include both (i) positive i.e. to do something which will secure lawful free speech and (ii) negative i.e. to not do something which would restrict lawful free speech.

16.3 In addition to the impact which taking or not taking the step will have on free speech, depending on the circumstances other factors which may be relevant include whether by taking or not taking the step this:

16.3.1 impacts on the University's compliance with its other legal or regulatory duties or obligations (such as the Equality Act 2010);

16.3.2 impacts on the University carrying out its essential functions of learning, teaching, or research, its administrative functions or its resources necessary to carry out such essential functions;

16.3.3 impacts on anyone's health, safety or security.

Depending on the facts and circumstances, there may be cases such as, without limitation, those involving the factors above where a reasonably practicable step to secure speech may involve the University regulating the time, place or manner of the speech whilst remaining neutral on the viewpoint expressed.

If there are no reasonably practicable steps which can be taken to secure the speech, we move to step 3.

16.4 Step 3: Are any restrictions of the speech prescribed by law and proportionate under the Convention? As set out in the Convention, speech may be restricted where this is *"prescribed by law and 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"*.

17. An [illustration of the three-step approach](#) can be found in the [Office for Students guidance related to freedom of speech](#).
18. In reaching a decision based on this three-step approach, the University will carefully consider available evidence and all the relevant issues.
19. It will balance the right to freedom of speech within the law, and its Secure Duty, with any relevant legal limitations and duties. It will also take account of relevant guidance that may be issued by relevant bodies including the [Office for Students guidance related to freedom of speech](#), other government departments and UUK. In making any decision it will act proportionately. Any restrictions placed on speech will not go beyond those required by law and/or to protect the rights, safety and security of others.

PROCEDURES

20. The University reserves the right to have different procedures for different categories of Event (as defined in section 27) or other activity falling within the scope of this Code.
21. Relevant procedures may include, as applicable, and in addition to any other aspects:
 - 21.1 specification of reasonable advance notice of the intention to hold the Event or undertake the activity,

- 21.2 a requirement that the organiser/person responsible provides all information as may be required by the University,
 - 21.3 an escalation or reporting process to staff authorised by the University to make a decision. This may include convening a Silver Group under the University's Incident Management Framework and/or the Freedom of Speech Oversight Group,
 - 21.4 a requirement to comply with the code of conduct under this Code (see section 23 to 26) and any applicable policy or procedure,
 - 21.5 if applicable, a schedule of charges and a requirement to sign a contract.
22. Further detail of procedures which are specific to Events (and the scope of Events covered by this Code) are set out in sections 27 to 45 (below).

CODE OF CONDUCT

- 23. The University expects our members, staff and student community and visiting speakers to treat others with dignity and respect, regardless of whether they hold similar or opposing viewpoints. We do not tolerate any form of bullying, harassment, discrimination or victimisation or any other unlawful conduct.
- 24. Students also remain subject to the University's student regulations, policies and codes relating to conduct and discipline and staff to the staff policies relating to conduct, problem resolution and discipline as amended and updated from time to time.
- 25. Whilst the University recognises the right to peaceful protest and that protest can be an expression of free speech, any protest or other activity must not be such as to shut down debate or substantially disrupt any authorised activity or Event taking place on University premises, or the holding of any such activity or Event authorised by the University or, where applicable, the Students' Union.
- 26. Any breach of this code of conduct by staff or students may be treated as a disciplinary matter and the University may take action in accordance with the relevant staff or student disciplinary procedures.

MEETINGS AND EVENTS (EVENTS)

- 27. **Scope of events covered by this Code (Events):** This part of the Code applies to meetings and similar activities (collectively referred to as **Events**) which take place:
 - 27.1 on University premises;
 - 27.2 away from University premises but which are affiliated to the University or are funded by the University or are branded as a University event;
 - 27.3 online events;

in each case where the event is held under the authority of the University or, where applicable, the Students' Union or has an association or link to the University. Commercial events held on University premises fall within the scope of this Code where these involve, in whatever capacity, any University members, staff, students or visiting speakers.

