

## LSE Academic Freedom

### Draft Code of Conduct on Academic Freedom:

#### COMMENTARY

This code is intended to complement the School's Code of Practice on Free Speech and its structure is modelled on that existing Code.

(The Free Speech Code can be found here:

<https://info.lse.ac.uk/staff/services/Policies-and-procedures/Assets/Documents/Code-of-Practice-on-Free-Speech.pdf>)

Most of the Code should be self-explanatory, but this commentary clarifies the scope and intentions of the different parts. In particular, the effect of Part 4.2—which makes reference to the Discrimination, Harassment and Bullying Code—is explained in detail.

**Part 1 Preamble** is very similar in content to the Free Speech Code. It will probably be appropriate to add one or two paragraphs on the model of the final paragraphs of the Free Speech Code's Preamble in order to make reference to the requirements of Higher Education (Freedom of Speech) Bill, which is currently before parliament and in its Final Stages but has not yet become law.

**Part 2 Scope** is identical to Part 2 of the Free Speech Code.

**Part 3 Principles** sets out the general requirements of academic freedom that must be followed by all staff: academic, professional services and senior management.

3.1 sets out the conduct covered by academic freedom in general terms.

3.2 sets out the requirement that the School takes no position on scholarly and political debates.

3.3 sets out the scope of freedom of research and publication.

3.4-3.7 set out the scope of academic freedom in teaching.

3.8-3.9 sets out the effect of academic freedom in respect of the appointment and promotion of academic staff, and the publication of academic work.

3.10 refers to the type of general legal restrictions that may apply to the academic freedom set out in this code (and is modelled on the equivalent paragraph in the Free Speech Code).

**Part 4 Protecting academic freedom** sets out some specific provisions.

4.1 reiterates the freedom of speech of staff and students within the limits set by the law, the School's Discrimination, Harassment and Bullying Policy (DHBC) and the other sections of this part.

(The DHBC can be found here:

<https://info.lse.ac.uk/staff/services/Policies-and-procedures/Assets/Documents/harPol.pdf>)

4.2 creates two narrow exceptions to the DHBC to protect the academic freedom of teachers and students in the classroom and lecture hall from complaints based solely on subjective perceptions.

- i) Part 4.14 of DHBC describes the bullying behaviour that will not be tolerated by the School as follows:

‘intimidating, hostile, degrading, humiliating or offensive behaviour which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, or humiliating environment. Bullying usually involves a repeated course of conduct. Bullying does not need to relate to a protected characteristic.’

Almost all the conduct described in DHBC 4.14 is not covered by the exception created here since it would not amount to ‘expressing an opinion or offering an interpretation of a matter relevant to the activities described in 3.1 of this Code’. The only exception to DHBC 4.14 created here arises from the possibility that some of the language of 4.14 could be interpreted subjectively. What this part of the Draft Academic Freedom Code protects is the use of words or images in the course of teaching when the use of those words is relevant to the dissemination of social-scientific knowledge, even though some students might find these words or images ‘offensive’ or ‘harmful’, or believe them to have the effect of creating ‘an intimidating, hostile, degrading or humiliating environment’.

The effect of this section is that where the teachers’ use of the words or images is relevant to ‘the dissemination of social scientific knowledge’—which is to say that the usage has a demonstrable bearing on the knowledge concerned—then it should be protected by the School. To be clear: a) the repeated use of offensive, insulting or degrading terms will cast doubt on its pedagogic justification and, therefore, on the relevance of this conduct to the ‘dissemination of social scientific knowledge’ and therefore on the application of this part of this code to the teachers’ conduct; b) the use of such language to refer to students themselves is not covered by this exception since that is not an ‘expression of an opinion or an interpretation of a matter relevant to the dissemination of social-scientific knowledge’.

ii) Part 4.18A DHBC describes a hate incident as:

‘behaviour which is not a crime but which is perceived by the victim, or anybody else, to be motivated by hostility or prejudice based on the 5 protected characteristics...’

This part of the Academic Freedom Code therefore establishes that the mere perception that the use of certain words or images in the classroom are motivated by hostility or prejudice when those words or images are being used in a way which is relevant to the ‘dissemination of social scientific knowledge’ will not be enough to engage DHBC 4.18A. Where such language is repeated or used excessively then this may amount to objective evidence of bullying under 4.14 DHBC in any case – see above.

This part of the Draft Academic Freedom Code follows the spirit of UK human rights law under which it is unlawful for the police to record a non-crime hate incident where the speech concerned is protected by Article 10 ECHR (see *R(Miller) v College of Policing* [2021] EWCA Civ 1926).

4.3 makes clear that while students or staff have a right to protest against the dissemination at LSE of ideas that they object to, and to protest against specific meetings or events where such ideas will be discussed, protest cannot go so far as to violate the academic freedom of other members of the School community, either by preventing access to any educational or public event or by seriously disrupting a meeting, lecture or class either from within or immediately outside the event itself.

4.4 requires that where students or staff believe a member of staff or student should be disciplined, dismissed or expelled they must make a formal complaint before they make any calls for such action *in public*, and may not continue to make such calls on the basis of a complaint that has already been

rejected under the School's procedures. This part does not affect private discussion of the possibility or desirability of disciplinary action. Nor does it prevent complaints, including complaints in public, about the fairness or effectiveness of any earlier procedures, but such complaints may not include any call for the disciplining, dismissal or expulsion of a member of staff or student.

4.5 requires that students or staff do not continue to repeat allegations against a member of staff that have been dismissed under the School's procedures in any direct communication with that member of staff.

**Part 5** is identical in substance to Part 5 of the Free Speech Code.