28. It applies to all members, staff and students of the University and visiting speakers. It also applies to Students' Union staff when organising events on University premises.

PROCEDURES APPLICABLE TO EVENTS

29. **Room/space booking and Events Register: All Events** must be added to the Events Register which is maintained by the Events Team and the University's room booking procedures followed.
30. **Events involving visiting speakers:** The authorised procedure for Events involving visiting / external speakers is annexed to this Code.
31. **Event bookings for public spaces:** All requests to book a public space should provisionally register the Event on the Events Register and then contact the University's Events Team and follow their process for public spaces. If the Event involves a visiting speaker the organiser must also follow the visiting / external speaker procedure. If no visiting / external speaker is involved but the Event raises or has the potential to raise freedom of speech issues, the organiser should follow the same escalation process as applies to Events involving visiting / external speakers.
32. **Other Events:** If any other Event raises or has the potential to raise freedom of speech issues (but does not involve a visiting / external speaker or a public space), the organiser should still follow the same escalation process as applies to Events involving visiting / external speakers.

APPROACH THE UNIVERSITY WILL TAKE TO MANAGING FREE SPEECH ISSUES FOR EVENTS

33. In carrying out its Secure Duty for any Event falling within the scope of this Code which raises, or has the potential to raise, free speech issues, the University will adopt the three-step approach outlined in section 16.
34. The COO is authorised to make the final decision on whether or not an Event should go ahead and to decide if an Event underway should be terminated. If the COO is unavailable when a decision needs to be made, the decision shall be made by such other person as is designated by the Vice-Chancellor.
35. The above authority covers Events organised by the Students' Union which take place on University premises or using University facilities as well as University Events.

36. Nothing in the above shall preclude bookings being refused or terminated on procedural or contractual grounds by other members of staff authorised to do so in the relevant procedure.
37. The refusal of any booking by the COO, or other person authorised by the Vice-Chancellor, will be reported to the next meeting of the Board of Governors.
38. **Cost of security:** The costs of security arrangements for Events held on University premises will, in most cases, be borne by the University. This includes:
 - 38.1 the cost of the University's in-house security team which can provide up to six persons to facilitate the safe running of an Event; and
 - 38.2 additional costs of up to £1,000 per Event for provision of a specialist risk assessment and external security cover (including for bag search requirements and specialist provision that require Security Industry Authority (SIA) licensed staff).
39. The University will also not be responsible for the security costs of external / visiting speakers who could reasonably be expected to have their own security arrangements because of the political or state office they hold (in which case the University's Security Team will not usually be involved in the security arrangements).
40. Where there are exceptional circumstances relating to an Event and its risks which cause the University's reasonable security costs to exceed the parameters in section 38.1 and 38.2, or the circumstances in section 39 apply, the University will expect the Event organiser to bear the security costs in excess of the stated parameters. This may also be a condition of the Event proceeding.
41. In such exceptional circumstances, the University's Head of Security will provide the Event organiser with a clear written summary and explanation of the calculation of the University's security costs. The Event organiser has the right to appeal the University's decision. Such an appeal should be directed to the University's Head of Security in the first instance but may be escalated to the University's COO.

UNIVERSITY TERMS RELATING TO EVENTS

42. All organisers of Events must undertake to comply with all lawful and reasonable instructions issued by authorised University staff. This includes in relation to the location, arrangement and conduct of such Events including but not limited to: complying with applicable procedures for the Event, following room / space booking procedures, registering the Event on the Events Register, ensuring adequate stewarding, chairing and control over entry.
43. Such instructions may be issued as conditions for allowing the Event or a visiting speaker's involvement in it, to go ahead or to deal with issues during or after the Event. Any conditions imposed will be proportionate and will not go beyond those reasonably required to address any risks which have been identified.

44. Permission to hold an Event may be withdrawn, or an Event which is under way may be terminated, in the following circumstances:
- 44.1 where there is a change in circumstances and, when re-applying the three-step approach in section 16 to these, such withdrawal or termination is justified,
- 44.2 the Event organisers: (i) are found to be in breach of the relevant contract, (ii) are found to have provided false or misleading information, or (iii) fail to comply with lawful and reasonable instructions issued by authorised University staff.
45. The University reserves the right to seek advice from the police about any public order aspect of a proposed Event, and to make police support at an Event a condition of its going ahead.

COMPLAINTS

46. Complaints relating to freedom of speech should be directed:
- 46.1 For applicants and students of the University: through the established [applicant](#) and [student](#) complaints processes.
- 46.2 For staff of the University: through the staff [Grievance Procedure](#) under the [Problem Resolution Framework](#).
- 46.3 For University members: to the University's Vice-Chancellor.
- 46.4 For visiting speakers: to the University Secretary.
47. Reports and concerns about free speech can also be raised through the [University's Report and Support website](#).
48. Possible misconduct or wrongdoing within the University may be reported by members, staff or those contracted to provide services to the University through the University's [Speak Out \(Whistleblowing\) Policy](#).

APPROVAL AND AUTHORISATION

49. The University's Board of Governors is responsible for approving this Code (and any amendments to it) on the recommendation of the University Executive Board (UEB).
50. The Freedom of Speech Oversight Group reports to UEB and makes recommendations related to this Code to UEB.
51. Responsibility for approving new procedures under this Code rests with UEB, on the recommendation of the FoSOG. Once approved, any amendments to an approved procedure may be delegated by UEB to defined boards, groups or individuals, within the University's governance and delegation arrangements, that are most aligned to the subject matter of the relevant procedure.

52. All procedures should specify those authorised to make a decision when issues of freedom of speech arise and, where appropriate, an escalation process through which the issue can be investigated and considered, applying the three-step process in this Code, before a final decision is made. In this context the FoSOG can act as an incident group and may either resolve the issue or make recommendations to the final decision maker.
53. Where a freedom of speech issue arises which cannot be resolved at a local level, applying the three step process in this Code, but requires further consideration and is not covered by a specific procedure under this Code it should be escalated in the first instance to the Governance, Legal and Compliance Directorate (SHULegal@shu.ac.uk) on behalf of the University Secretary who in turn may convene a meeting of the FoSOG to act as an incident group and final decision maker.

Issuing Authority: University Secretary

Paper GB/87/2, revised June 1993, July 2001, November 2007, February 2016, October 2017, September 2018; July 2025

ANNEX A

LEGISLATION RELATING TO FREEDOM OF SPEECH

1. The University operates within a complex legal and regulatory framework, particularly where free speech and academic freedom are concerned.
2. [Higher Education \(Freedom of Speech\) Act 2023](#) (the **HE(FoS)A**) which amends the Higher Education and Research Act 2017 and replaces the duty previously imposed on universities under s.43 of the Education (No.2) Act 1986, places duties on the Board of Governors to take steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order for it to achieve the objective of securing freedom of speech and academic freedom within the law for its staff, members, students and visiting speakers (we refer to this in this Code as the **Secure Duty**).
3. The HE(FoS)A defines freedom of speech and academic freedom as follows:
 - 3.1 **Freedom of speech:** means the freedom to impart ideas, opinions or information (referred to in Article 10(1) of the European Convention on Human Rights as it has effect for the purpose of the Human Rights Act 1998) by means of speech, writing or images (including in electronic form).
 - 3.2 **Academic freedom**, in relation to the University's academic staff: means their freedom within the law (a) to question and test received wisdom; and (b) to put forward ideas and controversial or unpopular opinions, without placing themselves at risk of being adversely affected by (i) loss of their jobs or privileges at the University; or (ii) the likelihood of their securing promotion or different jobs being reduced.
4. The Secure Duty includes securing that the use of the University premises:
 - 4.1 is not denied to any individual or body; and
 - 4.2 the terms on which such premises are provided are not to any extent, based on any ground in relation to the ideas or opinions of individuals or the policy or objectives of the body.
5. So far as relating to academic staff, the Secure Duty includes securing Academic freedom (as defined above). It also includes a duty, when recruiting academic staff, to secure that an applicant is not adversely affected in relation to their application because they have exercised their right to academic freedom.
6. It also prohibits the University from entering into a non-disclosure agreement with any University member, staff member, student or visiting speaker relating to a complaint they have made of misconduct or alleged misconduct which relates to: sexual abuse, sexual harassment, sexual misconduct, bullying or harassment.
7. The HE(FoS)A requires the Board of Governors to maintain a Code of Practice and at least once a year bring it to the attention of all the University's students.

8. When exercising its public functions, the University is also subject to the **Human Rights Act 1988**. This enshrines the European Convention on Human Rights (the **Convention**) within UK law.
9. **Article 9** of the Convention is the right to **freedom of thought, conscience and religion** and to manifest or express this. The **Article 10** right is to **freedom of expression**. Whilst, under Article 9 the right to hold a belief is unrestricted, the right to manifest or express this under Article 9 and the right to freedom of expression under Article 10 may be subject to *such limitations as prescribed by law, are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, the prevention of crime or disorder, the protection of health or morals, the protection of rights or reputation of others, prevention of disclosure of information received in confidence and maintaining the impartiality and authority of the judiciary*.
10. Any restriction or interference with lawful speech must have a lawful basis and be proportionate in going no further than reasonably necessary to achieve the aim of the restriction (e.g. to mitigate the risks of a controversial Event being disrupted and secure the safety of those attending).
11. This means the rights to express a belief and freedom of expression under the Convention and that of freedom of speech under the HE(FoS)A are not absolute rights but will be protected unless unlawful.
12. The right to freedom of peaceful assembly (protest) and to freedom of association with others, including the right to form and to join trade unions is also a protected right under **Article 11 (Freedom of assembly and association)** and operates in a similar way to Articles 9 and 10. Industrial action is protected if it follows the rules set out in the **Trade Union and Labour Relations (Consolidation) Act 1992** which should be interpreted in line with Article 11. A protest or industrial action may also involve the exercise of free speech to which the Article 9 and/or 10 protections attach.

OTHER UNIVERSITY LEGAL AND REGULATORY DUTIES

13. **Public Sector Equality Duty (PSED)**: the Equality Act 2010 (**EqA**) requires the University when exercising its functions to have **due regard** to the need to foster good relations between persons who share a relevant protected characteristic (as defined in the EqA) and persons who do not share it. However, regard to countervailing factors should also be considered including the right to freedom of speech within the law and its importance.
14. **The Prevent Duty**: section 26(1) of the Counter Terrorism and Security Act 2015 requires that when exercising its functions, the University must have **due regard** to the need to prevent people being drawn into terrorism, including having regard to the government's statutory guidance in carrying out the Prevent Duty.

15. Under section 31, when carrying out the Prevent Duty the University must have **particular regard** to (a) the duty to ensure freedom of speech and (b) the importance of academic freedom.
16. The University may need to balance its Prevent and PSED duties with the duty to secure freedom of speech within the law. However, the duty to have **due regard** under the PSED and Prevent Duty is not such a rigorous duty as the University's duty under the HE(FoS)A to have **particular regard** to the importance of free speech. As such the free speech duty will likely carry more weight.
17. **Charitable duties:** The Board of Governors are responsible for ensuring the duty to further the University's charitable purposes is complied with. They must not promote particular political positions or engage in political campaigning or activity unless this advances the University's charitable purposes. They must also ensure the University complies with its legal obligations to protect freedom of speech within the law and to protect students and staff from harassment, discrimination and other unlawful acts.
18. **Office for Students (OfS) regulation:** The OfS is the regulator for the Higher Education Sector. Under the HE(FoS)A and as part of the general functions of the OfS, it is required to promote the importance of freedom of speech within the law in the provision of higher education. It may also identify good practice on how to support freedom of speech and give advice about such practice to higher education providers.

WHEN WILL SPEECH BE UNLAWFUL AND NOT PROTECTED?

19. Speech can be unlawful and so not protected under **civil or criminal law**.

Criminal Law

20. Criminal law which can restrict free speech includes where the speech concerned would amount to, for example:
 - 20.1 racially or religiously aggravated offences;
 - 20.2 threats to kill;
 - 20.3 certain public order offences;
 - 20.4 fear or provocation of violence;
 - 20.5 the offence of harassment;
 - 20.6 certain communication offences involving sending obscene or menacing messages;
 - 20.7 acts intended or likely to stir up hatred on the grounds of race, religion or sexual orientation;

- 20.8 incitement to commit acts of terrorism; inviting or encouraging support for a proscribed organisation (terrorist groups or organisations which are prohibited by UK law);
- 20.9 encouraging terrorism or disseminating terrorist publications.
- 21. **Hate Crime or hate speech laws**, although not laws in themselves, these relate to:
 - 21.1 the offence of stirring up hatred in respect of race, religion or sexual orientation;
 - 21.2 the mechanism through which criminal offences are treated as aggravated or where the sentence is enhanced because the offender was motivated by hostility based on (amongst other protected characteristics) race or religion. Relevant offences which may be aggravated or enhanced include: criminal harassment, certain communications offences and certain public order offences.

Civil Law

Equality Act 2010 (EqA)

- 22. **The EqA** provides protection against **discrimination, victimisation and harassment**. Speech which would amount to discrimination, victimisation or harassment under the EqA (each of which is described below) is therefore unlawful.
- 23. The protected characteristics under the EqA are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief (which includes philosophical belief and lack of belief), sex and sexual orientation.
- 24. **Discrimination under the EqA** can be either direct or indirect.
- 25. A person will be **directly discriminated** against if, because of a protected characteristic, including a protected belief, they are treated less favourably than someone who does not have the protected characteristic. The person themselves does not have the protected characteristic, it will still be discrimination if they are treated less favourably because they associate with someone who has the characteristic or because they are perceived to have the characteristic even if they do not. If a person were to be sanctioned for expressing a lawful view they held associated with a protected characteristic this would be directly discriminatory even if others might find their view shocking, offensive, or upsetting.
- 26. **Indirect discrimination** is when a working practice, policy or rule is the same for everyone which puts or would put people with a protected characteristic at a particular disadvantage in comparison to others. Under the law indirect discrimination might be justified if it is a proportionate means of achieving a legitimate aim.
- 27. **Harassment** under the EqA has three definitions.
 - 27.1 **Harassment related to a relevant protected characteristic**: is unwanted conduct related to a protected characteristic, including a protected belief, which **has the purpose or the effect** of violating a person's dignity or subjecting them to an intimidating, hostile,

degrading, humiliating or offensive environment. The person does not have to object to the conduct for it to be unwanted. Harassment can also occur if this was not the intention.

27.2 Sexual harassment: is unwanted conduct (verbal, non-verbal or physical conduct) of a sexual nature which has the **purpose or effect** of violating a person's dignity or subjecting them to an intimidating, hostile, degrading, humiliating or offensive environment.

27.3 Harassment and less favourable treatment is unwanted conduct of a sexual nature or that is related to the protected characteristics of gender reassignment or sex, which has the **purpose or effect** of violating a person's dignity or subjecting them to an intimidating, hostile, degrading, humiliating or offensive environment; and because of the person's rejection or submission to the conduct, they are treated less favourably than they would have been treated had they not rejected or submitted to the conduct.

27.4 In each of the three definitions, in cases where the conduct complained of had the effect (rather than the purpose) of violating a person's dignity etc. it must have been reasonable in the circumstances for the conduct to have had that effect taking into account: (i) the perception of the person subjected to the conduct, (ii) the other circumstances of the case; and (iii) **whether it is reasonable for the conduct to have that effect**. It therefore involves an **objective test** and much wider considerations than just those of the person subjected to the conduct. As such the context will always be of relevance.

28. As referenced at section 20.5 of this Annex A, **Harassment is also a criminal offence** under the Protection from Harassment Act 1977. The offence of harassment is only committed if the person knows or ought to know that their course of conduct amounts to harassment of the other person. A person ought to know it amounts to harassment if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other. This therefore involves a similar objective test to that under the EqA.
29. Students' learning experiences at the University may include exposure to curricula, course material, discussions or speaker's views they find offensive. However, this will not in itself make such speech amount to harassment.
30. **Victimisation** under the EqA is where someone suffers a detriment i.e. is treated less favourably because they have done or are believed to have or may do a 'protected act'. A protected act includes: making an allegation or complaint that a person has acted in breach of the EqA, bringing proceedings under the EqA; giving evidence or information in connection with proceedings under the EqA (whether this does or does not support the complaint); doing any other thing for the purposes of or in connection with the EqA.
31. **Defamation:** Defamatory speech (libel or slander) is unlawful. In broad terms this is where the speech tends to lower the person (about who the speech is made) in the estimation of right-thinking people generally and that it has a substantially adverse effect.

ANNEX B

GLOSSARY

1. The terms used in the Code have the following meanings:

| Term | Meaning |
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| academic freedom | has the meaning given to it in section 3.3 of this Code. |
| academic staff | a member of staff who is employed, or otherwise engaged, for the purpose of teaching or conducting research. |
| Code | this freedom of speech code of practice. |
| Convention | the European Convention on Human Rights, as it has effect for the time being in relation to the United Kingdom under the Human Rights Act 1998. |
| EqA | Equality Act 2010. |
| Event | meetings or similar activities falling within the scope set out in section 27 of this Code. |
| Visiting / External Speaker Procedure | the University's visiting / external speaker procedure which is a procedure under this Code. |
| freedom of speech (or free speech) | has the meaning set out in section 3.1 of this Code. |
| FoSOG | the University's Freedom of Speech Oversight Group. |
| HE(FoS)A | Higher Education (Freedom of Speech) Act 2023. |
| member | in relation to the University, means a member of the Board of Governors. It does not include a person who is a member of the University solely because of having been a student of the University. |
| misconduct | In connection with a relevant complaint means— (a) sexual abuse, sexual harassment or sexual misconduct, and (b) bullying or harassment not falling within paragraph (a). |
| non-disclosure agreement | means an agreement which purports to any extent to preclude the person from— (a) publishing information about the relevant complaint, or (b) disclosing information about the relevant complaint to any one or more other persons. |
| premises | includes land, buildings, facilities and other property, in the possession of, or owned, leased, used, supervised or controlled by the University or Students' Union. |
| Prevent duty | has the meaning given in paragraph 14 of Annex A of this Code. |

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| PSED | the public sector equality duty under the EqA. |
| relevant complaint | complaint relating to misconduct or alleged misconduct by any person; "misconduct" means— (a) sexual abuse, sexual harassment or sexual misconduct, and (b) bullying or harassment not falling within paragraph (a). |
| Secure Duty | has the meaning given in section 1 of this Code. |
| staff | Includes: <ul style="list-style-type: none"> • an employee of the University; • a person working for the University under a contract of employment including but not limited to: <ul style="list-style-type: none"> ○ a fixed term contract, a zero hour contract, an hourly paid contract or other type of casual or atypical contract of employment; or • other individuals working for the University, other than under a contract of employment, such as agency staff, and other types of workers. |
| student | a person undertaking, or with a binding offer to undertake, a course of study or a programme of research at the University or that leads to an award granted by the University (including a trainee or apprentice). 'student' also includes students not on credit-based programmes, or students on courses provided through franchising or validation arrangements with the University. |
| Students' Union | Sheffield Hallam Students' Union. |
| visiting or external speaker | a person who was invited to speak at an Event (as defined in section 27 of this Code), or who would have been invited had there not been a restriction on this or does not include a person who wanted or requested an invitation to speak but was not invited. It may include a person whose invitation has not been approved through the University's Visiting / External Speaker Procedure. |